



**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 DRAFT RECOMMENDATIONS SUBMITTED BY MEMBERS FOR THE FIFTH REVIEW

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

*Revision*

The following draft recommendations for the Fifth Review Report, and other suggestions, have been compiled from the proposals submitted under the Fifth Review, and Members' written inputs in response to the Chairperson's request at the July 2019 SPS Committee meeting and the September 2019 consultations.

This compilation of recommendations should be read in conjunction with the summary of the informal SPS Committee meetings on the Fifth Review ([JOB/SPS/2/Rev.3](#)), which summarizes Members' reactions to submitted proposals. The recommendations included in this compilation reflect the latest submissions from the proponents, in the case where a proponent subsequently revised their original proposal/recommendations. The recommendations are ordered alphabetically by topic, similar to the format used in the draft Report of the Fifth Review ([G/SPS/W/313](#)).

In some cases, the recommendations have been slightly edited in order to provide additional context contained in other sections of the submitted proposals.

Members are invited to review these recommendations and provide comments at the informal consultations on **25 September 2019**, and/or in writing to the Secretariat ([SPSCommittee@wto.org](mailto:SPSCommittee@wto.org)) by **4 October 2019**.<sup>2</sup>

**1 APPROPRIATE LEVEL OF PROTECTION, RISK ASSESSMENT AND SCIENCE**

**1.1 Brazil**

1.1. Recommendations/suggestions as contained in [G/SPS/W/308](#):

- a. In order to develop and promote the adoption of science-based procedures for the implementation of the SPS Agreement, Brazil proposes the following:
  - i. Members should be urged to recognize that the risk assessment, as regulated under Article 5.1, is the main criteria and means by which scientific justification is attained for the adoption and implementation of SPS measures.
  - ii. Members should – when making notifications of corresponding provisional measures – specify that they are 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 Member has sought and will continuously seek additional information in order to review the measure accordingly and within a reasonable period of time.

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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 and obligations under the WTO.

<sup>2</sup> This deadline was subsequently extended to 10 October 2019.

- iii. The Committee should ask Codex Alimentarius, as well as other relevant international organizations, to work on the procedural steps necessary, given the impossibility of establishing a proper risk assessment, for the adoption and application of provisional measures.

## **1.2 Canada**

1.2. Recommendations/suggestions on ALOP, risk assessment and science:

- a. The International Standard Setting Bodies are invited to inform the Committee of their standards, guidelines, and recommendation or other relevant documents that they have developed regarding the consideration of insufficient scientific evidence.
- b. The Committee should continue to discuss the topic of risk and consider next steps for discussion based on the information provided by the ISSBs.

## **1.3 Ecuador**

1.3. Ecuador supports the views expressed by Brazil in document G/SPS/W/308. It is vital that Members uphold the notion that risk assessment is fundamental for the implementation of SPS measures and that such measures must be science-based in order to mitigate identified risks without creating unnecessary barriers to trade. Ecuador is willing to continue to engage in dialogue on this matter with a view to ensuring that decisions are made on the basis of scientific evidence and existing international parameters.

## **1.4 Turkey**

1.4. Regarding Brazil's proposal ([G/SPS/W/308](#)) on risk assessment and appropriate level of protection, Turkey considers Article 5 - Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection of the SPS Agreement to be quite clear and enough. Therefore, Turkey does not see any need to urge countries to recognize the same objectives given there and adding a requirement to notifications given under paragraph 2.1(b) of Brazil's proposal which will create an additional burden in terms of both administrative work and time.

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

### **2.1 Canada**

2.1. Recommendation/suggestion on approval procedures as contained in [G/SPS/W/310](#):

- a. Canada proposes that a thematic session on approval procedures be held in November 2019 as part of the Fifth Review of the Operation and Implementation of the Agreement on the Application of SPS Measures. As part of a thematic session on approval procedures, Members, International Standard Setting Bodies (ISSBs) and other organizations that have valuable perspectives in this area could be invited to share experiences, best practices, developments as well as relevant standards, guidelines and recommendations of ongoing or potential work relevant to approval procedures.<sup>3</sup>

### **2.2 Turkey**

2.2. Turkey would like to express its willingness to share its experiences on the subject.

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<sup>3</sup> A Thematic Session on Approval Procedures will be held on 5 November 2019. In addition, a Workshop on Control, Inspection and Approval Procedures was held in July 2018.

