



**Committee on Sanitary and Phytosanitary Measures**

**REVIEW OF THE OPERATION AND IMPLEMENTATION  
OF THE SPS AGREEMENT**

DRAFT REPORT OF THE COMMITTEE

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

**INTRODUCTION**

Article 12.7 of the Agreement on the Application of Sanitary and Phytosanitary Measures ("the Agreement") provides that "the Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises". A First Review of the Agreement was completed in March 1999.<sup>2</sup>

At the Fourth Session of the Ministerial Conference, Ministers instructed the Committee to review the operation and implementation of the Agreement at least once every four years.<sup>3</sup> The Second Review of the Agreement was completed in July 2005,<sup>4</sup> the Third Review in May 2010,<sup>5</sup> and the Fourth Review in July 2017.<sup>6</sup> At its March 2018 meeting, the Committee adopted a procedure and timetable to undertake the Fifth Review of the Agreement.<sup>7</sup>

In accordance with the procedures adopted by the Committee, this draft report of the Fifth Review is for discussion at the 18-19 July 2019 meeting of the Committee. Members are invited to submit written comments on this draft to the Secretariat by **17 June 2019**.

The draft report of the Fifth Review is comprised of three sections: (i) **Part A**: Proposals submitted under the Fifth Review – which contains the list of the proposals submitted under the Fifth Review, as well as information on the discussions and thematic sessions that have taken place on the various topics. In addition, this section contains information on the areas identified for further work by the SPS Committee, including any recommendations (to be added at a later stage); (ii) **Part B**: Periodic review of Decisions, Guidelines and Recommendations of the SPS Committee – which outlines the existing decisions, guidelines and recommendations which are to be examined as part of the periodic review of the Agreement; and (iii) **Part C**: Factual report – which will be based on the draft background document, which was initially circulated as G/SPS/GEN/1612 on 4 May 2018.<sup>8</sup>

---

<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 and obligations under the WTO.

<sup>2</sup> G/SPS/12.

<sup>3</sup> WT/MIN(01)/17.

<sup>4</sup> G/SPS/36.

<sup>5</sup> G/SPS/53.

<sup>6</sup> G/SPS/62. In accordance with the procedures for the Fourth Review, the Committee considered the revised report of the Review for adoption for the first time at its October 2014 meeting. After submission of Members' comments and suggestions, as well as further discussions in several Committee meetings, the report was subsequently adopted in July 2017. The report of the Fourth Review largely reflects the work of the Committee until October 2014, except where stated otherwise.

<sup>7</sup> G/SPS/W/296/Rev.1.

<sup>8</sup> Part C will be updated at a later stage and will be contained in an addendum to the Report of the Review.

---

**Table of contents**

	Page
<b>PART A – PROPOSALS SUBMITTED UNDER THE FIFTH REVIEW</b> .....	<b>3</b>
<b>1 INTRODUCTION</b> .....	<b>3</b>
<b>2 APPROPRIATE LEVEL OF PROTECTION, RISK ASSESSMENT AND SCIENCE</b> .....	<b>3</b>
<b>3 CONTROL, INSPECTION AND APPROVAL PROCEDURES (ANNEX C)</b> .....	<b>4</b>
<b>4 EQUIVALENCE</b> .....	<b>4</b>
<b>5 FALL ARMYWORM</b> .....	<b>6</b>
<b>6 NATIONAL SPS COORDINATION MECHANISMS</b> .....	<b>7</b>
<b>7 NOTIFICATION PROCEDURES AND TRANSPARENCY</b> .....	<b>7</b>
<b>8 PESTICIDE MRLS</b> .....	<b>8</b>
<b>9 REGIONALIZATION</b> .....	<b>8</b>
<b>10 ROLE OF CODEX, IPPC AND OIE IN ADDRESSING SPECIFIC TRADE CONCERNS</b> .....	<b>9</b>
<b>11 THIRD PARTY ASSURANCE SCHEMES AND DEVELOPMENT OF GUIDELINES FOR IMPLEMENTATION OF ARTICLE 13</b> .....	<b>10</b>
<b>PART B – PERIODIC REVIEW OF COMMITTEE DECISIONS, GUIDELINES AND RECOMMENDATIONS</b> .....	<b>11</b>
<b>12 INTRODUCTION</b> .....	<b>11</b>
<b>13 PROCEDURE TO MONITOR THE PROCESS OF INTERNATIONAL HARMONIZATION (G/SPS/11/REV.1)</b> .....	<b>11</b>
<b>14 CONSISTENCY - GUIDELINES TO FURTHER THE PRACTICAL IMPLEMENTATION OF ARTICLE 5.5 (G/SPS/15)</b> .....	<b>11</b>
<b>15 PROCEDURE TO ENHANCE TRANSPARENCY OF SPECIAL AND DIFFERENTIAL TREATMENT IN FAVOUR OF DEVELOPING COUNTRY MEMBERS (G/SPS/33/REV.1)</b> .....	<b>12</b>
<b>16 RECOMMENDED PROCEDURE TO ENCOURAGE AND FACILITATE THE RESOLUTION OF SPECIFIC SPS ISSUES AMONG MEMBERS IN ACCORDANCE WITH ARTICLE 12.2 (G/SPS/61)</b> .....	<b>12</b>
<b>ANNEX I: LIST OF TOPICS AND PROPOSALS</b> .....	<b>13</b>
<b>PART C - FACTUAL REPORT</b> (an updated version of the Background Document of the Fifth Review, G/SPS/GEN/1612, to be included as an addendum to a future revision of this Report)	

