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Committee on Sanitary and Phytosanitary Measures

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**COMMENTS ON THE RECOMMENDATIONS IN THE DRAFT REPORT OF THE FIFTH REVIEW
(G/SPS/W/313/REV.2)**

SUBMISSION FROM THE UNITED STATES

The following document, received on 9 March 2020, is being circulated at the request of the Delegation of the United States.

1 APPROPRIATE LEVEL OF PROTECTION, RISK ASSESSMENT AND SCIENCE

1.1 Recommendations:

- *Given the importance of ensuring that SPS measures are based on scientific principles, the Committee encourages Members to review periodically the SPS measures implemented in their national and/or regional systems, and their risk assessment techniques, as new circumstances and scientific evidence emerge and international standards, guidelines, and recommendations, are developed and updated by Codex, the OIE, or the IPPC.*
- *The Committee should continue to discuss the topic of risk, including management of situations involving insufficient scientific information, and consider next steps for discussion.*
- *The Committee invites Members to share experiences and examples of national efforts to consider scientific uncertainty and/or insufficiency of scientific evidence in risk analysis and the development and implementation of SPS measures.*
- *The Committee invites ISSBs to share examples of efforts to consider scientific uncertainty and/or insufficiency of scientific evidence in risk analysis and the development of international standards, guidelines and recommendations.*

2 CONTROL, INSPECTION AND APPROVAL PROCEDURES (ANNEX C)

2.1 Recommendations:

- The Committee should continue discussions and information exchange on the topic of control, inspection and approval procedures. To that end, the Committee should establish a formal SPS Committee agenda item on Annex C under the Operation and Implementation of the SPS Agreement agenda item to enable Members to share information on this topic.
- *Following the fruitful exchange of experiences and ideas at the November 2019 SPS Committee Thematic Session on Approval Procedures, the Committee should create an electronic working group open to the participation of all Members and Observers to continue to examine the topic of approval procedures. ~~The electronic working group, outlined in G/SPS/W/321, The electronic working group~~ could explore the:*
 - i. *Key challenges of approval procedures that impact international trade that Members should seek to address;*

- ii. *Principles of approval procedures that facilitate international trade while meeting the importing Member's appropriate level of sanitary or phytosanitary protection;*
- iii. *Available tools and best practices to enhance the implementation of the obligations of the SPS Agreement as they apply to approval procedures; and*
- iv. *Possible future work of the Committee on this topic.*

2.2 Comments from the United States on its suggested edits for the second recommendation on control, inspection and approval procedures in relation to the revised text "~~The electronic working group, outlined in [G/SPS/W/321](#), The electronic working group could explore the...~~":

- a. Rather than reference W/321, we suggest the recommendation list the topics that the eWG "could" explore. That way, the eWG can take up the elements of interest to Members.

3 EQUIVALENCE

3.1 Recommendations:

- *Members are encouraged to notify any agreement reached on the recognition of equivalence.*
- ~~*Given the importance of Article 4 on equivalence and of the Committee's Decision on the Implementation of Article 4 of the SPS Agreement (Equivalence),[‡] the Committee should continue discussions and information exchange on the topic of equivalence, including systems approaches, through the existing agenda item and in-depth discussion during future thematic sessions, informal meetings, and working groups as appropriate.*~~
- ~~*Members SPS Committee representatives are encouraged to coordinate with their country's Codex, OIE, and IPPC representatives and experts to highlight the importance of understanding trade impacts during the development and discussion of international standards, guidelines, and recommendations ISSB discussions that bear on the issue of equivalence.*~~

3.2 Comments from the United States on its suggested edits for the second recommendation on equivalence in relation to the deleted text "~~Given the importance of Article 4 on equivalence and of the Committee's Decision on the Implementation of Article 4 of the SPS Agreement (Equivalence),²¹~~":

- a. On further reflection, we would prefer not to single out specific obligations as "important" or to reaffirm. The SPS Agreement lays out a balance of rights and obligations.

