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**Committee on Sanitary and Phytosanitary Measures**

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

**OVERVIEW OF PAPERS AND PROPOSALS SUBMITTED BY MEMBERS**

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

*Revision*

Members have submitted the following proposals and suggestions for consideration during the Fifth Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures:

**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<sup>2</sup> (G/SPS/W/292/Rev.4)**

1.1. The Committee should play a constructive role in addressing the broad range of MRL-related issues that are currently having a significant impact on trade in food and agricultural products. The submission includes several recommendations for incorporation into the Fifth Review Report in order to advance work in the Committee on trade-related issues on MRLs. These recommendations cover the following themes: (i) enabling JMPR to better respond to increased demand and monitor progress on new Codex MRLs; (ii) strengthening notification practices of Members for greater transparency and predictability on MRLs; (iii) reporting to the Committee on international and regional activities on MRLs; (iv) collaborating on solutions for MRLs for minor use and specialty crops; and (v) discussing the role of the Committee in increasing coordination and harmonization.

**2 Australia (G/SPS/W/299)**

2.1. The Committee should explore the impediments to the application of the concept and practices of equivalence to manage SPS risks in trade. The submission includes a suggestion that the SPS Committee could expand on existing guidance on recognition of equivalence (G/SPS/19/Rev.2) 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. In addition, the submission recommends that the Fifth Review should draw on the existing and ongoing work of the ISSBs.

**3 Belize (G/SPS/W/306)**

3.1. The Committee should commence work on the development of guidelines for the implementation of Article 13 of the SPS Agreement. The submission includes a recommendation to initiate this work either through the formation of an ad hoc working group or by holding a workshop. The submission also indicates that if the Committee agreed to first hold a workshop, it might wish to explore the following areas: (i) Members' experience in recognizing third party assurance

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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> 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.

schemes; (ii) CCFICS presentation on "Guidance for Competent Authorities to assess third Party Assurance and its Potential to Inform National Food Control System Planning"; (iii) a third party certification programme owner, a buyer or a retailer and their procedures in benchmarking with national requirements or with the standards, guidelines and recommendations of international standard-setting bodies recognized by the SPS Agreement; and (iv) experiences of both exporting and importing countries on third party assurance schemes.

#### **4 Benin, Burkina Faso, Burundi, The Gambia, Ghana, Kenya, Madagascar, Morocco, Nigeria, the United States and Zambia (G/SPS/W/297)**

4.1. The Committee should examine how to strengthen national SPS committees to enhance coordination at the national, regional and international levels. The submission includes a recommendation for a workshop or thematic session to be held in late 2018 or early 2019 in order to exchange experiences on several identified topics related to national SPS committees. The topics identified for further discussion are: (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) the use of established information exchange mechanisms; and (v) the role of national SPS committees in advocacy. The submission also indicates that, following the Committee's examination of these matters, other Members' views would be welcomed as to whether a "good practices" document would be useful to Members.

#### **5 Brazil (G/SPS/W/300)**

5.1. The Committee should review the notification procedures under the SPS Committee in order to address the challenges arising from measures not clearly fitting within the scope of the SPS or TBT Agreement. In particular, the Committee should review the practices guiding the notification of the measure under one or both of the Agreements, in order to enhance predictability and transparency. The submission includes a recommendation to organize thematic sessions and workshops, with a view to developing practical guidelines for notifications.

#### **6 Brazil (G/SPS/W/301)**

6.1. The SPS Agreement provides a solid base for the treatment of regulatory issues in the area of trade in agricultural products, but it is necessary to reinforce its features to ensure the attainment of its objectives. In particular, the Committee should discuss the following issues, with a view to contributing to possible concrete results:

- (i) **Scientific justification (Article 2.2) and risk assessment** – the Committee should reaffirm the scientific basis of the SPS Agreement, thereby limiting the use of SPS measures as an arbitrary and unjustifiable discrimination or a disguised restriction on trade;
- (ii) **Equivalence (Article 4)** – Members should recognize the importance of the Decision (G/SPS/19/Rev.2), 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;
- (iii) **Risk assessment and determination of the appropriate level of SPS protection (Article 5)** – 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, are appraised in ways supported by scientific evidence and methods. Members could also discuss ways to avoid the misuse of Article 5.7; and
- (iv) **Regionalization (Article 6)** – Members could consider the option of automatically recognizing a disease status granted by the OIE. A similar recognition by the IPPC should also be encouraged.