---

## **PART A – PROPOSALS SUBMITTED UNDER THE FIFTH REVIEW**

### **1 INTRODUCTION**

1.1. In the Fifth Review, the Committee has considered proposals and suggestions submitted by Members on the following topics:

- Appropriate level of protection, risk assessment and science;
- Control, inspection and approval procedures (Annex C);
- Equivalence;
- Fall armyworm;
- National SPS coordination mechanisms;
- Notification procedures and transparency;
- Pesticide MRLs;
- Regionalization;
- Role of Codex, IPPC and OIE in addressing STCs; and
- Third party assurance schemes and development of guidelines for implementation of Article 13.

1.2. Part A of this document contains information on the discussions that have taken place in the SPS Committee and thematic sessions on the various topics identified above.<sup>9</sup> Annex I provides a list of the topics and proposals submitted under the Fifth Review.<sup>10</sup>

### **2 APPROPRIATE LEVEL OF PROTECTION, RISK ASSESSMENT AND SCIENCE**

2.1. Brazil indicated interest in discussing the appropriate level of protection (ALOP), risk assessment, and the scientific basis of SPS measures required by the SPS Agreement in its preliminary submission.<sup>11</sup> While recognizing that the SPS Agreement provides a solid base for the treatment of regulatory issues in the area of trade in agricultural products, Brazil was of the view that it was necessary to reinforce its features to ensure the attainment of its objectives.

2.2. In relation to scientific justification (Article 2.2) and risk assessment, Brazil indicated that the Committee should reaffirm the scientific basis of SPS measures required by the SPS Agreement, thereby limiting the use of SPS measures in a manner that would constitute arbitrary or unjustifiable discrimination or a disguised restriction on trade. With respect to risk assessment and determination of the appropriate level of SPS protection (Article 5), Brazil indicated that Members could discuss guidelines to ensure that the factors to be taken into account in risk assessment, as provided for in Articles 5.2 and 5.3, were appraised in ways supported by scientific evidence and methods. Members could also discuss ways to avoid the misuse of Article 5.7.

2.3. Some Members indicated interest in a further elaboration of Brazil's proposal, while also flagging concerns. The United States expressed interest in the topic of risk assessment, including risk communication, noting that the Background Document for the Fifth Review<sup>12</sup> contained valuable information on relevant Committee discussions.

2.4. Subsequently Brazil introduced a more detailed proposal<sup>13</sup> on risk assessment and appropriate level of protection. Brazil suggested that Members be urged to recognize that risk assessment, as regulated under Article 5.1, was the main criteria and means by which scientific justification was attained for the adoption and implementation of SPS measures. It also suggested that Members

---

<sup>9</sup> The Chairperson's report of the informal meetings on the Fifth Review is contained in JOB/SPS/2/Rev.2.

<sup>10</sup> A summary of all submitted proposals and papers is available in G/SPS/GEN/1625/Rev.2. In addition, comments that have been submitted on these proposals and papers are available in G/SPS/GEN/1655 and G/SPS/GEN/1661.

<sup>11</sup> G/SPS/W/301.

<sup>12</sup> G/SPS/GEN/1612.

<sup>13</sup> G/SPS/W/308, which replaced the relevant sections in G/SPS/W/301.

specify in relevant notifications that the notified measures were taken under Article 5.7, stating their views on the insufficiency of scientific evidence in relation to the issue that gave origin to the measure, and that the notifying Member had sought and would continuously seek additional information in order to review the measure within a reasonable period of time. The Committee should also ask Codex Alimentarius, as well as other relevant international organizations, to work on the procedural steps necessary for the adoption and application of provisional measures, given the impossibility of establishing a proper risk assessment. Brazil recognized that this was a sensitive issue and indicated openness to dialogue.

2.5. In Committee discussions, Brazil referred to the practical differences in the definition of risk assessment in the SPS Agreement, and that of the International Standard-Setting Bodies (ISSBs), as well as in the principle of provisional measures embodied in Article 5.7.

2.6. One Member emphasized the importance of Article 5.1 in implementing the scientific justification principle of the SPS Agreement, and further indicated that it did not agree with the suggestions regarding notifications contained in paragraph 2.1(b) of Brazil's proposal, which in its view went beyond the obligations of the Agreement and created an additional burden.

2.7. Other Members noted the importance of the scientific justification principle and the challenging nature of discussing this topic, while indicating their willingness to have further discussions on certain elements of the proposal.

### **3 CONTROL, INSPECTION AND APPROVAL PROCEDURES (ANNEX C)**

3.1. The SPS Committee held a Workshop on Control, Inspection and Approval Procedures (Annex C) in July 2018.<sup>14</sup> The main objective of the workshop was to bring together officials responsible for the implementation of the SPS Agreement, as well as the relevant international standard-setting bodies and other international organizations, for discussion and experience-sharing on developments, challenges and practices in implementing Article 8 and Annex C of the SPS Agreement. Through presentations, practical case stories and discussions, the workshop aimed to expand Members' understanding of the relevant WTO Agreements and provisions; highlight the economic rationale for strengthening the implementation of Annex C to reduce trade transaction costs; and explain how the WTO Trade Facilitation Agreement (TFA) linked to and complemented the SPS Agreement.

