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Committee on Sanitary and Phytosanitary Measures

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SPS-RELATED PRIVATE STANDARDS

COMMUNICATION FROM ARGENTINA

The following communication, received on 9 May 2015, is being circulated at the request of the delegation of Argentina.

1. Argentina wishes to express its views on the ongoing negotiations aimed at developing a working definition of SPS-related private standards.
2. Argentina reiterates that the intention to remove certain key terms, such as "non-governmental entities" and "requirements", from the working definition is at variance with the definitions provided by the World Organisation for Animal Health (OIE) (2009) and the FAO/WHO Codex Alimentarius Commission (2010), as well as with the mandate to develop such a definition conferred upon this Committee pursuant to the Decision contained in document G/SPS/55 (2011).
3. Argentina recalls that no objections were raised by Members in respect of these long-standing definitions by the OIE and the FAO/WHO Codex Alimentarius Commission. Furthermore, the two terms ("non-governmental entity" and "requirements") were also endorsed by the SPS Committee Decision (document G/SPS/55), in accordance with the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). These successive instruments therefore represent an interpretation that has not been contested, for which reason this understanding of the use of the terms "non-governmental entity" and "requirements" should be respected.
4. Argentina emphasizes that the term "non-governmental entity" forms part of the definitions of private standards developed by both the OIE and the World Health Organization (WHO)/Codex Alimentarius Commission. There is no difference or contradiction between the OIE definition and that of the FAO/WHO Codex Alimentarius Commission. Both definitions of private standards stem from two of the three international reference organizations with respect to the SPS Agreement (the OIE and the FAO/WHO Codex Alimentarius Commission). For this reason and in comparison with the other definitions set out in section 2 of document G/SPS/GEN/1334/Rev.1, these two definitions are considered to be the most relevant.
5. Furthermore, the OIE definition is the working definition of private standards, as described in the terms of reference (footnote 6 of document G/SPS/GEN/1334/Rev.1). This definition was developed by the OIE ad hoc Group on Private Standards and International Trade in Animals and Animal Products, which mirrored the group set up under the WTO SPS Committee.
6. In view of this specificity, the definition established by this ad hoc group is particularly important.
7. It should also be borne in mind that the inclusion of the terms "non-governmental entities" and "requirements" in the OIE definition was agreed upon by major industrial organizations (the International Meat Secretariat (IMS); the International Egg Commission (IEC); the German poultry association (*Zentralverband der Deutschen Geflügelwirtschaft*) representing the International Poultry Council (IPC); the International Federation of Agricultural Producers (IFAP); the French consumer protection association *Familles rurales*; and the French federation of trade and

distribution companies (*Fédération des entreprises du commerce et de la distribution* (FCD)) in conjunction with private businesses, government authorities and representatives of NGOs.

8. The mandate conferred upon the SPS Committee pursuant to the Decision contained in document G/SPS/55 states that the SPS Committee will limit any discussions to requirements which are established and/or adopted by non-governmental entities to fulfil one of the four objectives stated in Annex A, paragraph 1, of the SPS Agreement and which may affect international trade. Any working definition of private standards must therefore be in line, and not conflict, with the definitions that have already been agreed, while remaining faithful to the mandate and the vocabulary (the terms "non-governmental entity" and "requirements") used in the SPS Committee Decision (document G/SPS/55).

9. Argentina thus considers that the only proposed definition that would be consistent with the definitions of the OIE and the FAO/WHO Codex Alimentarius Commission, as well as with the mandate conferred upon the SPS Committee pursuant to the Decision contained in document G/SPS/55, is the one set out in document G/SPS/W/272 of 8 October 2013, with the amendment that a private standard could also consist of a requirement. Document G/SPS/W/276 does not add anything new in respect of the definition contained in document G/SPS/W/272.

10. Argentina also wishes to comment on the report of the co-stewards of the e-Working Group on Private Standards (document G/SPS/W/283).

11. The most recent report of the co-stewards of the e-Working Group (e-WG) states that the e-WG has reached an impasse with the terms "requirement" and "non-governmental entity".

12. Argentina would like to point out that the term "written" is also cause for concern, since a possible type of private standard would be ruled out were standards that do not exist in written form to be excluded. It is common knowledge that requirements, including those resulting from customary practices or customs, may be written or unwritten.

13. Furthermore, the decisions and recommendations already adopted by the Dispute Settlement Body (DSB) have clarified that measures, both written and unwritten, may be the subject of a dispute before the DSB. This is one of the reasons why Argentina supports the definition contained in document G/SPS/W/272. This point should therefore be included in the report of the co-stewards as one of the issues on which divergent views exist (paragraph 21 of document G/SPS/W/283).

14. Argentina submits this communication mindful of possible future developments with regard to this issue in the WTO Dispute Settlement Body.

15. In view of the foregoing, Argentina hereby places its concerns on record and encourages the Committee to give due consideration to existing consensus positions in order to secure a definition of private standards as soon as possible.