## **7 Brazil (G/SPS/W/307)<sup>3</sup>**

7.1. The Committee should develop and promote the implementation of provisions related to adaptation to regional conditions, including pest- or disease-free areas and areas of low pest or disease prevalence. The submission includes several recommendations: (i) Members should reaffirm that regionalization, as a fundamental principle of the SPS Agreement, is an important and necessary tool for the protection of human, animal or plant life or health, while promoting and facilitating trade in agricultural and animal products; (ii) Members should continue their commitment to share experiences and information on their internal regulatory systems with a view to improving the implementation of regionalization provisions; (iii) the OIE and the IPPC are invited to share with the SPS Committee the outcome of their on-going work, experience and activities in relation to regionalization, recognition of pest-free-areas and trade facilitation; and (iv) the Committee should examine the Guidelines on Article 6 (G/SPS/48) in order to assess their effectiveness and their implementation, as well as to streamline and improve the Guidelines, with a view to promote the recognition, expeditiously and without undue delay, of pest- or disease-free areas and areas of low pest or disease prevalence granted by the relevant international organizations.

## **8 Brazil (G/SPS/W/308)<sup>4</sup>**

8.1. The Committee should develop and promote the adoption of science-based procedures for the implementation of the SPS Agreement. The submission includes several recommendations: (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; and (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.

## **9 Brazil (G/SPS/W/312)<sup>5</sup>**

9.1. The submission provides inputs on the proposed draft programme for the Workshop on Transparency and Coordination.<sup>6</sup> The submission outlines detailed themes to be covered under two sessions: (i) introduction of relevant provisions and procedural aspects by the Secretariat; and (ii) Members' experience with submitting notifications and incoming notifications.

## **10 Brazil, the European Union, and the United States (G/SPS/W/311)**

10.1. The Committee should advance shared understanding of the implementation and operation of Article 6 of the SPS Agreement. The joint submission references the proposals contained in the individual papers previously submitted by Members under the Fifth Review<sup>7</sup> aimed at strengthening the understanding and implementation of regionalization. The submission invites Members, and representatives of IPPC and OIE, to engage in a more focused discussion at the informal meeting of the Committee in July 2019, with the goal of identifying consensus recommendations for the Fifth Review. In order to facilitate this process, the submission invites Members, as well as representatives of IPPC and OIE, to review a set of questions for discussion and provide comments by 10 May 2019.

## **11 Brazil, Kenya, Madagascar, Paraguay, the United States and Uruguay (G/SPS/W/305)**

11.1. The Committee should consider fall armyworm as a case study to discuss the application of the principles affirmed in the SPS Agreement to enable greater access to tools and technologies in

<sup>3</sup> This proposal on regionalization replaces the relevant sections of the previous submission (G/SPS/W/301).

<sup>4</sup> This proposal on scientific justification, risk assessment and appropriate level of protection replaces the relevant sections of the previous submission (G/SPS/W/301).

<sup>5</sup> This proposal builds on Brazil's previous submission on notification procedures (G/SPS/W/300).

<sup>6</sup> G/SPS/GEN/1694.

<sup>7</sup> G/SPS/W/298, G/SPS/W/303 and G/SPS/W/307.

the quest for safer and more sustainable agriculture and to prevent food insecurity. The submission includes a recommendation for interested Members of the Committee to form a working group for the purpose of undertaking several activities, which include to: (i) examine, identify and discuss examples of Members' effective use of principles such as risk analysis, scientific evidence, harmonization, international standards, and transparency to enable greater access to safe tools and technologies to manage fall armyworm in Africa; and (ii) collect and compile information resulting from collaboration in the area of field trials, data portability, common application dossiers, joint risk assessments and mutual recognition, among others.

## **12 Brazil, Kenya, Madagascar, Paraguay, the United States and Uruguay (G/SPS/W/309, G/SPS/W/309/Corr.1)**

12.1. The submission outlines a proposed draft programme for a Thematic Session on Enabling Access to Tools and Technologies: Fall Armyworm Case Study to be held in March 2019. The submission proposes that the thematic session focus on: (i) the SPS Agreement; (ii) fall armyworm – the problem, the tools and technologies; (iii) global, regional and national frameworks; and (iv) Member experiences – successes and challenges in improving regulatory frameworks to support farmer access to safe and effective tools and technologies.

## **13 Canada (G/SPS/W/302/Rev.1)**

13.1. The Committee should consider holding a workshop or thematic session on Article 4 (Equivalence) as part of the Fifth Review, in order to provide Members with an opportunity to expand their knowledge of the concept of equivalence. The submission includes various elements which could be examined by Members in the workshop or thematic session: the equivalence obligations in the SPS Agreement; the guidance provided in the *Decision on the Implementation of Article 4 of the Agreement on the Application of Sanitary and Phytosanitary Measures* (G/SPS/19/Rev.2); the jurisprudence relating to Article 4 in decisions of the Dispute Settlement Body; the work of the ISSBs on developing international standards, guidelines and recommendations referring or relating to equivalence; Members' experience implementing the concept of equivalence; as well as any best practices that can be shared concerning the implementation of the obligations, guidelines or recommendations on equivalence. The submission also indicates the possibility of including other topics of interest relating to equivalence as identified by other Members, such as systems approaches for achieving equivalence, as part of the workshop or thematic session.