3.2. The United States expressed interest in continuing to work on this topic. Canada proposed to hold a thematic session on approval procedures in November 2019, to provide Members with an opportunity to discuss issues concerning the implementation of Article 8 and Annex C.<sup>15</sup> Canada proposed that such a thematic session could also address areas such as undue delays and transparency procedures.

3.3. Members welcomed Canada's proposal, and several noted challenges faced in trade of agricultural products due to approval procedures which did not follow the principles of the SPS Agreement. The Committee agreed to hold a thematic session on approval procedures in November 2019. Members were asked to submit inputs on the programme and speakers, following which the Secretariat would prepare a first draft of the programme for circulation and discussion in the July 2019 Committee meeting.

### **4 EQUIVALENCE**

4.1. Australia proposed that the Committee expand on its existing guidance on recognition of equivalence in relation to systems approaches for achieving the importing Members' appropriate level of protection.<sup>16</sup> In particular, the proposal suggested that the Committee explore the impediments to the application of the concept and practices of equivalence to manage SPS risks in trade. The Committee could build on its *Decision on the Implementation of Article 4 of the Agreement*

---

<sup>14</sup> A summary report of this workshop is available in document G/SPS/R/91. The programme is also available in document G/SPS/GEN/1613/Rev.2. Presentations from the session are available at: [https://www.wto.org/english/tratop\\_e/sps\\_e/workshop910718\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/workshop910718_e.htm).

<sup>15</sup> G/SPS/W/310.

<sup>16</sup> G/SPS/W/299.

---

*on the Application of Sanitary and Phytosanitary Measures*<sup>17</sup>, specifically in relation to the determination of equivalence of a systems approach, and draw on existing and ongoing work of the ISSBs.

4.2. Brazil proposed that Members recognize the importance of the Committee Decision on Equivalence, commit to follow its provisions, and reinforce their commitment to enter into consultations when requested, following Article 4.2 and the procedures described in the Decision itself.<sup>18</sup> Canada proposed holding a workshop or a thematic session on equivalence,<sup>19</sup> and suggested including topics such as systems approaches.<sup>20</sup> Several Members supported Canada's proposal to hold a thematic session or workshop on equivalence and further suggested that such an event could also address the topics raised by Australia and Brazil, as well as help to identify priorities and needs. Many Members were in favour of sharing best practices and experiences in implementing Article 4 before developing additional guidance.

4.3. The Committee decided to hold a two-part thematic session on equivalence, including a first part to introduce the concept of equivalence and the international guidance available from the WTO and ISSBs; and a second part to share the experiences of Members with the recognition of equivalence.

4.4. The first part of the thematic session on equivalence was held in October 2018,<sup>21</sup> where the Secretariat provided an overview of the provisions of the SPS Agreement on equivalence (Article 4) and the relevant guidelines, as well as relevant jurisprudence. The thematic session also included a presentation from the Secretariat on equivalence from a TBT perspective. The ensuing discussions covered SPS topics related to the time-frame for expedited responses, the use of Committee guidelines in disputes, responding to equivalence requests, criteria for determining the appropriate level of protection, and the lack of equivalence notifications, among others. In addition, the discussions focused on the differences in the coverage of equivalence in the SPS and TBT Agreements, and the lessons to be learned from discussions in the SPS and TBT Committees.

4.5. Representatives of Codex, IPPC and OIE explained how the concept of equivalence was applied in their respective areas and identified the relevant international standards and guidelines. In addition, the OIE provided information on the level of implementation of equivalence and equivalence arrangements by its members, including the challenges faced in making an equivalence determination, as reported in a recent survey. The discussions covered the need to ensure the consistency of the work being undertaken by the ISSBs with the WTO Agreements; the challenges of having a common definition of equivalence; the lack of consistency in wording across organizations; the situations in which a systems approach should be used; and the link between recognition of disease-free areas and equivalence determinations. The Secretariat provided background information on the genesis of the equivalence Decision and underscored the collaboration between the SPS Committee and the ISSBs at the time.

4.6. Building on Part 1 of Thematic Session on Equivalence, the proponents noted several areas for further discussion. These included the notification of equivalence and use of the formal equivalence agenda item; exploring certain concepts in more detail; improving the predictability of equivalence; and discussing the Committee Decision. One Member observed that the first part of the thematic session had served to untangle some of the issues identified in its written comments.<sup>22</sup>

4.7. The second part of the Thematic Session was held in March 2019.<sup>23</sup> Members shared their experience in applying equivalence at different levels, to individual measures, groups of measures, or entire control systems for particular commodities. In addition, other approaches to equivalence

---

<sup>17</sup> G/SPS/19/Rev.2.

<sup>18</sup> G/SPS/W/301.

<sup>19</sup> G/SPS/W/302.

<sup>20</sup> G/SPS/W/302/Rev.1.

<sup>21</sup> The programme is available in document G/SPS/GEN/1640/Rev.1. Presentations from the session are available at: [https://www.wto.org/english/tratop\\_e/sps\\_e/workshop301018\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/workshop301018_e.htm).

