



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 PAPERS/PROPOSALS
ON THE ISSUES FOR CONSIDERATION

Note by the Secretariat¹

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

1 Joint Proposal from Argentina, Australia, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Japan, Kenya, Madagascar, New Zealand, Panama, Paraguay, Peru, Uganda, the United States, and Uruguay² (G/SPS/W/292/Rev.4) - Pesticide MRLs

1.1 Comments from the United States

1.1. The United States notes that the recommendation related to strengthening notification practices contained in the joint proposal on MRLs does not contain any requirements that would impose an additional burden on Members, as one Member asserted. Indeed, the recommendation contained in paragraph 2.2 of G/SPS/W/292/Rev.4 is fully consistent with sections 2.1 and 2.5 of the Committee's *Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement*, G/SPS/7/Rev.4.

1.2. We appreciate the statements by Senegal, Japan and Guatemala on the importance of taking forward the recommendations in the paper and look forward to working together to address the trade concerns addressed in the joint proposal.

2 Proposal from Australia (G/SPS/W/299) - Equivalence

2.1 Comments from the United States

2.1. We thank Australia for its submission. The United States believes equivalence arrangements can be useful tools to facilitate trade. We look forward to the thematic sessions on equivalence and invite discussion on a number of points in Australia's paper.

2.2. **First**, we invite clarification from Australia on the goal of the proposal to enable feedback that is more specific. Is the chief goal of the proposal to improve implementation of Article 4 of the SPS Agreement, or is the aim to broaden international acceptance of the systems approaches concept?

¹ 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.

² 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.

2.3. **Second**, we are interested in understanding the basis of the Australia's view that "*use of the guidance [on equivalence] developed by the International Standard Setting Bodies (ISSBs) has been limited...*".

- Is this based on a review of Members' notifications (G/SPS/7/Rev.4, page 31) and/or on Members' reports to the Committee under the agenda item on equivalence?
- What are Members' experiences in the equivalence arrangements notification process?
- Do Members' notification and reporting practices on equivalence accurately convey the extent of Members activities in implementing Article 4?

2.4. In this regard, we note that ISPM 24 states, "*...while not formalized under the title of "equivalence", there is widespread application of equivalence in current phytosanitary practices*". ISPM 24 further states:

"To manage a specified pest risk and achieve a contracting party's appropriate level of protection, equivalence may be applied to:

- *an individual measure,*
- *a combination of measures, or*
- *integrated measures in a systems approach."*

2.5. We note that all options listed, including systems approaches, are applications of equivalence to a specified pest risk. With respect to pest-risks, we are interested in knowing:

- Do Members notify phytosanitary practices to manage a specified pest risk and result in new market access that are not formalized under the title of equivalence? If so, what notification format do Members use?
- Has any Member applied equivalence to integrated measures in a systems approach to address a suite of possible pest risks or to a country's entire plant health system?
- Do Members consider the practice of making regulatory determinations to allow market access for products based on pest risk assessments a form of equivalence?

2.6. We note that Chapter 5.3 of the OIE Terrestrial Code for Animal Health discusses both equivalence and regionalization (i.e., zoning and compartmentalization).

- What are Members' experiences with respect to recognition of pest- or disease-free areas to allow market access in relation to equivalence determinations?
- To what extent have Members engaged in equivalence determinations for animal diseases over and beyond a regionalization determination for a specified animal disease?
- What benefits do Members see from entering into equivalence arrangements related to animal health that regionalization recognitions do not provide?

2.7. **Third**, we invite Australia to elaborate its view that "*...additional specific guidance from the SPS Committee may result in increased numbers of systems approaches being recognized as equivalent...*". By our reading, the term "systems approaches" has been used in different ways by Codex, IPPC and OIE, and has not even been used consistently from document to document by each ISSB.

2.8. We invite Members to consider inviting the ISSBs to report to the SPS Committee on their understandings of the term "systems approaches" in the context of the subjects that each ISSB covers.

2.9. Further, we note that Codex members are working to clarify and unify the meaning of "systems approaches" in Codex documents. The *Proposed Draft Guidance on the Use of Systems Equivalence* currently under development has a significant number of concepts that overlap and duplicate existing Codex work. This duplication and overlap is especially prominent with respect to the *Guidelines on the Judgment of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems* (CAC/GL 53-2003) and the *Guideline for the Development of Equivalence Agreements Regarding Food Import and Export Inspection and Certification Systems* (CAC/GL 34-1999).

2.10. In view of the variability and uncertainty in the meaning of "systems approaches" across the ISSBs, as well as the current discussions in Codex to clarify and unify its meaning across proposed and existing documents, we wonder how the SPS Committee could usefully contribute additional guidance to increase the use of systems approaches. Further, we recall the recognition of Members' resource and time constraints in the Committee's *Decision on the Implementation on Equivalence* (G/SPS/19/Rev.2), and invite Members' views and experiences on the circumstances under which systems approaches, such as recognition of equivalence of national food control systems, have been successfully negotiated and resulted in an expansion of trade opportunities.