### **3 EQUIVALENCE<sup>4</sup>**

#### **3.1 Australia**

3.1. Recommendations/suggestions on equivalence as contained in [G/SPS/W/299](#):

- a. Within the framework of the Fifth Review, the SPS Committee would explore the impediments to the application of the concept and practices of equivalence to manage SPS risks in trade. Where it would assist Members to expand their use of equivalence to facilitate safe trade, the SPS Committee could expand on existing guidance on recognition of equivalence in relation to systems approaches for achieving equivalence in achieving the importing Members' appropriate level of protection of plant, animal and human health while permitting trade to begin, continue or resume.
- b. The Review would expand on guidance provided to Members in the Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures specifically in relation to the determination of equivalence of a systems approach.<sup>5</sup>
- c. The Review would draw on existing and ongoing work of the ISSBs, in relation to systems approaches that may be used in determining if a systems approach could be considered as equivalent to existing measures and achieve the importing Member's appropriate level of protection.

#### **3.2 Brazil**

3.2. Recommendations/suggestions on equivalence as contained in [G/SPS/W/301](#):

- a. To improve the implementation of Article 4, Members should recognize the importance of the Decision ([G/SPS/19/Rev.2](#)), commit to follow its provisions and reinforce the commitment of their countries to enter into consultations when requested, following Article 4.2 and the procedures described in the Decision itself.

#### **3.3 Canada**

3.3. Recommendations/suggestions on equivalence as contained in [G/SPS/W/302/Rev.1](#):

- a. Canada would like to propose, for the Committee's consideration, a workshop or thematic session on equivalence as part of the Fifth Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures.

3.4. Recommendations/suggestions on equivalence proposed in the July 2019 informal SPS Committee meeting:

- a. The Committee should continue discussions and information exchange on the topic of equivalence through the existing agenda item and in-depth discussion during future thematic sessions, informal meetings, and working groups as appropriate.
- b. Members are encouraged to coordinate with their Codex, OIE, and IPPC representatives and experts to highlight the importance of understanding trade impacts during the development and discussions of international standards, guidelines, and recommendations on the issue of equivalence.

#### **3.4 Ecuador**

3.5. For Ecuador, enhancing dialogue on the principle of equivalence is essential given that these issues are of interest when conducting trade negotiations. In this respect, it should be noted that

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<sup>4</sup> The SPS Committee held a two-part Thematic Session on Equivalence in October 2018 and February 2019.

<sup>5</sup> Australia subsequently noted that while there might still be a need to review the existing guidance, especially in relation to systems approaches, it also recognized that Members did not have an appetite to do so (paragraph 1.3(o) of [JOB/SPS/2/Rev.3](#)).

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Ecuador has aligned itself with the international practices established in the Codex and will continue its efforts in this area.

## **4 FALL ARMYWORM<sup>6</sup>**

### **4.1 Brazil, Kenya, Madagascar, Paraguay, the United States and Uruguay**

4.1. Recommendations/suggestions on fall armyworm as contained in [G/SPS/W/305](#):

- a. We recommend that interested Members of the Committee form a working group for the purpose of undertaking the activities outlined in sections 5 and 6 of this paper. The working group could, at an appropriate time, provide a report on its activities to the Committee.
  - i. We recommend that the working group examine, identify, and discuss examples of the effective use by Members of these principles to enable greater access to safe tools and technologies to manage FAW in Africa. The working group could also determine if any of these principles have not been employed in the FAW context as well as the reasons why, and how the principle could be relevant in the future.
  - ii. We recommend that the working group collect and compile information and experiences resulting from collaboration in these areas. The compilation could serve as a resource for national and regional authorities with capacity or expertise constraints in the development of their own systems and strategies. The compilation would obviously not affect Members' rights and obligations under the SPS Agreement.
  - iii. Brazil, Kenya, Madagascar, Paraguay, the United States and Uruguay believe there is a compelling need to enable greater access to safe tools and technologies in the quest for safer and more sustainable agriculture and to prevent food insecurity. We recommend that interested Members of the Committee form a working group to develop these documents outlined in sections 5 and 6 of this paper for consideration by the Committee under the Fifth Review.