<sup>22</sup> G/SPS/GEN/1655.

<sup>23</sup> The programme is available in document G/SPS/GEN/1675/Rev.1. Presentations from the session are available at: [https://www.wto.org/english/tratop\\_e/sps\\_e/workshop18032019\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/workshop18032019_e.htm).

were presented from an academic and regional perspective. In the discussions, Members agreed that equivalence was an important trade-facilitating tool.

4.8. Some speakers highlighted that the principle of equivalence implied reaching a similar or comparable end-result, without requiring sameness of methods or procedures. In this context, the role of the 'appropriate level of protection' was highlighted several times as the relevant benchmark or comparator against which the health outcome of alternative processes or methods should be assessed. The proponents indicated their intention to reflect on the discussions at the thematic sessions and consider possible next steps.

## 5 FALL ARMYWORM

5.1. Brazil, Kenya, Paraguay, the United States and Uruguay proposed using fall armyworm as a case study to discuss the application of the principles in the SPS Agreement to enable greater access to tools and technologies.<sup>24</sup> The proposal recommended forming a working group to undertake several activities.

5.2. Several Members supported the proposal, including the formation of a working group to share experiences and help to identify precautionary actions. One Member indicated that it was still studying the proposal and that it reserved its position. Another Member raised questions about the link to intellectual property issues made in the proposal, and the link to the TRIPS Agreement, also noting that biotechnology was a sensitive subject, and that the development of prescriptive guidelines in this area could interfere with Members' policy space.

5.3. The Committee decided to hold a thematic session on fall armyworm in March 2019, and Paraguay circulated a proposed agenda for this session.<sup>25</sup> The Thematic Session on Fall Armyworm was held on 19 March 2019<sup>26</sup>, to discuss the role of the WTO SPS Agreement in enabling access to tools and technologies and facilitating international trade, using fall armyworm as a case study. The session provided information on the nature and the impact of the spread of fall armyworm across the globe, the challenges for smallholders, and the tools and technologies available. Global, regional and domestic approaches to enable regulatory frameworks to facilitate access to safe and effective tools and technologies were presented. Members shared their experiences in dealing with fall armyworm, highlighting their successes and challenges.<sup>27</sup>

5.4. Paraguay and Uruguay subsequently noted that research had allowed the development of technology kits, which could be effective in other regions such as Africa. They suggested that the Committee should focus on how to move forward to assist countries in need of these technology kits, and how the Committee could effectively support this approach, in light of the principles of the SPS Agreement in formulating and implementing SPS measures. The also underscored the importance of collaborating on regulatory approaches.

5.5. The first open-ended working group meeting on fall armyworm was held in March 2019, where Members were invited to share their views on potential next steps. Members reflected on the experiences shared in the thematic session. The co-sponsors indicated their intention to have an open and collaborative process in exchanging ideas so that the Fifth Review Report would fully reflect the views of the Committee.

5.6. Issues discussed at this meeting included the development and implementation of guidelines in order to respond to the needs of farmers impacted by the pest; the role of the ISSBs in developing a collaborative action plan, and the possible opportunity to contribute to IPPC's International Year of Plant Health 2020; the role of the SPS Committee; and facilitation of technology transfer among Members. One of the proponents clarified that the suggested role of the working group was to compile rather than develop guidelines, and to reflect the experiences of Members that could be beneficial to others in their national and regional work in facilitating access to tools.

---

<sup>24</sup> G/SPS/W/305.

<sup>25</sup> G/SPS/W/309 and G/SPS/W/309/Corr.1.

<sup>26</sup> The programme for this thematic session is contained in G/SPS/GEN/1676/Rev.1. Presentations from the session are also available at: [https://www.wto.org/english/tratop\\_e/sps\\_e/workshop19032019\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/workshop19032019_e.htm).

<sup>27</sup> See the summary report of the March 2019 SPS Committee meeting for an overview of the thematic session (G/SPS/R/94, forthcoming).

## 6 NATIONAL SPS COORDINATION MECHANISMS

6.1. Burundi, Ghana, Kenya, Madagascar, Nigeria and the United States presented a joint proposal on strengthening national SPS committees, suggesting the organization of a thematic session or workshop in late 2018 or early 2019.<sup>28</sup> Several Members supported the proposal, highlighting the importance of sharing experiences with national SPS committees. Some Members emphasized that national committees were not the only way to coordinate and suggested enlarging the scope to include other national coordination mechanisms in the event. While the Trade Facilitation Agreement contained an obligation to establish a national committee, the SPS Agreement did not. What mattered was the existence of a functioning national coordination mechanism. The Secretariat reminded Members that the SPS Committee had held a Workshop on Coordination at National and Regional Levels in 2011, and invited Members to consult the materials available on the WTO website.<sup>29</sup>

6.2. The Committee agreed with the Chairperson's suggestion to address national SPS coordination mechanisms in a Workshop on Transparency and Coordination to be held in July 2019. The Secretariat prepared draft programme,<sup>30</sup> inviting Members to submit comments.

