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Committee on Sanitary and Phytosanitary Measures

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**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 12 March 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. The SPS Committee adopted five actions regarding SPS-related private standards at its meeting of 30-31 March 2011 (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. Following the informal and formal meetings of the October 2013 SPS Committee, Members agreed to set up an "electronic working group" (e-WG), composed of Members who submitted specific and concrete proposals or comments on the joint definition tabled by China and New Zealand (G/SPS/W/272) to the Secretariat by 8 November. It was agreed that China and New Zealand would act as "co-stewards" and take the lead in developing a compromise working definition of SPS-related private standards. The basis for this work was G/SPS/W/272. Any compromise language for a working definition of SPS-related private standards would have to be agreed by the SPS Committee. The co-stewards functioned in a private capacity and not as representatives of their government, and strove for transparency, openness and inclusiveness in the process.
 4. By 8 November 2013, comments were received by the Secretariat from 11 Members – Argentina, Australia, Belize, Brazil, Burkina Faso, Canada, China, the European Union, Japan, Singapore and the United States.
 5. On 5 December 2013, the e-WG members were sent an e-mail from the co-stewards attaching:
 - a. A compilation of the comments received from e-WG members (by 8 November);
 - b. The joint China/New Zealand proposed definition of an SPS-related private standard (G/SPS/W/272);
 - c. A table giving the various elements of the definition to be completed by the e-WG members;
 - d. A list of the e-WG participants; and
 - e. The working procedures.
 6. Members of the e-WG reviewed the compilation of comments and suggested by 22 January 2014, how each element of the definition would best be addressed taking into account the other e-WG members' comments. It was emphasised that the group was developing a working definition, not a legal definition, and that such a definition would apply to SPS-related private standards, but not interpret the SPS Agreement or any of its words or provisions.

7. On 11 February 2014, the co-stewards sent to the e-WG a summary of all the comments received from the e-WG with further comments and recommendations for consideration. Members were requested to be very open in their consideration of the proposals that had been made by the other members of the e-WG, and very explicit and clear in their reasoning when submitting further comments/proposals. A deadline of 27 February 2014 was agreed for receiving comments.

8. While progress was made on resolving differences in some elements of the definition, consensus was not reached on language for a working definition. The co-stewards have consulted and provide the following suggested language on their own responsibility for consideration at the March 2014 SPS Committee meeting:

"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.")

9. The rationale for the elements of this working definition includes the following:

- a. a set of requirements: There was general agreement among the e-WG to include the concepts of "written" requirements, and that it could be a requirement or a set of requirements. Some Members also considered "for common and repeated use" should be incorporated in the working definition, while others noted concern about possible redundancy or lack of clarity with this term. Taking into consideration the definition of a "standard" contained in Annex 1 of the WTO Agreement on Technical Barriers to Trade, the co-stewards recommend the language: "*a written requirement or a set of written requirements for common and repeated use*".
- b. of a non-governmental entity: This was probably the element of the definition where there was the most diverse views expressed. An alternative proposal was made that the requirement "... is not applied under the exercise of governmental authority". However, the co-stewards make the following points in support of inclusion of the term "*non-governmental entity*":
 - i. the term is generic, not specific to the SPS Agreement; and the ownership approach (by using "of") can help avoid the confusion of "private standards" with "official standards";
 - ii. "non-governmental entity" is the term used in the SPS Committee's Decision G/SPS/55; and
 - iii. A working definition does not entail any legal interpretation as to whether or not private standards are covered by the terms of the SPS Agreement.
- c. which are related to food safety, animal or plant life or health: There was a suggestion to replace "related to" with "for the purposes of" however the co-stewards consider this could easily be confused with the role of the ISSBs. Furthermore, "for the purposes of" means that the standard is imposed primarily in order to achieve that particular objective and some Members question whether the primary objective of a private standard is genuinely food safety. It was hence suggested to go with "*related to*" which is a broader term to reflect the fact that the standard has some link to food safety, but this is not necessarily its primary objective.
- d. Footnote: in general the e-WG was in agreement or could be flexible with the use of a footnote. An accompanying explanatory document was also proposed by one member of the e-WG. The co-stewards noted the comments by the WTO Legal Affairs Division with regard to the legal implications of the China/New Zealand joint proposal and its accompanying footnote (G/SPS/W/272), and would like to propose a revised optional footnote for consideration by the Committee:

"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."