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Committee on Sanitary and Phytosanitary Measures

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**SECOND REPORT OF THE CO-STEWARDS OF THE PRIVATE STANDARDS E-WORKING  
GROUP ON ACTION 1 (G/SPS/55)**

**SUBMISSION BY THE CO-STEWARDS OF THE E-WORKING GROUP**

The following communication, received on 29 September 2014, is being circulated at the request of China and New Zealand in their capacity as co-stewards of the e-Working Group on private standards.

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**1 BACKGROUND**

1. The SPS Committee adopted five actions regarding SPS-related private standards at its March 2011 meeting (G/SPS/55). Endorsement of these actions was without prejudice to the views of Members regarding the scope of the SPS Agreement.

2. In adopting Action 1, Members agreed to develop a working definition of SPS-related private standards ("The SPS Committee should develop a working definition of SPS-related private standards and limit any discussions to these").

3. At the October 2013 meeting of the SPS Committee, Members agreed to establish an "electronic working group" (e-WG), led by China and New Zealand as "co-stewards", to develop a compromise working definition of an SPS-related private standard. As consensus was not reached by the e-WG on language for a working definition, the co-stewards provided on their own responsibility in G/SPS/W/276 a proposed working definition for consideration at the March 2014 meeting of the SPS Committee. The proposed working definition was:

**"An SPS-related private standard is: a written requirement or a set of written requirements of a non-governmental entity which are related to food safety, animal or plant life or health and for common and repeated use."**

(Optional footnote: "This working definition or any part of it shall be without prejudice to the rights and obligations of Members under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures or the views of Members on the scope of this Agreement.")

4. Consensus was not reached on the working definition at the March 2014 meeting, and the SPS Committee requested that the Secretariat research existing definitions of private standards from other international organisations. The resulting document, G/SPS/GEN/1334, was discussed at the July 2014 meeting and subsequently revised to include three additional definitions.

5. The SPS Committee agreed that the e-WG pursue its discussion of a working definition of SPS-related private standards and do so based on the working definition tabled by the e-WG co-stewards contained in document G/SPS/W/276. In that regard, it was agreed that:

- a. Members should submit by 5 September 2014 to the co-stewards of the e-WG, through the Secretariat, any comments they may have on the co-stewards' draft working definition and regarding elements of other existing definitions that could be incorporated into the co-stewards' working definition; and

- b. The e-WG should circulate its report on a compromise working definition of an SPS-related private standard to the Committee no later than the end of September, for consideration at the SPS Committee meeting scheduled for 16-17 October 2014.

## 2 CONSIDERATION BY THE E-WG CO-STEWARDS OF MEMBERS' COMMENTS RECEIVED BY 5 SEPTEMBER

6. Comments were received, by the 5 September 2014 deadline, from 10 members of the e-WG (Argentina, Australia, Belize, Brazil, Burkina Faso, Canada, China, the European Union, Japan, and the United States) and from Cuba.

7. Comments received from Members by 5 September included:

- a. ... a written requirement(s) or condition(s) ...: Some Members reaffirmed their support for the use of the word "requirements", while others proposed using the word "conditions".
- b. ... of a non-governmental entity and is not applied under the exercise of governmental authority...: A number of Members noted that the term "non-governmental entities" is used in the OIE and Codex definitions, while a number of other Members remained concerned that this term was ambiguous and preferred "is not applied under the exercise of governmental authority".
- c. ... which are for common and repeated use in commercial transactions ...: There was general support for including the term "for common and repeated use" and one Member suggested adding "in commercial transactions".
- d. ... which are related to food safety, animal or plant life or health ...: There was general support for the term "related to food safety, animal or plant life or health".
- e. Footnote: There were mixed views as to whether the footnote should be included with the working definition, with some Members flexible to its inclusion, some opposing it saying it was not necessary, and others supporting it on the grounds of clarity.

8. The co-stewards carefully considered the views expressed by the submitting Members and proposed the following revised working definition as a result of the comments provided:

**"An SPS-related private standard is: a written requirement(s) or condition(s) of a non-governmental entity and not applied under the exercise of governmental authority, which are for common and repeated use in commercial transactions and which are related to food safety, animal or plant life or health."**

9. The co-stewards proposed that rather than a footnote, there be a statement in the decision document that the definition is a working definition of an SPS-related private standard, is without prejudice to the rights and obligations of Members, and does not represent any views of Members on the scope of the Agreement with respect to private standards.

10. Comments were requested from the e-WG by 24 September 2014.

## 3 SUMMARY OF E-WG COMMENTS RECEIVED BY 24 SEPTEMBER

11. Comments were received on 24 September from: Argentina, Australia, Belize, Brazil, Burkina Faso, Canada, the European Union, Japan and the United States. There was no consensus regarding acceptance of the co-stewards' suggested working definition.

12. Comments on the proposed working definition included:

- a. Instead of parenthetical "s" the definition should revert to the language: ... a set of ...

- b. Replace ... which are for common and repeated use ... with ... that may be used ... because the requirement/condition is not necessarily for common or repeated use (a term used under the TBT Agreement). This change would also more accurately reflect the *de jure* "voluntary" nature of the standards (as opposed to any official status).
- c. Move ... applied by ... to immediately before the term ... non-government entity ... to clarify who is doing the "applying". (This also eliminates the ambiguity represented by the "of a" prepositional phrase in front of "non-governmental entity".)
- d. ... not exercising governmental authority ... This wording enables the on-going inclusion of "non-governmental entities" (requested by some e-WG members) but by clarifying what it means, removes much of the ambiguity that is of concern to some other e-WG members.
- e. Move ... related to food safety... nearer to the start of the sentence to make it clear that it is the requirements or conditions, rather than the commercial transaction, which relate to food safety.

13. There was no consensus on whether to include the footnote or to incorporate those statements in the decision document.

14. Canada suggested specific amendments to the working definition for improved clarification. The co-stewards considered all comments received and have based the following revised working definition on those suggested modifications. However, due to time constraints, the co-stewards were unable to consult with the e-WG on this revised working definition.

#### 4 PROPOSED WORKING DEFINITION AS REVISED BY THE E-WG CO-STEWARDS

15. The co-stewards suggest a new working definition for consideration by the SPS Committee:

**"An SPS-related private standard is: A written requirement or condition, or a set of written requirements or conditions, related to food safety, or animal or plant life or health that may be used in commercial transactions and that is applied by a non-governmental entity that is not exercising governmental authority."**

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