

**NAPPO DRAFT STANDARD FOR REGULATING THE MOVEMENT OF SHIPS  
AND CARGOES ABOARD THOSE SHIPS FROM AREAS INFESTED  
WITH THE ASIAN GYPSY MOTH**

Communication from China

The following communication, received on 1 October 2008, is being circulated at the request of the Delegation of China.

**Background**

1. On 27 May, 2008, the North American Plant Protection Organization (NAPPO) Secretariat circulated the draft NAPPO Regional Standard for Phytosanitary Measures - Guidelines for Regulating the Movement of Ships and Cargoes aboard those Ships from Areas Infested with the Asian Gypsy Moth (RSPM No. 33) (<http://www.nappo.org/Standards/Consultation/RSPM33/RSPMNo.33GypsyMoth-e.pdf>). The draft standard requires that, to prevent the introduction of the Asian Gypsy Moth (AGM) into North America, it is necessary for NAPPO members to impose strict phytosanitary measures on the ships and the cargoes aboard from the regulated areas including the Russian Federation, the Republic of Korea, Japan, Mongolia and China. The phytosanitary measures include requiring the National Plant Protection Organization (NPPO) responsible in the regulated area to inspect ships and cargoes before their departure, to establish a Pest Free Area (PFA), and to provide phytosanitary certificates certifying that ships and cargoes are free of AGM. NAPPO members may strictly inspect ships prior to a ship's entry into a NAPPO region port. If an AGM egg mass is found on the ship, the ship will be required to leave the waters of the NAPPO region, and return of the vessel to the NAPPO region can only occur when the vessel and cargo have been cleaned of AGM, which will be subject to re-inspection before entering a NAPPO member country. Should there be ongoing detection of AGM egg masses on the ships from a country or region, NAPPO members may prohibit the entry of all ships from/via this country or region.

**A. THE STANDARD WOULD ENORMOUSLY IMPACT INTERNATIONAL TRADE**

2. The regional standard, if adopted and implemented, would have significant negative impacts on international trade. First, the standard is not aiming at one type of cargo, but ships and the cargoes aboard on which international trade mainly relies. As a phytosanitary measure, it covers a wide range never seen before. Second, it involves the whole of temperate Asia as the regulated area. Taking China as an example, 30 ports from Jinzhou in the north to Xiamen in the south are covered, including almost all major Chinese ports. According to incomplete statistics, should the standard be implemented, affected trade only between China and the United States would reach US\$46.5 billion.

B. THE STANDARD IS INCONSISTENT WITH THE SPS AGREEMENT

3. While respecting the right of WTO Members to take measures necessary for the protection of human, animal or plant life or health, China is deeply concerned with the inconsistency of the SPS Agreement and the significant negative impact on trade which this NAPPO regional standard could have on the countries to be affected.

(a) It is inconsistent with Article 2.2 of the SPS Agreement

4. Article 2.2 of the SPS Agreement requires that any SPS measure be applied only to the extent necessary to protect human, animal or plant life or health and be based on scientific principles. However, measures proposed in the NAPPO standard are not in proportion to the regulated risk. The AGM is not a pest that has newly occurred in Asia, but has long existed. There have been a huge number of ships moving between Asia and North America for such a long time, that it is difficult to provide an accurate number, but the relevant NPPOs have never applied AGM-related restrictions to the ships. According to NAPPO information, the AGM has not settled in North America despite a few sporadic introductions, in which cases the AGM were all rapidly discovered and eradicated through surveillance programs. Furthermore, the genetic analysis on the sporadically introduced AGM did not demonstrate that all the introductions originated from the Asian population. Without the AGM posing new serious threats to the life and health of animals and plants in North America, it is apparently inconsistent with Article 2.2 of the SPS Agreement for NAPPO to issue a regional standard that would enormously impact international trade.

(b) It is also inconsistent with Article 5.6 of the SPS Agreement

5. There are many highly restrictive requirements in the draft standard. For example, NAPPO members may strictly inspect ships prior to their entry into a NAPPO region port. If an AGM egg mass is found on the ship, the ship will be required to leave the waters of the NAPPO region, and return of the vessel to the NAPPO region can only occur when the vessel and cargo have been cleaned of AGM, which will be subject to re-inspection before entering the NAPPO region. Should there be ongoing detection of AGM egg masses on the ships from a country or region, NAPPO members may prohibit the entry of all ships from / via the country or region. These measures violate Article 5.6 of the SPS Agreement which requires that SPS measures not be more trade-restrictive than necessary. There is also some ambiguity in the draft standard. For example, the high risk period is defined in the draft standard as the period during which AGM female flight has occurred prior to entry to a NAPPO member country (i.e. female flight has occurred either in the year preceding the ships request to enter or in the current year). Meanwhile, the draft standard adds that this period will vary depending on the location of the infested port and the port of arrival in North America, and a high risk period should be specified by each NAPPO country in national legislation and should be subject to revision annually based on geographic and climatic factors influencing female flight and larval dispersal. Such provisions will certainly add uncertainties in their implementation in different countries, and cause unnecessary impacts on international trade.

C. PROPOSALS

(a) In view of the inconsistency of the draft standard with the SPS Agreement, it is recommended that NAPPO member countries treat the issue cautiously and delay the adoption and implementation of the draft standard until its necessity and rationale are recognized by relevant organizations including the IPPC and the WTO SPS Committee.

- (b) China requests that the WTO SPS Committee discuss the issue and, in an appropriate manner, draw the attention of the IPPC to this regional phytosanitary standard so as to avoid its hasty implementation which would cause unnecessary negative impacts on international trade.
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