



SPS Committee

Current Issues^{*}

^{*}This presentation 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.



Private Standards

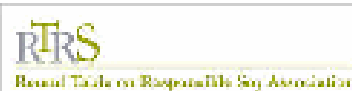
Private Standards in International Trade

– Why and How

- Food safety concerns (BSE, E-coli, Salmonella, dioxin)
- Private companies liability for food safety risks
- “Corporate Social Responsibility” and “Reputation Risks”
- Vertical integration between suppliers and retailers
- Consumer increasing expectations, better informed, more health conscious and organised
- Globalisation of retail and production / more global sourcing / Large food retailers
- Estimation of over 400 private schemes (UNCTAD)

Examples of Private Standards

- **Individual Firms Schemes**
(Tesco, Carrefour)
- **Collective National Schemes**
(British Retail Consortium)
- **Collective International Schemes**
(GlobalGap)



Governments food safety requirements and some SPS principles

- Separate food safety from quality requirements
- Based on Codex standards or on a risk assessment
- Consistent level of health protection
- Least restrictive of trade
- Recognize equivalence of other measures
- Notified in advance, with comment period
- Published, with reasonable interval before entry into force
- No unjustified costs in testing, certification, approval

SPS-related Private Standards

Positive aspects

- Facilitate compliance with national and international standards
- Promote best-practices
- Improve brand reputation
- Facilitate access to markets
- Address emerging risks rapidly
- Pave way for eventual adoption of national or international standards

Concerns

- Scientific justification?
- Harmonization (Codex/IPPC/OIE)?
 - deviations from international standards (MRLs)
 - multiplicity of private standards
 - more restrictive than official regulations
- Equivalence? more prescriptive
- Transparency? limited or none
- Control, inspection, approval procedures - costly certification requirements
- Subject to WTO mechanisms for consultations/dispute settlement?
- **Additional, costly market access barriers, especially for small-scale producers in developing countries**
- **Deviation from principles of multilaterally agreed trade rules**

Reasons Why Private Standards are being Discussed in the WTO SPS Committee

1. Market access implications
2. Developmental implications
3. Legal aspects



Market Access – Possible Implications

- **Private Standards going beyond international standards**
(e.g., very low or zero Maximum Residue Levels - MRLs)
- **Private Standards going beyond official requirements**
(e.g., Good Agricultural Practices, Labour requirements, Environment requirements)
- **Becoming *de facto* market access requirements**
 - “Blurring” of private and official requirements
- **Multiplication of different schemes**
 - Overlap and/or contradictions
 - Lack of harmonization
 - No equivalence



Developmental Implications

- **Costs associated with private standards**
 - Costs of compliance
 - Certification costs
 - Lack of price premium
- **Impact on small- and medium- sized farmers and enterprises**
- **Driving supply chain modernization and investments**
- **Faster upgrading**
- **Correcting underlying hygienic problems**

Legal Aspects

➤ **Applicability of SPS Agreement**

- Art. 1.1 and Annex A(1)
- Art. 13
- Scientific basis, Equivalence, Transparency

➤ **Mechanism/forum to address concerns**

➤ **Mechanism/forum to resolve disputes**



SPS Agreement - Article 13

Implementation

... Members shall:

- take such **reasonable measures as may be available to them** to ensure that non-governmental entities within their territories ... comply with the relevant provisions of this Agreement.
- **...not take measures** which have the effect of, directly or indirectly, **requiring or encouraging** such ... non-governmental entities... **to act in a manner inconsistent** with the provisions of this Agreement.
- ensure that they **rely on the services** of non-governmental entities for implementing sanitary or phytosanitary measures **only if these entities comply with the provisions of this Agreement.**



SPS Committee discussions on private standards

- St. Vincent and the Grenadines' concern about EurepGAP certification for bananas (June 2005)
- Three information sessions with international organizations and entities involved in private standards (Oct 2006, June 2007, June 2008)
- Discussions at regular SPS Committee meetings
- Agreement on 3-phase work plan (October 2008): questionnaire/report/recommendations
- Creation of an ad hoc working group

SPS Committee - Ad Hoc Working Group

30 Members participated:

Argentina, Australia, Belize, Brazil, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, Egypt, the European Communities, Guatemala, Japan, Mexico, Mozambique, New Zealand, Pakistan, Paraguay, Peru, Saint Vincent and the Grenadines, South Africa, Chinese Taipei, Thailand, United States, Uruguay, Venezuela