## 7 NOTIFICATION PROCEDURES AND TRANSPARENCY

7.1. Brazil proposed that Members exchange views on the notification of measures not clearly fitting only within the scope of the SPS or TBT Agreements, in order to improve transparency and avoid delays in the evaluation of notifications, for example at a workshop or thematic session.<sup>31</sup> Members supported the proposal to hold a workshop or thematic session. Brazil clarified that the proposal was mainly to facilitate a broader discussion on notifications under the SPS or the TBT Agreement and did not expressly include the development of guidelines. One Member suggested that the Secretariat could provide information on notification statistics at such an event.

7.2. The Committee decided to hold a Workshop on Transparency and Coordination in July 2019. Brazil noted that both the SPS and TBT Committees would address its proposal as part of their transparency workshops scheduled for summer 2019. Brazil invited Members to collaboratively work in developing the agenda for these sessions.

7.3. The United States shared the concern regarding notification practices and welcomed the work under the Fifth Review to provide greater clarity on current practices and to promote a shared understanding among Members on the need to notify measures to the appropriate Committee consistent with the definitions contained in the SPS Agreement.<sup>32</sup>

7.4. The Secretariat circulated a draft programme for the workshop,<sup>33</sup> developed in coordination with Brazil and TBT colleagues. The draft programme took into account Brazil's proposals in the SPS and TBT Committees.<sup>34</sup> Members were requested to submit comments and suggest speakers, and Brazil submitted further suggestions.<sup>35</sup>

7.5. One Member reiterated the need to notify relevant measures under both the SPS and TBT Agreements and highlighted the importance of further discussions on these types of measures that fall within the scope of both Agreements. There was a suggestion to upgrade the SPS and TBT information management systems (IMS), as well as ePing, to become an integrated platform to allow Members to submit notifications under both Agreements, as well as to track these notifications in order to ensure the accuracy of research results. Brazil indicated interest in the idea of an automatic procedure for submitting notifications under both Agreements, noting that the feasibility of implementing this feature would have to be checked.

---

<sup>28</sup> G/SPS/W/297.

<sup>29</sup> Information on this workshop is available at:  
[https://www.wto.org/english/news\\_e/news11\\_e/spis\\_17oct11\\_e.htm](https://www.wto.org/english/news_e/news11_e/spis_17oct11_e.htm).

<sup>30</sup> G/SPS/GEN/1694.

<sup>31</sup> G/SPS/W/300.

<sup>32</sup> G/SPS/GEN/1655.

<sup>33</sup> G/SPS/GEN/1694.

<sup>34</sup> JOB/TBT/283.

<sup>35</sup> G/SPS/W/312.

## 8 PESTICIDE MRLS

8.1. Brazil, Chile, Colombia, Costa Rica, Kenya, Peru, the United States and Uruguay presented a revised joint proposal on addressing the trade effects of pesticide MRLs.<sup>36</sup> The proposal contained several recommendations to advance work in the Committee on trade-related MRLs, for inclusion in the Report of the Fifth Review. The recommendations aim to enable the Joint FAO/WHO Meeting on Pesticide Residues (JMPR) to better respond to increased demand and monitor progress on new Codex MRLs; strengthen notification practices of Members for greater transparency and predictability of MRLs; invite reports to the SPS Committee on international and regional activities on MRLs; enhance collaboration on solutions for MRLs for minor use and specialty crops; and note the role of the Committee in increasing coordination and harmonization.

8.2. Several Members expressed general support for the proposal, but some noted concerns in relation to the additional transparency requirements for pesticide MRLs, which would be burdensome. One Member stressed that the recommendations should be balanced and mutually beneficial. Another Members highlighted the challenges related to minor use pesticides.

8.3. In the March 2019 SPS Committee meeting, one Member acknowledged the importance of pesticide MRLs and raised a question on the first recommendation in the proposal in relation to the work of JMPR, observing that the Committee was not in a position to discuss the relationship between JMPR and Codex. One of the proponents emphasized that the identified recommendation was addressed to Members, and not the actions of the Committee. Members were being tasked to convey the importance of trade and JMPR's critical role in establishing MRLs to their respective Codex colleagues, through their national coordination mechanisms. The proponent further highlighted that there had been developments since the submission of the paper, in terms of improvements in the functioning of JMPR.

## 9 REGIONALIZATION

9.1. In its preliminary submission, Brazil raised some concerns on regionalization and suggested the possibility of automatic recognition of an official OIE (and eventually IPPC) disease status.<sup>37</sup> The European Union proposed Committee actions to build on the thematic sessions on regionalization,<sup>38</sup> clarifying that a further examination of jurisprudence might not be required in light of the information already provided at these sessions. The United States suggested Committee activities to promote greater understanding of regionalization and to help Members overcome challenges in its implementation.<sup>39</sup>

9.2. Some Members supported the development of case studies and training materials, as outlined in the US proposal, and further suggested experience-sharing through written submissions and greater use of the agenda item on regionalization; discussions on the reasons behind the lack of implementation of the SPS Committee Guidelines on Regionalization<sup>40</sup>; inviting the IPPC and OIE to provide further information on their ongoing work; and organizing a thematic session on regionalization.

9.3. Some Members also expressed concerns with the concept of the automatic recognition of OIE disease status, as suggested in Brazil's proposal. In response, Brazil recognized that for many Members, automatic recognition of OIE disease status was difficult and clarified that it did not preclude undertaking a risk assessment. The European Union clarified that reviewing the Guidelines on Regionalization could help identify obstacles to their practical implementation, and a possible need for clarification.