## **14 Canada (G/SPS/W/310)**

14.1. The Committee should consider holding a thematic session on approval procedures in November 2019 as part of the Fifth Review, in order to provide Members with an opportunity to discuss issues concerning the implementation of Article 8 and Annex C of the SPS Agreement. The submission includes various elements which could be examined by Members in the thematic session: obligations of Article 8 and Annex C as they relate to approval procedures (e.g. undue delay, transparency, information requirements); relevant jurisprudence; relevant ISSBs work regarding approval procedures; and experiences, best practices, and challenges faced by Members. The submission also welcomes other topics of interest relating to approval procedures as identified by other Members, for examination by the Committee as part of the proposed thematic session.

## **15 The European Union (G/SPS/W/298)**

15.1. The Committee should examine the topic of regionalization (pest- and disease-free areas) and ensure that any further work of the SPS Committee on regionalization would build on the on-going work of the international standard-setting bodies, and on WTO jurisprudence. The submission includes specific proposals for action by the SPS Committee: (i) invite the OIE to share with the SPS Committee the outcome of its on-going work in relation to regionalization and trade facilitation; (ii) invite the IPPC to conduct a similar survey, and to share information about its on-going activities and about any experience it may have about the implementation of its standards in relation to pest-free areas; (iii) with the assistance of the WTO Secretariat, look at recent WTO jurisprudence on regionalization both in the animal health and plant health domains; and (iv) examine the Guidelines on Article 6 (G/SPS/48) in order to assess their effectiveness, to what extent they are actually followed by Members and, if needed, identify areas which could be improved.

**16 South Africa (G/SPS/W/304 and G/SPS/W/304/Add.1)**

16.1. The Committee should consider the role of international organizations in addressing SPS issues in relation to providing advice to the SPS Committee on specific trade concerns (STCs) that are raised during the meetings. The submission includes a proposal to invite Codex, IPPC and OIE to speak in the Committee when a trade concern relates to their area (i.e. food safety, phytosanitary and animal health issues respectively). The submission outlines that the purpose of the three sisters' interventions would be to indicate if there is a relevant international standard, recommendation or guideline, and to assist the Committee to locate information that may facilitate the discussion of STCs. The submission also indicates that the comments by the three sisters would be of an advisory nature only and must be understood to be in their own responsibility and not binding on any WTO Member.

16.2. The addendum to the submission proposes the implementation of recommendation 8 of the 2009 workshop on the relationship between the SPS Committee and the ISSBs.<sup>8</sup> Specifically, the submission recommends that the Secretariat write to the ISSBs requesting: (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 would then submit a report to the Secretariat; and (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).

**17 The United States (G/SPS/W/303)**

17.1. The Committee should consider concrete activities and focused areas of discussion that could contribute to Members' ability and preparedness to strengthen the implementation and operation of Article 6 of the SPS Agreement. The submission includes specific suggestions for Members and the Committee to address several challenges related to regionalization for animal health that may realize increased opportunities to facilitate safe trade in animals and animal products: (i) activities to promote greater understanding of regionalization; and (ii) activities to assist Members overcome challenges in implementing regionalization.

**18 The United States**

18.1. The United States also indicated interest in examining the following topics under the Fifth Review: transparency, Annex C, and risk analysis (including risk communication).

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<sup>8</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).

# 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	-	-	-	-	-	Joint submission G/SPS/W/292/Rev.4	-	-
Australia	-	-	G/SPS/W/299	-	-	Joint submission 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	-	-	-	Joint submission 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	Joint submission G/SPS/W/292/Rev.4	G/SPS/W/301, G/SPS/W/307, G/SPS/W/311	Joint submission on Fall armyworm G/SPS/W/305, G/SPS/W/309, G/SPS/W/309/Corr.1
Brazil, European Union and United States	-	-	-	-	-	-	G/SPS/W/311	
Brazil, Kenya, Madagascar, Paraguay, United States and Uruguay								Joint submission on Fall armyworm 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	-	-	Joint submission G/SPS/W/292/Rev.4	-	-
European Union	-	-	-	-	-	-	G/SPS/W/298, G/SPS/W/311	-

Members	ALOP, Risk Assessment and Science	Annex C	Equivalence	National SPS Committees	Notification Procedures/ Transparency	Pesticide MRLs	Regionalization	Other Topics
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	-	Joint submission G/SPS/W/297	Topic of interest	Joint submission G/SPS/W/292/Rev.4	G/SPS/W/303, G/SPS/W/311	Joint submission on Fall armyworm G/SPS/W/305, G/SPS/W/309, G/SPS/W/309/Corr.1