Responses to the Questionnaire - G/SPS/GEN/932

- **Products affected:** fresh fruit, fresh vegetables, fresh, chilled or frozen bovine and poultry meat
- **Main export markets:** Australia, Canada, Japan, US and the EU
- **Content:** food safety (2/3 replies), animal and plant health, and social and environmental
- **Private standards and 3 Sister standards:** lower MRLs, absence of listeria in raw meat, de-boning of beef from BSE-free countries, animal welfare. 2/3 said Private Standards more restrictive



Responses to the Questionnaire - G/SPS/GEN/932

- **Negative effects:**
 - excluded from some markets, and export to new markets, e.g., Southeast Asia and Middle East;
 - annual certification costs from US\$ 2,000-8,000.
 - multiplicity, lack of equivalence, non-transparent, non-inclusive
- **Positive effects:**
 - more stable presence in other markets
 - enhanced competition
 - facilitate compliance with international standards
 - better brand reputation, easy credit
- **Technical/Financial assistance received:** yes for more than half responses



Belize

- **Products affected** Straight or concentrated juice from orange or grapefruits or the by-products thereof (final products are either packed in drums, bins or tankers)
- **Main export markets** **USA, Belgium, England, Germany, Holland, Italy, Switzerland, UK, USA**
- **Standards /Schemes listed**
 - Quality Management System -ISO 9001:2000
 - Environmental Management System ISO 14001
 - SGF (Sure Global Fair) – European Labelling standard
 - Kosher
 - AIJN

Actions on Private Standards adopted by the SPS Committee (G/SPS/55)

- **Action 1:** SPS Committee to develop a working definition of private SPS standards
- **Action 2:** SPS Committee should regularly inform the three sisters on relevant developments
- **Action 3:** the Secretariat to inform the Committee on developments in other WTO fora
- **Action 4:** Members are encouraged to communicate with private standard entities in their territories to sensitize them to the issues raised in the SPS Committee
- **Action 5:** SPS Committee, Codex, the OIE, and the IPPC to support the development and/or dissemination of informative materials



Possible actions for the SPS committee (G/SPS/W/256) – No consensus

- Action 6: Members to exchange relevant information regarding private standards
- Action 7: SPS Committee provide a forum for the discussion of specific trade concerns related to SPS-related private standards
- Action 8: SPS Committee to develop guidelines on the implementation of Article 13 of the SPS Agreement
- Action 9: SPS Committee to develop a transparency mechanism regarding private standards
- Action 10: SPS Committee to develop a Code of Good Practice
- Action 11: SPS Committee to develop guidelines for Member governments to liaise with entities involved in private standards
- Action 12: SPS Committee should seek clarification as to whether the SPS Agreement applies to SPS-related private standards



Current State of Play - Private Standards

- **5 agreed actions:** Committee will discuss how to “action the actions” at the upcoming October SPS meeting.
- **Action 6:** proposed modification to Action 6 “Members are encouraged to exchange, outside the formal and informal sessions of the SPS Committee, relevant information regarding SPS-related private standards”
- No consensus reached, and Members to discuss proposed changes before October meeting to try & resolve differences.
- **Actions 7 to 12:** No consensus, remain on the table

The way forward



- Focus on practical trade problems
- SPS Committee considering practical ways to address concerns and draw benefits
- Find another forum
- Set up a new working group for actions 7-12
- Dialogue at national and int'l levels
- Guidance on implementation of Article 13
 - E.g. decision, guidelines, code of practice
 - Consensus required
- Dispute settlement

Implement agreed actions 1 to 5 ...