### **4.2 Brazil, Kenya, Paraguay and the United States**

4.2. Recommendations/suggestions as contained in [G/SPS/W/317](#):

- a. Brazil, Kenya, Paraguay and the United States propose that the concepts identified below could productively be a subject of further Committee discussion in connection with FAW and could be assembled into a Committee document, connected to the Fifth Review, on approaches to streamline regulatory processes with respect to FAW. We recognize these concepts can be helpful in addressing other SPS challenges as well, particularly for authorities facing capacity constraints. Such a document could assist Members in strengthening implementation of Article 9 of the SPS Agreement.
  - i. The concepts are: (i) data portability; (ii) common application dossiers; (iii) joint risk assessments; (iv) adaptation to regional conditions; (v) unilateral recognition; (vi) mutual recognition; (vii) familiarity; (viii) history of safe use; (ix) equivalence; (x) harmonization; and (xi) emergency use authorization.

### **4.3 India**

4.3. The following are India's comments on the draft recommendations/suggestions in document G/SPS/W/318 regarding paragraphs 4.1 and 4.2 about fall armyworm (FAW):

- a. We recognize the importance of devising ways and means to tackle fall armyworm (FAW). We are also committed to building stakeholder's capacities through mutual cooperation and support. However, we feel that further deliberations are required to obtain clarity on some of the concepts being proposed in paragraphs 4.1 and 4.2. We note that market access to products, tools, and technologies will be governed by regulations and laws in

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<sup>6</sup> The SPS Committee held a Thematic Session on Fall Armyworm in February 2019, followed by the first meeting of the open-ended working group on fall armyworm.

force in each Member's territory. We request the proponents to elaborate upon the following:

- i. Are the concepts being proposed to address the SPS challenges relating to FAW voluntary in nature or are they to be adhered to in a prescriptive manner?
- ii. Is the list of concepts exhaustive or is it merely an indicative/inclusive one?
- iii. With respect to the following:
  - 1) Data portability;
  - 2) Common application dossiers;
  - 3) Joint risk assessments;
  - 4) Familiarity
  - 5) History of safe use; and
  - 6) Emergency use authorization.

What is the legal basis for these concepts under the SPS Agreement? Do the concepts adhere to the requirements specified under the SPS Agreement or are some of them SPS-plus?

## **5 NATIONAL SPS COORDINATION MECHANISMS**

### **5.1 Benin, Burkina Faso, Burundi, The Gambia, Ghana, Kenya, Madagascar, Morocco, Nigeria, the United States and Zambia**

5.1. Recommendations/suggestions on national SPS committees as contained in [G/SPS/W/297](#):

- a. We propose that the SPS Committee examine the following matters, as well as others of interest to Members, through an exchange of experiences in a thematic session or workshop to be held in late 2018 or early 2019:<sup>7</sup>
  - i. The mechanism for establishment and composition of national SPS committees;
  - ii. The role of the private sector in advising or providing input to national SPS committees;
  - iii. The procedures for developing national SPS strategies and positions in regional and international organizations;
  - iv. Use of established information exchange mechanisms; and
  - v. Role of national SPS committees in advocacy.
- b. Following the Committee's examination of these matters, we would welcome other Members' views as to whether a "good practices" document would be useful to Members. In our view, a collection of good practices could assist developing countries, recently acceded Members and countries seeking to accede to the WTO. We are interested in others' views.

### **5.2 Canada**

5.2. Recommendation/suggestion on national SPS coordination mechanisms:

- a. Members are encouraged to implement appropriate national coordination mechanisms to enable consultation and communication between relevant technical and trade policy experts to enable the development of coordinated SPS positions.

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<sup>7</sup> A joint Workshop on Transparency and Coordination was held on 15-16 July 2019.