---

<sup>36</sup> G/SPS/W/292/Rev.4. Previous revisions of this proposal were discussed prior to the launch of the Fifth Review.

<sup>37</sup> G/SPS/W/301.

<sup>38</sup> G/SPS/W/298.

<sup>39</sup> G/SPS/W/303.

<sup>40</sup> G/SPS/48.



9.4. Brazil subsequently presented a proposal on regionalization,<sup>41</sup> which expanded on and replaced the suggestions on regionalization contained in its previous submission.<sup>42</sup>

9.5. Brazil, the European Union and the United States indicated that they had held discussions on the common objectives of their proposals, with a view to identifying practical ideas to cooperate to resolve concerns in this area. These ideas included discussion of case studies to identify benefits and challenges, promoting transparency, reinvigorating the standing agenda item on regionalization, and seeking inputs from OIE and IPPC.

9.6. Members expressed their general support for continued discussions, including with the OIE and IPPC, on how to address the concerns of Members. Canada drew attention to its paper on experiences with regionalization.<sup>43</sup>

9.7. Brazil, the European Union and the United States subsequently presented a joint paper containing a number of questions for Members, and for IPPC and OIE.<sup>44</sup> The proponents indicated that the paper included a synthesis of all ideas in their previous individual proposals, highlighting that it sought to outline a way forward to discussions that could lead to consensus recommendations within the Committee. The proponents invited Members, as well as IPPC and OIE, to provide responses to a set of questions outlined in the joint proposal, and to indicate whether other questions should be included. These questions and responses would form the basis for a more in-depth discussion in July 2019. Members agreed to move forward on this basis.

## 10 ROLE OF CODEX, IPPC AND OIE IN ADDRESSING SPECIFIC TRADE CONCERNS

10.1. South Africa proposed inviting the three standard-setting bodies to intervene in the Committee when specific trade concerns (STCs) in their area were discussed.<sup>45</sup> Recalling a 2009 Workshop on the Relationship between the SPS Committee and the "Three Sisters" (i.e. Codex, IPPC and OIE), South Africa noted that many STCs were related to international standards, and that the "Three Sisters" could play a useful role in discussions of these concerns.

10.2. The United States referred to its comments on the proposal<sup>46</sup> which invited Members to review the Committee's discussions in 2012 on the role of observers,<sup>47</sup> and further requested that the Secretariat provide some background information on the Committee's discussions. In response, the Secretariat provided information on past discussions of the role of observer organizations, highlighting a 2012 background document on the subject<sup>48</sup> and its annex which also contained the recommendations from the 2009 Workshop.

10.3. Several Members agreed that ISSBs could play a useful role in helping resolve concerns and also strengthen the factual basis of STCs discussed in the Committee. They referenced the useful information contained in the Catalogue of Instruments.<sup>49</sup> They emphasized that the role of ISSBs should be neutral. Members also expressed interest in refining the proposal through further discussion in order to avoid a situation where ISSBs would need to study all STCs on the agenda, trying to identify relevant standards. One Member also questioned the role that ISSBs could play in resolving trade concerns.

10.4. South Africa subsequently introduced an addendum to its proposal,<sup>50</sup> recalling that its original proposal built on the recommendations from the 2009 SPS Committee workshop. South Africa further proposed a more active role of the "Three Sisters" in addressing STCs, specifically in relation

---

<sup>41</sup> G/SPS/W/307.

<sup>42</sup> G/SPS/W/301.

<sup>43</sup> G/SPS/GEN/1650.

<sup>44</sup> G/SPS/W/311.

<sup>45</sup> G/SPS/W/304.

<sup>46</sup> G/SPS/GEN/1655.

<sup>47</sup> The following documents were also referenced in the submitted comments: (i) the 2012 Secretariat's Note on *Observers in the SPS Committee - Their Role and Outstanding Requests* (G/SPS/GEN/1157); and (ii) the 2012 Proposal by Chile and the United States on *International Standard Setting Bodies Involvement in the WTO SPS Committee in Specific Trade Concerns (STCs)* (G/SPS/W/267).

<sup>48</sup> G/SPS/GEN/1157.

<sup>49</sup> G/SPS/63.

<sup>50</sup> G/SPS/W/304/Add.1.

to implementing recommendation 8 of the 2009 workshop.<sup>51</sup> Specifically, South Africa proposed that the Secretariat write to the ISSBs requesting that they analyze the STCs and identify those which could have been addressed by the use of existing international standards. The relevant standard-setting body would then submit a report to the Secretariat. The Secretariat would share these reports with the Committee and organize a workshop wherein each of the ISSBs would share its analysis of the identified STC(s).

10.5. Some Members reiterated concerns about the potential burden on ISSBs if they needed to review the numerous STCs discussed in the Committee, given resource constraints; ISSBs having to take positions on STCs in relation to Members' measures and existing international standards, which could lead to discussions on the ALOP, which was outside the remit of the ISSBs; and the feasibility of having ISSBs analyze STCs without compromising their independent mandates. They queried the purpose of the ISSB's assessment of STCs, if there would be no obligation following the outcome of the assessment.