Third Review of the SPS Agreement

Review of the SPS Agreement

- Article 12.7:
3 years after entry into force
 - First Review completed March 1999 (G/SPS/12)
- Ministerial Decision:
reviews at least every 4 years
 - Second Review completed June 2005 (G/SPS/36)
 - Third Review completed in March 2010 (G/SPS/53)



Issues arising from Second Review

- **Transparency (G/SPS/7/Rev.3)**
- **Good offices of the Chair/ specific concerns (G/SPS/W/259)**
- **Relationship with 3 sisters (workshop 10/2009)**
- **Pest- and disease-free areas (G/SPS/48)**
- **Database (SPS IMS)**
- **Undue delays; Good Regulatory Practices; Implementation of control measures (Article 8); Examination of relationship between the right to maintain SPS measures and the “least trade restrictive” obligation;**



Issues arising from Third Review (G/SPS/53)

– *further work*

- **Transparency** – *consider how to enhance implementation and benefits by LDCs and developing countries*
- **Monitoring use of International Standards** (G/SPS/11/Rev.1) - *consider revising procedure*
- **Special and Differential Treatment** – *consider how to address problems of LDCs and developing countries in implementing and benefitting from S&D*
- **Cooperation with 3 Sisters** – *follow-up on workshop recommendations to strengthen relation (G/SPS/R/57)*
- **Control, Inspection and Approval Procedures** (Art.8 & Annex C) – *consider how to facilitate implementation*

Several proposals tabled so far: Japan, New Zealand, Canada, Argentina, and EU.



Current State of Play – Third Review

Three Issues Prioritized for Further Work

- Cooperation with Codex, OIE, and IPPC
(Article 12.3)
- Monitoring the use of international standards
(Article 3.5 and 12.4)
- Control, Inspection and Approval Procedures
(Article 8 and Annex C)



Cooperation with Codex, OIE and IPPC (Article 12.3)

Issues discussed at June 2011 Committee:

1. October workshop on national coordination.
2. Joint submission by Canada and Japan to advance recommendation 3 of the October 2009 workshop, regarding joint work by the 3 Sisters on cross-cutting issues.
3. SPS Committee to request specific information from the 3 Sisters relating to recommendation to solicit more information at the strategic planning phase of the 3 sisters' work



Monitoring the use of international standards (Article 3.5 and 12.4)

- Background document on Monitoring the use of international standards (G/SPS/GEN/1086).
- Call to adequately reflect, in monitoring the process of international harmonization, all trade problems involving international standards.
- Need for Members to comply with the recommendation to notify measures when based on international standards, and to accurately identify the existence of relevant international standards.
- Members invited to submit, by 29 July, any specific submissions regarding the underutilization of the current monitoring procedure or proposals for its revision.



Control, Inspection and Approval Procedures (Article 8 and Annex C)

- Members should first exchange information on their experiences regarding control, inspection and approval procedures before discussing the provisions more generally.
- The European Union presented its approach to SPS audits and inspections in third countries. Argentina informed that it is currently reviewing on-site audit procedures at the national level.
- Members were encouraged to reflect on the submissions and to continue sharing their experiences with control, inspection, approval procedures



Ad Hoc Consultations

Good Offices by the Chair of the SPS Committee

Article 12.2

“The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. [...]”

Procedure currently under discussion in the SPS Committee
(G/SPS/W/259)

Good Offices by the Chair of the SPS Committee

➤ Experience of Good Offices of the Chair:

1. Argentina et al. relating to citrus canker by EU – Resolved (STC n. 27);
2. US with respect to restrictions on wheat and oilseeds by Poland – Not reported (STC n. 25);
3. Canada with respect to import restrictions on bovine semen by India – Solved in 2001, but reappeared in 2003 (STC n. 61)