## 6 NOTIFICATION PROCEDURES AND TRANSPARENCY

### 6.1 Brazil

6.1. Recommendations/suggestions on notification procedures and transparency as contained in [G/SPS/W/300](#):

- a. Without prejudice to the rights and obligations of Members under other committees, and for the purpose of enhancing predictability and transparency in situations where a Member considers it is difficult to establish or foresee whether a draft technical regulation may fall under the SPS and/or the TBT Agreement, Brazil understands that Members should notify simultaneously the measure in both Committees in accordance with the recommended procedures for implementing the transparency obligations of the SPS Agreement set forth on [G/SPS/7/Rev.4](#).
- b. In line with the above, and taking into account the challenges arising from defining whether a measure falls within the scope of one or both agreements, Brazil proposes to further address this cross-cutting issue through thematic sessions and workshops, with a view to developing practical guidelines for notifications.<sup>8</sup>

### 6.2 Canada

6.2. Recommendations/suggestions on notification procedures/transparency:

- a. Members are encouraged to clearly indicate in their SPS Committee notification when a measure has been notified to another Committee.
- b. The Secretariat is requested to update the SPS notification templates to include a new section 'related notifications'. The 'related notifications' section would be completed by Members when a SPS measure is notified to other Committees or when there are other related notifications.

### 6.3 Ecuador

6.3. In this regard, it should be emphasized that the ePing system has been extremely useful for the internal analysis of draft regulations and for sending comments. Ecuador is constantly analyzing notifications received via the ePing platform, thanks to the coordinated efforts of the Permanent Mission to the WTO, the Ministry of Production, Foreign Trade, Investment and Fisheries, and agencies directly involved in the application of sanitary and phytosanitary measures.

6.4. Nevertheless, Ecuador considers it important to point out that even though Members submit notifications in the official WTO languages (English, Spanish or French), the notified regulations themselves are often drafted in the language of the notifying country, which makes it difficult to properly understand not only their scope but their potential impact on Ecuador's exportable supply. We therefore suggest looking at ways of facilitating access to English, Spanish or French translations of notified regulations.

## 7 PESTICIDE MRLS

### 7.1 Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Japan, Kenya, Madagascar, New Zealand, Panama, Paraguay, Peru, Uganda, the United States and Uruguay

7.1. Recommendations/suggestions on pesticide MRLs as contained in [G/SPS/W/292/Rev.4](#):<sup>9</sup>

- a. We believe the Committee should encourage Members, as a matter of some urgency, to approach their Codex representatives to highlight the trade issues raised during discussions

<sup>8</sup> A joint Workshop on Transparency and Coordination was held on 15-16 July 2019.

<sup>9</sup> Ministers of Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Guatemala, Japan, Kenya, Madagascar, Panama, Paraguay, Peru, Uganda, the United States and Uruguay signed a joint statement supporting the recommendations contained in this submission. See [WT/MIN\(17\)/52](#).

on MRLs at the SPS Committee and to participate actively in their inter-ministerial discussions on MRL issues. Members should encourage national discussions of options that could enable a more productive Codex MRL system; and in particular, to hasten discussions on ways to achieve sustainable funding for the scientific bodies. Such discussions would take place in the context of national resource availability, and could include, inter alia, options for increasing support to JMPR, increasing representative expert participation and other forms of support for the scientific bodies as well as encouraging programmes to support submission of data from developing countries especially on minor crops. The Committee should also invite regular updates from Codex on its progress in the evaluation of new compounds and new uses.

- b. We believe the SPS Committee should consider ways for WTO Members to provide greater transparency and predictability worldwide on MRLs by urging Members to: (1) notify all proposed changes to their MRLs, including changes to MRLs that are based on international standards; and (2) review and improve their ability to take the comments of their trading partners meaningfully into account when considering proposed changes on MRLs.
- c. We believe the Committee should welcome efforts by Members of these regional initiatives and the relevant observer organizations to provide regular updates to the Committee on their harmonization and other collaborative activities on MRLs. Such information could provide the basis for other Members to take up creative new MRL-related initiatives at the national and regional levels to improve harmonization to Codex MRLs as well as to regional MRLs where relevant, in order to facilitate trade.
- d. We believe the SPS Committee should invite Members, on a voluntary basis, to explore ways in which their domestic regulatory approaches to pesticide registration and use can impact – both negatively and positively – the incentives of the private sector to invest in registration and stewardship of lower-risk alternative pesticides in their countries. The SPS Committee should also invite Members to evaluate their own minor use needs and to collaborate in global data generation activities.
- e. We recommend the Committee include all of the recommendations put forward in this paper in its Report of the Fifth Review of the Operation and Implementation of the SPS Agreement.