10.6. Other Members were of the view that there could be a role for ISSBs in providing insights to solve trade concerns, but also highlighted that ISSBs would need to find ways to prioritize their work, so that they could focus on the more persistent and long-standing STCs first. Members indicated their willingness to engage in further discussions on the proposal in order to address these concerns. South Africa further noted that no fundamental opposition to the proposal had been raised, but that there were practical concerns, and reiterated the suggestion put forward by another Member that ISSBs be given an opportunity to respond to the proposal, in order to facilitate the way forward.

## **11 THIRD PARTY ASSURANCE SCHEMES AND DEVELOPMENT OF GUIDELINES FOR IMPLEMENTATION OF ARTICLE 13**

11.1. Belize submitted a proposal suggesting that the Committee commence work on the development of guidelines for the implementation of Article 13 of the SPS Agreement.<sup>52</sup> The submission also included a recommendation to initiate this work either through the formation of an ad hoc working group or by holding a workshop. The submission indicated several areas that could be explored if the Committee agreed to first hold a workshop to explore Members' experiences in recognizing third party assurance schemes, CCFICS work on guidance for competent authorities to assess third party assurance schemes, efforts to benchmark such certification programmes with international SPS standards, and importing and exporting countries' experiences.

11.2. The United States referred to its written comments, indicating that it could not support the development of guidelines.<sup>53</sup> Belize submitted a written statement addressing the comments, and further urged Members to support either a workshop or thematic session on third party assurance schemes in 2019.<sup>54</sup>

---

<sup>51</sup> Recommendation 8 of the 2009 workshop: Requesting the "Three Sisters" to analyze the current specific trade concerns raised in the SPS Committee to see which of these could have been addressed by the use of the existing international standards (Report of the 2009 workshop, G/SPS/R/57).

<sup>52</sup> G/SPS/W/306.

<sup>53</sup> G/SPS/GEN/1655.

<sup>54</sup> G/SPS/GEN/1661.

## **PART B – PERIODIC REVIEW OF COMMITTEE DECISIONS, GUIDELINES AND RECOMMENDATIONS**

### **12 INTRODUCTION**

12.1. Within the context of the Fifth Review of the Operation and Implementation of the SPS Agreement, this document provides information on the Decisions, Guidelines and Recommendations of the SPS Committee which are to be reviewed as part of the periodic reviews of the SPS Agreement.

12.2. Periodic reviews are outlined in several existing decisions, guidelines and recommendations of the SPS Committee:

- Procedure to Monitor the Process of International Harmonization (G/SPS/11/Rev.1);
- Consistency – Guidelines to Further the Practical Implementation of Article 5.5 (G/SPS/15);
- Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members (G/SPS/33/Rev.1); and
- Recommended Procedure to Encourage and Facilitate the Resolution of Specific SPS Issues among Members in Accordance with Article 12.2 (G/SPS/61).

### **13 PROCEDURE TO MONITOR THE PROCESS OF INTERNATIONAL HARMONIZATION (G/SPS/11/REV.1)**

#### **Periodic Review:**

- The Committee should continue to monitor the use of international standards at each of its regular meetings (G/SPS/11/Rev.1). It should continue to review the monitoring procedure as part of the periodic reviews of the SPS Agreement, as foreseen in the Decision to Modify and Extend the Provisional Procedure to Monitor the Process of International Harmonization.<sup>55</sup>

13.1. Articles 3.5 and 12.4 of the SPS Agreement require the Committee to develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines and recommendations. The Committee initially adopted a Provisional Procedure to Monitor the Process of International Harmonization in 1997, and revised it in November 2004.<sup>56</sup> In June 2006, the Committee decided to extend this Procedure indefinitely, and to review its operation as an integral part of the periodic review of the operation and implementation of the Agreement under Article 12.7.<sup>57</sup>

13.2. The Background Document for the Fifth Review contains the recommendations on this topic resulting from the Fourth Review, as well as a summary of discussions under the agenda item on monitoring the use of international standards.<sup>58</sup> No Member has suggested a modification of the Procedure to Monitor the Process of International Harmonization during the Fifth Review.

### **14 CONSISTENCY - GUIDELINES TO FURTHER THE PRACTICAL IMPLEMENTATION OF ARTICLE 5.5 (G/SPS/15)**

#### **Periodic Review:**

- As foreseen in the Guidelines to further the Practical Implementation of Article 5.5 and in the Third Review, the Committee should continue to review these Guidelines as part of the periodic reviews of the SPS Agreement.<sup>59</sup>

<sup>55</sup> Recommendation from the Fourth Review; G/SPS/62, para. 2.14, first bullet. This recommendation contains a reference to G/SPS/40, para. 2.

<sup>56</sup> G/SPS/11/Rev.1.

<sup>57</sup> G/SPS/40.

<sup>58</sup> G/SPS/GEN/1612, paras. 1.1-1.6.

<sup>59</sup> Recommendation from the Fourth Review; G/SPS/62, para. 4.2, second bullet. This recommendation contains a reference to G/SPS/15, Introduction; and G/SPS/53, para. 14.

14.1. Article 5.5 requires the Committee to develop guidelines to further the practical implementation of that provision. The Committee adopted such Guidelines in July 2000, and subsequently agreed to review them as part of the periodic review of the operation and implementation of the SPS Agreement. The Background Document for the Fifth Review contains the recommendations on this topic resulting from the Fourth Review. To date no Member has suggested a need to modify these Guidelines. Although there is no standing agenda item regarding Article 5.5, there is an opportunity for Members to provide information regarding their experiences in this regard under the Agenda Item "Information from Members on Relevant Activities".

