

Committee on Sanitary and Phytosanitary Measures

**PROCEDURE TO MONITOR THE PROCESS
OF INTERNATIONAL HARMONIZATION**

Revised Draft Eleventh Annual Report¹

The draft Eleventh Annual Report on the Procedure to Monitor the Process of International Harmonization was considered by the SPS Committee at its meeting of 23-24 June 2009. The Committee agreed to adopt the report subject to its revision to include information arising from discussions under the relevant agenda item at that meeting. This revision includes that information.

Members wishing to suggest modification to this draft report are invited to submit their comments to the Secretariat no later than **25 July 2009**. If no substantive objection to the report has been submitted by that date, the report will be considered to have been adopted.

**PROCEDURE TO MONITOR THE PROCESS
OF INTERNATIONAL HARMONIZATION**

A. INTRODUCTION

1. At its meeting of 15-16 October 1997, the SPS Committee adopted a provisional procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations, as provided for in Articles 3.5 and 12.4 of the SPS Agreement. The Committee extended the provisional monitoring procedure in 1999, 2001, and 2003, and adopted a revision of the procedure in October 2004.² On 28 June 2006, the Committee agreed to extend the provisional procedure indefinitely, and to review its operation as an integral part of the periodic review of the operation and implementation of the Agreement under Article 12.7.³ The next such review is to be completed in 2009, and every four years subsequently.

2. The Committee has previously adopted tenth annual reports on the monitoring procedure.⁴ These reports summarize several standards-related issues that the Committee has considered and the responses received from the relevant standard-setting organizations.

¹ This document has been prepared under the Secretariat's own responsibility and is without prejudice to the position of Members or to their rights or obligations under the WTO.

² G/SPS/14, G/SPS/17, G/SPS/25 and G/SPS/11/Rev.1.

³ G/SPS/40.

⁴ These were circulated as G/SPS/13, G/SPS/16, G/SPS/18, G/SPS/21, G/SPS/28, G/SPS/31, G/SPS/37, G/SPS/42, G/SPS/45 and G/SPS/49.

B. NEW ISSUES

3. Since the adoption of the Tenth Annual Report in June 2008, two new issues have been raised under this procedure. One issue is with regard to concerns raised relating to a draft regional standard of the North American Plant Protection Organization (NAPPO) entitled "Guidelines for Regulating the Movement of Ships and Cargoes Aboard those Ships from Areas Infested with the Asian Gypsy Moth". The other issue pertains to provisions of the Constitutive Agreement of the Asia Pacific Plant Protection Commission (APPPC) regarding havea plants and South American leaf blight.

Concerns on draft regional standard of the North American Plant Protection Organization

4. At the meeting of the Committee of 15-16 October 2008, China raised the issue of a draft regional standard developed by NAPPO which would require NAPPO members (Canada, Mexico and the United States) to impose strict phytosanitary measures on ships and cargoes from China, Japan, Korea, Mongolia, and Russia.⁵ China, along with Japan, Korea and Indonesia, was concerned that the draft regional standard would have a serious impact on international trade if implemented, that it was inconsistent with Articles 2.2 and 5.6 of the SPS Agreement, and that it had ambiguities regarding the technical application of the measure in different NAPPO countries and in different climatic conditions.

5. The United States stressed that the NAPPO standard was still in a draft form, and was amenable to changes based on comments submitted by concerned Members. China had declined an invitation to attend an October 2008 meeting regarding this draft standard. This pest was not present in the NAPPO countries, but it was known to be very invasive. A harmonized standard would allow ships to enter any port in a NAPPO country, after being approved at the first port of call. Canada supported the statement of the United States, citing the damage previously caused by incursions of the Asian Gypsy Moth in Canada. These interventions were also supported by Mexico.

6. China stated that it had already sent technical comments to the NAPPO secretariat and hoped there would be further meetings between the NAPPO secretariat and the concerned Members. The representative of Norway also expressed interest regarding the possible impact on Norway's exports.

7. The European Communities reported that they had not introduced any new measures with regard to the Asian Gypsy Moth, although they remained vigilant to any potential risk. The European Communities noted the similarities between this issue and ISPM 15 on wood packing material, and hoped that a similar solution to the Asian Gypsy Moth problem could be found.

8. At the meeting of the Committee in February 2009, China reported that it had maintained good communications with the officials of the NAPPO countries since raising its concern on this issue. The draft standard had been revised and was undergoing a second comment-soliciting process, and technical expert groups had been sent to China, Japan and Korea from NAPPO to exchange information. China welcomed the open and transparent working procedure of the NAPPO countries, and requested that they delay adoption of the standard until comments and concerns were taken into account. Moreover, China reaffirmed the need for scientific evidence for every SPS measure, as provided for in Article 2.2 of the SPS Agreement. China also reported that the occurrence of the Asian Gypsy Moth had decreased sufficiently within its territory that this pest was not detected during joint surveillance with the United States in some Chinese ports. China also recalled the SPS Agreement provision for the least trade-restrictive measure to be applied.

9. Indonesia, Japan and Korea shared similar concerns in regard to the draft standard. Japan requested that the standard not be adopted until all comments were duly considered. Indonesia noted

⁵ G/SPS/R/53, paragraphs 112-120.

the need for further studies on the possibility of the survival of the insects on long distance journeys to North America via cargoes. Korea argued that the draft standard might pose an excessive restriction on trade, and expressed regret that the low prevalence of the pest in Korea had not been considered by the United States.