## **7.2 Ecuador**

7.2. Ecuador supports the recommendations set out in document G/SPS/W/292/Rev.4. The work of the JMPR needs to be strengthened in order to ensure a timely response to issues that arise regarding the setting of MRLs. In Ecuador's view, it is vital that all Members be aligned with the principles established in the SPS Agreement and base their measures on the international decisions on pesticide MRLs adopted by the Codex Committee on Pesticide Residues.

## **7.3 Turkey**

7.3. It is considered that the countries setting more restrictive measures on MRLs than the international standards should share their risk assessments, on which these more restrictive measures are based, with the international standard-setting organizations. Hence, a common ground would be established to facilitate risk assessment procedures.

## **8 REGIONALIZATION**

8.1. Recommendations/suggestions on regionalization were submitted in earlier proposals by Brazil ([G/SPS/W/307](#)), the European Union ([G/SPS/W/298](#)) and the United States ([G/SPS/W/303](#)). However, these proponents subsequently submitted a joint paper ([G/SPS/W/311](#)) in order to gather responses from Members, as well as IPPC and OIE, on a set of questions to inform further discussions on the topic.

## 8.1 Turkey

8.2. Regarding recognition of regionalization and pest and disease-free zones, recommendations of international organizations and the requirements of exporting country could be different. In addition, importing countries sometimes require implementation of their own procedures on recognition of pest and disease-free zones although they are defined in accordance with the international standards and notified to trading partner countries through SPS notifications.

8.3. Turkey has completed its regionalization studies for its zones free of avian influenza in line with OIE recommendations, and has published a self-declaration of freedom from the disease through OIE and SPS notifications. However, Turkey still faces some problems regarding recognition of its free status of avian influenza with countries.

8.4. Besides, some exporting countries do not recognize the disease-free status of regions or zones within a country and request disease-free status of the entire country.

8.5. In this respect, Turkey welcomes the proposal to review the Committee's Guidelines on implementation of Article 6 with the contributions of the international organizations, such as OIE and IPPC, as well as organizing trainings with regards to related subjects.

8.6. It is beneficial to encourage countries to announce their regionalization efforts related to animal diseases, which may affect trade during peace time. This can be done through SPS notifications, in addition to self-declarations to OIE, as well as by identifying regions to impose import restrictions which therefore does not affect the whole country, in case of an outbreak.

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

### 9.1 South Africa

9.1. Recommendations/suggestions on the role of Codex, IPPC and OIE as contained in [G/SPS/W/304/Add.1](#).

- a. South Africa would like to propose that the Secretariat write to the ISSBs requesting them to implement recommendation 8 of the workshop:<sup>10</sup>
  - i. To analyze the STCs and to identify those which could have been addressed by the use of existing international standards. The relevant Sister Organization will then submit a report to the Secretariat;
  - ii. Upon receipt of this report from each of the three Sisters, it is proposed that the Secretariat share the report with the Committee and organize a workshop wherein each of the three Sisters will share its analysis of the identified STC(s).

### 9.2 Codex, IPPC and OIE

9.2. Recommendation/suggestion as contained in [G/SPS/W/314](#):

- a. Members are encouraged to develop their understanding of the various standards adopted by Codex, IPPC and OIE in order to facilitate their implementation.

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<sup>10</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](#)).



## **10 THIRD PARTY ASSURANCE SCHEMES**

### **10.1 Belize**

10.1. Recommendation/suggestion on voluntary third-party assurance schemes as contained in [G/SPS/W/316](#).<sup>11</sup>

- a. "In view of the ongoing work being undertaken by CCFICS on the use of voluntary third-party assurance to inform national food control system planning, and the current pilot projects that will be undertaken in Belize, Honduras, Mali, Senegal and Uganda, the Committee should hold a thematic session on voluntary third-party assurance programmes."
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<sup>11</sup> The recommendation in the original proposal referred to "a thematic session or workshop", however in the July 2019 SPS Committee meeting, Belize informed the Committee that the four areas indicated in its proposal would be best covered in a one-day thematic session, as opposed to a two-day workshop. The Committee agreed in the July 2019 SPS Committee meeting to include this recommendation in the revised draft Report of the Fifth Review.