3 Proposal from Belize (G/SPS/W/306) – Third Party Assurance Systems/Development of Guidelines for Article 13

3.1 Comments from the United States

3.1. We appreciate the clarity of the submission by Belize on a key point: Belize makes clear that its proposal to develop guidelines for the implementation of Article 13 seeks to apply the SPS Agreement to private persons and businesses, including "*retailers [and] buyers*". As an initial matter, the United States does not, and indeed cannot, support the development of such guidelines.

4 Proposal from Brazil (G/SPS/W/300) – Notification Procedures/Transparency

4.1 Comments from the United States

4.1. The United States shares Brazil's concern that some measures notified to the TBT Committee are SPS measures and should be notified to the SPS Committee. We would welcome work under the Fifth Review to provide greater clarity on current notification 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. We note that whether a measure is an SPS measure does not hinge in any way on whether it is notified to the SPS Committee, another WTO committee, or no WTO committee at all.

4.2. We welcome a discussion of these issues in the transparency workshop to be held on the margins of the SPS Committee in July 2019.

5 Proposal from Brazil (G/SPS/W/307) – Regionalization

5.1 Comments from the United States

5.1. The United States shares the interest of the European Union and Brazil to discuss potential Committee actions that could build on the thematic sessions on regionalization, in particular to focus on identifying obstacles to the practical implementation of Article 6. We note the proposals contained in our submission, G/SPS/W/303, and look forward to working with Brazil, the European Union and other interested delegations to identify specific elements to take forward that can further the practical implementation of Article 6.

6 Proposal from Brazil (G/SPS/W/308) – ALOP, Risk Assessment and Science

6.1 Comments from the United States

6.1. The United States thanks Brazil for its submission. We strongly support a discussion on the importance of scientific justification in the Fifth Review. We invite Brazil to share its views on its proposal in paragraph 2.1. (a) that the Committee focus on the scientific justification as the main criteria for risk assessment alone. We have concerns that a recognition by the Committee on the relation of scientific justification to risk assessment alone could be misinterpreted or misused to detract from the role of scientific justification across provisions throughout the SPS Agreement.

6.2. We invite Brazil to elaborate on its rationale for its proposal to request that the ISSBs work on the procedural steps for the adoption and application of Article 5.7. In light of the fact that Members apply provisional measures in the absence of available scientific evidence, we do not understand the basis on which the elaboration of procedural steps would benefit from the scientific expertise of the ISSBs. As a practical matter, such procedural steps for each Member would reflect its own

institutional and legal processes for risk management, which we believe is an area where ISSB expertise would not be relevant or appropriate. However, we share Brazil's concern regarding the potential for abuse of Article 5.7 and invite further discussion of Members' experiences in implementing the obligation to seek to obtain the additional information necessary for a more objective assessment of risk within a reasonable period of time.

6.3. The United States supports the concept of greater transparency in the application of Article 5.7. However, we are unsure whether additional information in the notification of provisional measures taken would be an effective means of achieving the transparency sought. We are interested in other Members' views.

7 Proposal from the European Union (G/SPS/W/298) - Regionalization

7.1 Comments from the United States

7.1. The United States shares the interest of the European Union and Brazil to discuss potential Committee actions that could build on the thematic sessions on regionalization, in particular to focus on identifying obstacles to the practical implementation of Article 6. We note the proposals contained in our submission, G/SPS/W/303, and look forward to working with Brazil, the European Union and other interested delegations to identify specific elements to take forward that can further the practical implementation of Article 6.

8 Proposal from South Africa (G/SPS/W/304) – Role of 3 Sisters in Addressing STCs

8.1 Comments from the United States

8.1. The United States welcomes a renewed discussion under the Fifth Review of the role of the ISSBs in the Committee. We recall that Members extensively discussed the role of the ISSBs with respect to Committee discussion of specific trade concerns (STCs) in 2012. We would welcome the opportunity for Members to reacquaint themselves with these earlier exchanges in the context of South Africa's current proposal. In this regard, we note the 2012 Secretariat's Note on *Observers in the SPS Committee - Their Role and Outstanding Requests* (G/SPS/GEN/1157), as well as the 2012 Proposal by Chile and the United States, *International Standard Setting Bodies Involvement in the WTO SPS Committee in Specific Trade Concerns (STCs)* (G/SPS/W/267). We invite Members to review the Committee's discussions in 2012 on this issue (perhaps the Secretariat could assist by providing an oral summary) and assess the most appropriate ways in which Members and the ISSBs can work together to resolve STCs.
