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## Committee on Sanitary and Phytosanitary Measures

### PROPOSED WORKING DEFINITION OF SPS-RELATED PRIVATE STANDARDS

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

Revision

#### BACKGROUND

1. The SPS Committee has been discussing the issue of SPS-related private standards since June 2005, when Saint Vincent and the Grenadines raised a specific trade concern regarding EurepGAP (now called GLOBALGAP) requirements for bananas destined for sale in the United Kingdom.<sup>2</sup> Since then, private standards have been discussed regularly at SPS Committee meetings.
2. The SPS Committee decided in October 2008 to request an ad hoc working group to undertake a three-step study, and present a report proposing concrete actions for consideration by the Committee at the end of this process.<sup>3</sup> The ad hoc working group on SPS-related private standards completed its work on identifying "Possible Actions for the SPS Committee Regarding SPS-Related Private Standards", and presented its report to the SPS Committee.<sup>4</sup>
3. At its March 2011 meeting, the Committee adopted five of the six actions put forward by the working group (G/SPS/55).
4. At the October 2011 SPS Committee meeting, the Chairman invited Members to submit specific proposals on a working definition of SPS-related private standards (Action 1) by 13 January 2012. Members were also invited to: (i) comment on the proposed definitions received; and (ii) submit proposals on the implementation of Actions 2 to 5, by 10 February 2012.
5. At an informal meeting held in March 2012, the Committee discussed a draft working definition of SPS-related private standards prepared by the Secretariat based on proposals and comments received.<sup>5</sup> The following revised draft working definition of SPS-related private standards reflects comments made at the March 2012 informal meeting, and is presented for consideration by the Committee at its meeting in July 2012.

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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 or obligations under the WTO.

<sup>2</sup> G/SPS/R/37/Rev.1, paras. 16-20; G/SPS/GEN/766; STC No. 219.

<sup>3</sup> See paras. 4-7 of G/SPS/W/230 and paras. 122-137 of G/SPS/R/53.

<sup>4</sup> G/SPS/W/256.

<sup>5</sup> G/SPS/W/265.

## **I. PROPOSED WORKING DEFINITION**

"SPS-related private standards are market requirements which are [developed and/or] applied by [private] [non-governmental] entities [<sup>6</sup>], which may directly or indirectly affect international trade, and which relate to one of the following objectives:

- (a) to protect animal or plant life or health [within the territory of the Member] from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- (b) to protect human or animal life or health [within the territory of the Member] from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;
- (c) to protect human life or health [within the territory of the Member] from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; and
- (d) to prevent or limit other damage [within the territory of the Member] from the entry, establishment or spread of pests."

## **II. ADDITIONAL ELEMENTS TO CONSIDER**

6. SPS-related private standards include technical requirements, guidelines and recommendations.

7. To assess whether an SPS-related private standard may affect international trade, the Member concerned should consider relevant available information such as: the value or other importance of imports to the importing and/or exporting Members concerned, whether from other Members individually or collectively; the potential development of such imports; and difficulties for producers in other Members, particularly in developing country Members, to comply with the proposed SPS-related private standard. The concept of a significant effect on trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, as long as such effects are significant.<sup>7</sup>

8. SPS-related private standards can be developed by [private] [non-governmental] entities themselves, or may be derived from existing private, official or international standards, and are applied for [private] [non-governmental] entities' commercial objectives as part of a private, commercial and contractual relationship. SPS-related private standards are not developed, endorsed or promulgated by the Codex Alimentarius Commission (Codex), the International Plant Protection Convention (IPPC) and the World Organization for Animal Health (OIE).

9. Official SPS measures implemented by a Member (including SPS measures implemented by governments other than the national government, or by non-governmental entities on behalf of a Member) are not SPS-related private standards.

10. [Where an SPS-related private standard becomes an official SPS measure, it is no longer considered to be an SPS-related private standard.]

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<sup>6</sup> A non-governmental entity is any entity that does not possess, exercise, or is not vested with governmental authority. Non-governmental entities are private entities, including private sector bodies, companies, industrial organizations, enterprises and private standard-setting bodies.

<sup>7</sup> See G/SPS/7/Rev.3, para. 10.