



Committee on Sanitary and Phytosanitary Measures

**FIFTH REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT
ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES**

COMPILATION OF COMMENTS SUBMITTED BY MEMBERS
ON THE DRAFT REPORT OF THE FIFTH REVIEW¹

Note by the Secretariat²

Members have submitted the following comments on the draft Report of the Fifth Review (G/SPS/W/313):

1 EUROPEAN UNION

1.1. As regards the structure, we agree with the proposed Parts A and C. As to Part B, we wonder whether it is really useful to have a separate section on these very few items where there have been no suggestions from any Member. While we understand the logic behind the proposal, we are inclined to believe that it might be more appropriate to integrate Part B into Part C, since the latter provides a comprehensive overview of all the activities of the Committee during the period under review, including those referred to under Part B.

1.2. As regards the actual contents of the different sections, we have no specific comments at this stage.

2 HONG KONG, CHINA

2.1. In the table of contents on page 2 of the document, we suggest relocating Annex I to follow Part C.

2.2. We suggest the following textual amendment in paragraph 12.1 to be consistent with paragraph 1.2:

"12.1 Within the context of the Fifth Review of the Operation and Implementation of the SPS Agreement, Part B of this document provides information on the Decisions,

¹The draft Report of the Fifth Review (G/SPS/W/313) was circulated on 27 May 2019.

² 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.

¹² G/SPS/GEN/1612.

²¹ 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.

²⁴ G/SPS/W/305.

²⁵ G/SPS/W/309 and G/SPS/W/309/Corr.1.

²⁶ 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.

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

³² G/SPS/GEN/1655.

³⁷ G/SPS/W/301.

³⁸ G/SPS/W/298.

³⁹ G/SPS/W/303.

Guidelines and Recommendations of the SPS Committee which are to be reviewed as part of the periodic reviews of the SPS Agreement."

3 UNITED STATES

3.1. Comment in relation to the use of 'risk assessment' in paragraph 2.3: *"Is this correct? Risk communication is a part of risk analysis, not of risk assessment"*.

"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 Review¹² contained valuable information on relevant Committee discussions."

3.2. Comments on paragraph 4.4 in relation to the use of 'jurisprudence' in the text: *"In [a] formal document such as this, we would prefer 'dispute settlement reports' if possible."*

"4.4 The first part of the thematic session on equivalence was held in October 2018,²¹ 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."

3.3. Comments on paragraph 4.5: *"Equivalence is a legal concept in the SPS Agreement. The ISSBs do not interpret the agreement – even as applied to their respective areas."* Suggested edits in relation to paragraph 4.5:

"4.5 Representatives of Codex, IPPC and OIE explained their views of how the concept of equivalence was applied in their organizations' respective areas and identified what the representatives considered to be 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 ISSB representatives' views on: 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."

3.4. Suggested edits in relation to paragraph 5.1:

"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 in integrated pest management strategies.²⁴ The proposal recommended forming a working group to undertake several activities.

3.5. Comments on paragraph 5.2: *"Paragraph 9.1 of G/SPS/GEN/1625/Rev.1 more accurately describes the proposed activities of the working group"*. Suggested edits in relation to paragraph 5.2:

"5.2 Several Members supported the proposal, including the formation of a working group to share experiences and help to identify the ways in which application of the principles of the SPS Agreement could support greater access and to collect information on collaborations among Members that could also support improved access to tools and technologies ~~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."

3.6. Comments on the last sentence of paragraph 5.2: *"Kenya intervened to say that these concerns would be taken into account by the proponents."*

3.7. Suggested edits in relation to paragraph 5.3:

"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.²⁵ The Thematic Session on Fall Armyworm was held on 19 March 2019²⁶, 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. The session also relayed information on the critical need to improve host plant resistance. 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.²⁷"

3.8. Suggested edits in relation to paragraph 7.3:

"7.3 The United States agreed with the importance of ensuring appropriate notifications and welcomed ~~The United States shared the concern regarding notification practices and welcomed the work under the Fifth Review on this topic, including work 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.³²"

3.9. Comment on paragraph 9.1 in relation to the use of 'jurisprudence' in the text: *"Prefer 'dispute settlement reports'."*

"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.³⁷ The European Union proposed Committee actions to build on the thematic sessions on regionalization,³⁸ 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.³⁹"

3.10. Comments on the title 'Part B – Periodic Review of Committee Decisions, Guidelines and Recommendations': *"Shouldn't this be 'procedures'? There are 3 'procedures' on the list below, but no 'decisions'."*

3.11. Comments on Part B of the Report: *"Could this section be condensed to simply reference the Guidelines & Recommendations for which the Committee has previously called for periodic review? In our view, it's incumbent on Members to put forward proposals on the ways in which elements of the documents or their application need to be evaluated."*