Proposals from Members

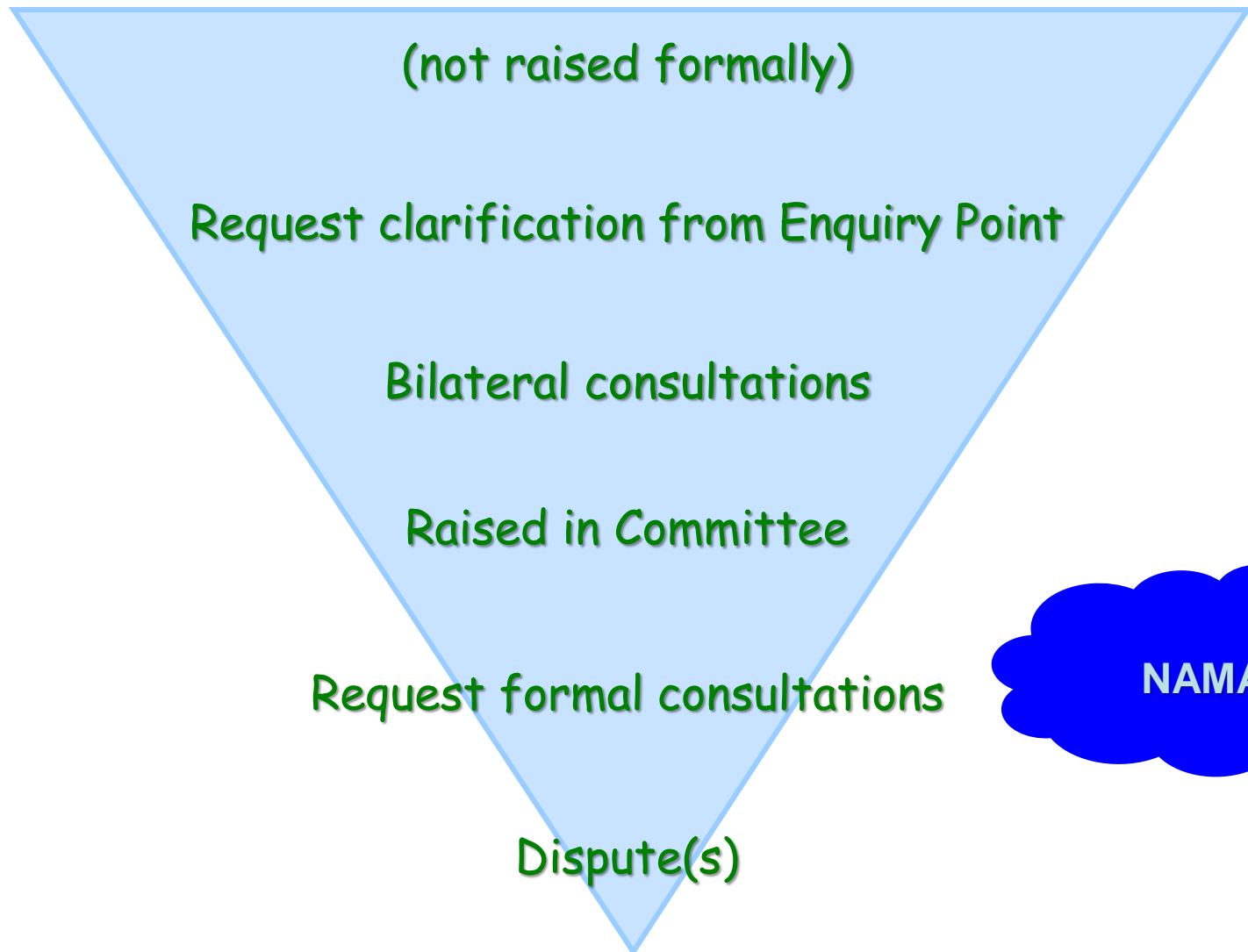
- Argentina
- US
- Joint Argentina/US
- Brazil
- India, Norway, Philippines and Switzerland (March 2011)

Newest Secretariat Document (G/SPS/W/259 - 27 May 2011)

What is the link to the Horizontal Mechanism (HM) of the Non Agricultural Market Access (NAMA) negotiations?



The process of multilateral review



The two sides of the debate (ad hoc)

- Completely voluntary procedure
- No timetables
- “reasonable period of time”
- No legal opinion (Chair/facilitator)
- Independent from HM, but to be revised

- Voluntary, beyond first meeting/exchange of information
- Fixed timelines
- 180 days
- Legal opinion can be given (Chair/facilitator)
- Sunset clause (Horizontal Mechanism)

Current State of Play – Ad Hoc Consultations

- India, Switzerland, Norway and the Philippines have initially repeated their preference to await the outcome of the NAMA horizontal mechanism approach, but in March 2011 the HM-4 tabled a counter-proposal for an SPS-specific mechanism.
- The Secretariat prepared a consolidated proposal reflecting the two options on the table (G/SPS/W/259).
- An inter-sessional informal meeting to discuss this new document saw a change in strategies. HM-4 are pushing for rapid adoption of the procedure they are proposing, while others seem less keen as the desired simple, voluntary procedure has become complex.

The way forward



- Members were invited to submit comments by 29 July.
- G/SPS/W/259 to be revised to reflect each Member's comments in square brackets
- Document W/259 will be discussed at an informal meeting on 18 October 2011.