10. The United States reaffirmed that the Asian Gypsy Moth was a highly invasive pest, and had been found in port areas in North America on a number of occasions although it was not present in North America. The United States stated that the need for specific phytosanitary measures had been stressed by the NAPPO pest risk assessment panel, subsequent to a risk assessment. This assessment was available on request and was the basis of the present draft standard. The United States assured trading partners that the applied phytosanitary measures would be consistent with its WTO rights and obligations. The statements of the United States were corroborated by Mexico and Canada.

11. At the meeting of the Committee in June 2009, China stressed its concern that implementation of the draft NAPPO standard would potentially have a tremendous impact on trade between China and countries in North America. The draft standard applied to all ports in China, whereas AGM had historically been found only in the north-eastern part of China. The occurrence of AGM in China had been reduced significantly, and a joint survey conducted by China and the USDA in 2008 identified no occurrence of AGM in China. China invited NAPPO members to participate in a workshop in July that would highlight the preventive and control measures it had taken. China was concerned with the operability of the current draft standards, specially with regard to certification and inspection requirements, noting the impossibility of checking ships and cargo at night, as many ships departed before dawn. Moreover, as numerous non-plant related cargo such as cars and steel also had to be inspected, it would lead to an increase in costs, thus creating a barrier to trade. Japan, Korea and Indonesia again noted their similar concerns and requested that the standard not be implemented until these concerns had been addressed.

12. Canada underlined that the NAPPO standard aimed at controlling a real risk to North American forests, which had been affected by AGM in the past with multi-million dollar costs for eradication. Since March 2009, six ships had been found with AGM egg-masses on board. NAPPO members were aware of the trade impact and the costs associated with control measures, however the draft regional standard had been developed to be no more trade restrictive than necessary to effectively address the risks associated with AGM. Comments of all stakeholders would be taken into account when the standard was finalized in August 2009, and NAPPO members would work in a coordinated approach to consider direct impacts of the standard on trade.

13. The United States affirmed that AGM was a highly invasive pest, not present in North America, and which had been found on a number of occasions in port areas in North America. The regional standard was based on a risk assessment which was available upon request. NAPPO members had solicited scientific and technical inputs from concerned countries. In June 2009, the NAPPO forestry panel reviewed the comments received and a revised draft of the standard would be made available in August 2009. Mexico concurred with the statements by the United States and Canada, and reaffirmed its willingness to work with concerned trading partners to mitigate any potential risk of introduction of AGM into North America.

14. Several Members expressed the view that this issue did not pertain to the monitoring or the use of an international standard, or to a need for development of an international standard, and that in future it should be addressed more appropriately as a specific trade concern.

Concerns on restrictions on imports of Havea Plants

15. At the meeting of the Committee of 25-26 February 2009, Brazil raised concerns regarding some provisions of the Constitutive Agreement of the Asia Pacific Plant Protection Commission (APPPC), which includes a clause in its Article 4 and Appendix B on South American leaf blight.⁶ By virtue of this clause, the APPPC contracting parties are requested to prohibit by law the importation of havea plants from countries outside the region. Brazil considered that this requirement lacked scientific justification, was not based on risk analysis, and had already affected many countries in South and Central America. Moreover, in 1999 the 117th Council of the FAO had recommended the revision of the APPPC Constitutive Agreement, to bring it in line with the IPPC and SPS Agreement principles and provisions. Brazil urged a timely revision of the APPPC Constitutive Agreement.

16. Japan expressed a similar concern as Brazil. Japan was not a member of the APPPC even though it was located in the region covered by it, due to this provision against South American leaf blight. A risk assessment for a regional standard had been conducted by the APPPC, and Japan hoped that the APPPC would adopt a regional standard on this basis at its September 2009 meeting.

17. The IPPC representative clarified the relationship between the IPPC and the regional plant protection organizations. The cooperation of the regional plant protection organizations with the IPPC secretariat to achieve the objectives of the International Plant Protection Convention, and to develop relevant standards, is prescribed in Article 9 of the Convention. Article 10 of the Convention provides that regional standards shall be consistent with the principles of the Convention. The IPPC had also sought the revision of the APPPC Constitutive Agreement, to make it consistent with IPPC principles.

18. At the June meeting of the Committee, Brazil recalled its concerns and noted that it had been exchanging technical and scientific information with APPPC countries since 1999. However, the clause had not yet been revised, and Brazil remained concerned about APPPC member legislation on South American Leaf Blight (SALB). Paraguay and Japan supported Brazil's concerns, and Japan reiterated its hope that efforts to harmonize the text of the APPPC with the SPS Agreement would soon be concluded. New Zealand clarified that it was a member of APPPC, but all of its Zealand's measures with regard to the import of plant material were based on the outcome of risk analysis

19. Indonesia explained that the objective of the measure was to protect the rubber industry of Indonesia from the SALB. A specific analysis was undertaken each time a decision to import was made in order to prevent trade disputes and to comply with the SPS Agreement.

20. The IPPC stated that there were actually two issues: (1) whether the clause pertaining to Havea should be included in the APPPC convention and (2) whether the draft PRA was technically sound. The standard did not prohibit imports of all plants and plant products from Brazil. The FAO had provided technical support to the region in order to complete a PRA on which a regional standard could be based.

⁶ G/SPS/R/54, paragraphs 125-127.

C. PREVIOUS ISSUES

21. Since the adoption of the Twelfth Annual report, there has been no further discussion on any issue previously raised under this procedure.

D. RESPONSES RECEIVED FROM THE RELEVANT STANDARD-SETTING ORGANIZATIONS

22. No further information has been provided by the relevant standard-setting organizations regarding issues previously raised.