### **15 PROCEDURE TO ENHANCE TRANSPARENCY OF SPECIAL AND DIFFERENTIAL TREATMENT IN FAVOUR OF DEVELOPING COUNTRY MEMBERS (G/SPS/33/REV.1)**

#### **Periodic Review:**

- As foreseen in the Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members, the Committee should review its implementation as part of the periodic reviews of the SPS Agreement.<sup>60</sup>

15.1. The Committee adopted the Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members in 2004.<sup>61</sup> In 2006, it decided to extend the procedure, and to review it again in 2008.<sup>62</sup> In 2009, the Committee adopted a revision of the procedure, and decided to review it as part of the periodic reviews of the SPS Agreement. The Background Document for the Fifth Review contains the recommendations on this topic resulting from the Fourth Review, as well as a summary of discussions under the relevant agenda item.<sup>63</sup> No Member has submitted a proposal to modify the Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members during the Fifth Review.

### **16 RECOMMENDED PROCEDURE TO ENCOURAGE AND FACILITATE THE RESOLUTION OF SPECIFIC SPS ISSUES AMONG MEMBERS IN ACCORDANCE WITH ARTICLE 12.2 (G/SPS/61)**

#### **Periodic Review:**

- As foreseen in the Recommended Procedure to Encourage and Facilitate the Resolution of Specific SPS Issues among Members in Accordance with Article 12.2, the Committee should review its implementation as part of the periodic reviews of the SPS Agreement.<sup>64</sup>

16.1. The Committee adopted the Recommended Procedure to Encourage and Facilitate the Resolution of Specific SPS Issues among Members in Accordance with Article 12.2 in 2014. As noted in the Background Document for the Fifth Review, the Procedure has not been used to date.<sup>65</sup> No Member has submitted a proposal in relation to this Procedure during the Fifth Review.

---

<sup>60</sup> Recommendation from the Fourth Review, G/SPS/62, para. 8.2, fourth bullet. This recommendation contains a reference to G/SPS/33/Rev.1, para. 7.

<sup>61</sup> G/SPS/33.

<sup>62</sup> G/SPS/33/Add.1.

<sup>63</sup> G/SPS/GEN/1612, paras. 8.1-8.5.

<sup>64</sup> Recommendation from the Fourth Review, G/SPS/62, para. 11.7, first bullet. This recommendation contains a reference to G/SPS/61, para. 5.1.

<sup>65</sup> G/SPS/GEN/1612, paras. 11.1-11.5.

### ANNEX I: LIST OF TOPICS AND PROPOSALS

Members	ALOP, Risk Assessment and Science	Annex C	Equivalence	National SPS Committees	Notification Procedures/ Transparency	Pesticide MRLs	Regionalization	Other Topics
Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Japan, Kenya, Madagascar, New Zealand, Panama, Paraguay, Peru, Uganda, United States and Uruguay	-	-	-	-	-	<i>Joint submission</i> G/SPS/W/292/Rev.4	-	-
Australia	-	-	G/SPS/W/299	-	-	<i>Joint submission</i> G/SPS/W/292/Rev.4	-	-
Belize								Development of guidelines for implementation of Article 13 G/SPS/W/306
Benin, Burkina Faso, Burundi, The Gambia, Ghana, Kenya, Madagascar, Morocco, Nigeria, United States and Zambia	-	-	-	<i>Joint submission</i> G/SPS/W/297	-	-	-	-
Brazil	G/SPS/W/301, G/SPS/W/308	-	G/SPS/W/301	-	G/SPS/W/300, G/SPS/W/312	<i>Joint submission</i> G/SPS/W/292/Rev.4	G/SPS/W/301, G/SPS/W/307, G/SPS/W/311	<i>Joint submission on Fall armyworm</i> G/SPS/W/305, G/SPS/W/309, G/SPS/W/309/Corr.1
Brazil, European Union and United States	-	-	-	-	-	-	G/SPS/W/311	

Members	ALOP, Risk Assessment and Science	Annex C	Equivalence	National SPS Committees	Notification Procedures/ Transparency	Pesticide MRLs	Regionalization	Other Topics
Brazil, Kenya, Madagascar, Paraguay, United States and Uruguay								<i>Joint submission on Fall armyworm</i> G/SPS/W/305, G/SPS/W/309, G/SPS/W/309/Corr.1
Canada	-	G/SPS/W/310	G/SPS/W/302/Rev.1	-	-	<i>Joint submission</i> G/SPS/W/292/Rev.4	-	-
European Union	-	-	-	-	-	-	G/SPS/W/298, G/SPS/W/311	-
South Africa	-	-	-	-	-	-	-	Role of Codex, IPPC and OIE in addressing STCs G/SPS/W/304, G/SPS/W/304/Add.1
United States	Topic of interest: risk analysis (including risk communication)	Topic of interest	-	<i>Joint submission</i> G/SPS/W/297	Topic of interest	<i>Joint submission</i> G/SPS/W/292/Rev.4	G/SPS/W/303, G/SPS/W/311	<i>Joint submission on Fall armyworm</i> G/SPS/W/305, G/SPS/W/309, G/SPS/W/309/Corr.1