

PRIVATE STANDARDS

Statement by MERCOSUR (Argentina, Brazil, Paraguay and Uruguay)

The following statement, received on 22 December 2009, is being circulated at the request of the delegation of MERCOSUR.

1. MERCOSUR would like to thank the WTO Secretariat for document G/SPS/W/247, which contains a compilation of possible actions that could be taken by the SPS Committee in relation to private standards. The document clearly reflects not only Members' level of concern with regard to the trade implications of such standards but also their interest in seeking solutions to ensure that the multilateral commitments undertaken under the SPS Agreement are not nullified or impaired. We thus consider that the Secretariat document is an excellent basis for the SPS Committee's work and reaffirm our commitment to move ahead on what was agreed at the 46th Meeting of the SPS Committee, namely, to identify possible measures to be given "priority".

2. In order to launch this new stage, we believe it is important to share the following thoughts with other Members:

- (a) It is essential to protect the balance of rights and obligations which Members have laid down in the SPS Agreement, observing the principles of international law and adapting national regulations to the commitments undertaken;
- (b) it is the Members of the WTO that have the responsibility, the capacity and the legal instruments needed to reaffirm the application and validity of the standards they agreed for the purpose of regulating international trade. Consequently, the SPS Committee is the competent multilateral forum in which to find solutions to the new concerns raised by Members in regard to market access and directly related to sanitary and phytosanitary matters;
- (c) although we do not disregard the key role played by private actors in international trade, we consider that it is a priority to preserve the State's role in regulatory matters, particularly when it is a question of sanitary and phytosanitary measures. We believe it is important to create positive State/private sector synergies in order to make the best use of the opportunities and benefits opened up by international trade, but on the basis of clear and defined roles, each respecting the other's competence and attributions;
- (d) we consider that the work carried out on Members' experience in specific cases has been extremely positive. This interchange showed that some Members had encountered situations in which private standards had not caused greater prejudice or had even been beneficial to some extent. On the other hand, for the most part

Member's experiences caused serious concern, with practical examples being given of how private standards departed from the official regulations (the national regulations of the importer or international regulations) and how they had had a negative trade impact. It is our view that the information provided is sufficient and eloquent enough to allow the SPS Committee to embark upon the search for solutions;

- (e) MERCOSUR considers that the solutions to the concerns raised by some Members regarding the proliferation and content of private standards should serve to facilitate trade on the basis of clear and WTO-consistent rules. Accordingly, the Committee's aim should be to create operational mechanisms to enable us to find solutions to practical problems of access, avoiding the creation or maintenance of unjustified trade restrictions that weaken the commitments made at the multilateral level.

3. On the basis of these considerations, MERCOSUR is suggesting that priority be given to the following recommendations listed by the Secretariat in document G/SPS/W/247, based on the justification given below for each of them:

A. MECHANISM TO RESOLVE SPECIFIC TRADE CONCERNS

4. This is one of the items most commonly found on the Committee's agenda, under which Members raise concerns relating to the adoption of measures which, in their view, unjustifiably restrict their exports. There are four sub-items under this item: (i) new concerns; (ii) concerns already raised; (iii) examination of notifications received; and (iv) information on issues resolved.

5. MERCOSUR considers that Members should be urged to raise in meetings of the SPS Committee specific trade concerns relating to practical problems encountered by Members as a result of the application of a particular private standard. The Member in which the organization or entity that has developed or implemented the standard in question is located will then request this private organization or entity to explain the regulation and will follow it up in order to respond.

6. This proposal has several objectives:

- (a) To raise the level of communication between Members and entities which adopt private standards. In our view, better exchange between both parties could be extremely useful in clarifying certain provisions and overcoming various problems;
- (b) to facilitate understanding of the motives/reasons/justification underpinning a standard, including risk assessment where applicable;
- (c) to allow exporting Members to try to find positive solutions to the specific problems detected, by raising their concerns and clarifying those aspects of the private standards that give rise to reservations.

B. MONITORING OF PRIVATE STANDARDS

7. Based on the contributions by Members, observers and the Secretariat, MERCOSUR considers that the Committee should continually monitor new developments in relation to private standards, paying special attention to the trade problems caused by their implementation. Such a mechanism will enable the Committee to have up-to-date information on the issue and, eventually, to use this to examine other work options within the Committee.

C. GUIDELINES ON ARTICLE 13

8. Article 13 of the SPS Agreement provides for two obligations on Members regarding the measures adopted by "non-governmental entities within their territories":

- Obligation to do something (action): *"Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement."*
- Obligation to abstain from doing something (omission): *"Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement."*

9. Nevertheless, in the course of the discussions it became clear that not all Members interpreted and applied Article 13 of the SPS Agreement in the same way, which is why we consider that the SPS Committee has the responsibility (and the authority) to adopt "Guidelines" establishing common criteria to allow Members to apply the commitments laid down in Article 13 uniformly.