3.3 Comments from the United States on its suggested edits for the third recommendation on equivalence in relation to the revised text "~~...ISSB discussions that bear on the issue of equivalence...~~":

- a. We would like this to refer to ISSB discussions bearing on equivalence more broadly. This accounts for the trade significance of discussions that bear on equivalence but that are not about the development of standards, guidelines, or recommendations specifically focused on the general topic of equivalence; and this ensures the relevance of the 5th Review recommendation regardless of how ISSB agendas and discussions evolve.

4 FALL ARMYWORM

4.1 Recommendations:

- *Members should continue to exchange experiences on efficient, predictable and science-based regulatory approaches that help to mitigate the effect of fall armyworm on trade*

[‡]~~[G/SPS/19/Rev.2](#)~~

²~~[G/SPS/19/Rev.2](#)~~

~~while safeguarding and that also safeguard human, animal and plant health and life, and taking into account for the specific needs of smallholdings-smallholder farm families.~~

- *As appropriate, Members are encouraged to request technical assistance to support efforts to improve their integrated pest management strategies and, where needed, their regulatory approach to pre-market approval and inspection systems, with the goal of, inter alia, enabling greater access to products that strengthen host plant resistance.*
- *Members are encouraged to continue discussion of the concepts identified in [G/SPS/W/317](#) that aim to assist Members, particularly those with capacity constraints, to address SPS challenges, in the SPS Committee, ~~including and,~~ where appropriate, in the electronic working group on approval procedures ~~established pursuant~~ referred to in paragraph [insert relevant 5th Revision paragraph with the proposal by Canada in [G/SPS/W/321](#). eWG recommendation] above.*

4.2 Comments from the United States on its suggested edits for the first recommendation on fall armyworm in relation to the revised text "...smallholder farm families.":

- a. The "smallholding" would be the land itself, which would not have needs. The original "smallholder farm families" seems more appropriate.

4.3 Comments from the United States on its suggested edits for the third recommendation on fall armyworm in relation to the revised text "...~~established pursuant~~ referred to in paragraph [insert relevant 5th Revision paragraph with the proposal by Canada in [G/SPS/W/321](#). eWG recommendation] above.":

- a. Due to confusion about what "established pursuant to the proposal by Canada" would bring in, refer to the eWG in this way.

5 NATIONAL SPS COORDINATION MECHANISMS

5.1 Recommendations:

- *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 that are consistent with the obligations of the SPS Agreement. Members are further encouraged to consider ways to strengthen internal coordination on SPS matters.*
- *Members should continue to share experiences on their national coordination mechanisms and discuss strategies and approaches to improve SPS coordination and engagement at the national level with the aim of strengthening implementation of the SPS Agreement, including resolving specific trade concerns.*
- *The Committee requests the Secretariat to prepare a collection of resources that can be useful for Members in implementing their national coordination mechanisms, starting with those mentioned at the 2019 Workshop on Transparency and Coordination with particular attention to the concepts and questions outlined in [G/SPS/W/297](#), and including additional resources as suggested by Members.*

5.2 Comments from the United States on its suggested edit for the first recommendation on national SPS coordination mechanisms:

- a. To be clear that we want the positions to be consistent with the SPS Agreement – and that we are not saying there is an SPS Agreement requirement for internally coordinated positions.

6 NOTIFICATION PROCEDURES AND TRANSPARENCY

6.1 *Recommendations:*

- *Members are encouraged to clearly indicate in their SPS Committee notifications when a measure has been notified to another Committee.³ Members should include this information under the point of the notification format titled "Other relevant documents and language(s) in which these are available".⁴*

6.2 Comments from the United States on its suggested edit for the recommendation on notification procedures and transparency:

- a. We do not believe that the footnotes should be included. These footnotes are slightly off point in ways that could create confusion.
- b. We feel the content of footnote 4 is inaccurate. Box 6, description of content, suggests identifying which parts of a dual-notified measure are SPS and which TBT.
- c. The new proposed notification for box 9 (other relevant documents) would indicate whether the measure was also notified to the TBT committee. Whether it has been dually notified is different from the question of which parts are SPS and which TBT.

7 MRLS FOR PLANT PROTECTION PRODUCTS

7.1 *Recommendations:*

- *The Committee encourages Members to engage in national discussions of options that could enable a more productive Codex MRL system; and in particular, to discuss ways to achieve sustainable funding for the joint FAO/WHO scientific bodies. Such national discussions of options with respect to the MRL system would take place in the context of national resource availability, and could involve consideration of, inter alia, options for increasing support to JMPR, including increasing representative expert participation and other forms of support for the scientific bodies, and options for encouraging programmes to support submission of data from developing countries, especially on minor crops. The Committee invites regular updates from Codex on its progress in the evaluation of new compounds and of new uses for existing compounds, and on its progress in its periodic review of existing compounds.*
- *The Committee encourages Members to provide greater transparency and predictability worldwide on MRLs, by inter alia: (1) notifying all proposed changes to their MRLs, including changes to MRLs that are based on international standards; and (2) reviewing and improving their ability to take the comments of their trading partners meaningfully into account when considering proposed changes on MRLs.*
- *The Committee welcomes efforts by Members and the relevant observer organizations to provide regular updates to the Committee on their activities on MRLs, including updates on regional initiatives on MRLs. The Committee notes that such information could provide the basis for other Members to implement similar activities 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.*
- *The Committee invites 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 Committee*

³Please refer to section 2.7 of the Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) in document [G/SPS/7/Rev.4](#), which also makes reference to notifying a regulation containing SPS and TBT measures under both the SPS and TBT Agreements.

⁴In the Committee's Recommended Transparency Procedures ([G/SPS/7/Rev.4](#)), the explanatory sections of the notification formats in Annex A 1 and Annex B 1 indicate that this type of information should be included in the notification format under the point titled "Description of content". This section would have to be updated if the Committee agreed that this information should be included under the point titled "Other relevant documents and language(s) in which these are available".

also invites Members to evaluate their own minor use needs and to collaborate in global data-generation activities.

8 REGIONALIZATION

8.1 Recommendations:

- *The Committee recognizes the importance of regionalization to safe trade in agricultural products. The Committee encourages Members to respond to requests from other Members concerning regionalization in a timely manner and to avoid unnecessary requests for information.*
- *Members are encouraged to use actively and systematically the Guidelines to Further the Practical Implementation of Article 6 (G/SPS/48), including the section on Expedited Process (Section IV).*
- *With a view to increasing transparency, Members are encouraged to share: their experiences in developing and strengthening their frameworks for regionalization; and information on their procedures and processes related to regionalization, including on how another Member may request recognition of pest- or disease-free areas.*
- *Under the Committee's agenda item for regionalization, Members are encouraged to share experiences on: securing another Member's recognition of regional conditions with respect to specific plant pests or animal diseases; and recognizing regional conditions of another Member with respect to specific plant pests or animal diseases.*
- *Members appreciate the information shared by OIE and IPPC on their activities in support of regionalization. Members welcome additional information on case studies, the Performance of Veterinary Services (PVS) Pathways, and Observatory projects, and on other activities aimed at improving understanding and implementation of OIE and IPPC standards.*
- *The Committee should further discuss issues related to Article 6, including the Committee Guidelines, through future thematic sessions, informal meetings or working groups, as appropriate.*

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

9.1 Recommendations:

- *The ~~International Standard Setting Bodies are invited~~ Committee encourages Members to ~~provide information on~~ consult with the relevant ISSB for advice and counsel when a specific trade concern arises regarding one of the ISSB's standards, guidelines ~~and/or recommendations in the SPS Committee meetings.~~*
- *The Committee may continue to consider the role of Codex, IPPC and OIE ~~in addressing~~ with respect to specific trade concerns.*

9.2 Comments from the United States on its suggested edit in the second recommendation on the role of Codex, IPPC and OIE in relation to the revised text "~~in addressing with respect to...~~":

- a. Current phrasing presumes they have a role in "addressing" the concerns. That would misunderstand the permissible role of ISSBs.
