PRIVATE STANDARDS
AND THE WTO COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES

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Summary: Private standards have been under discussion in the SPS Committee since June 2005. The discussions have focused on three themes:

- Market access: Some Members have taken the view that standards set by the private sector can help suppliers improve the quality of their products and gain and maintain access to high-quality markets. Other Members have argued that private standards can be both more restrictive (e.g. requiring lower levels of pesticide residues) and more prescriptive (e.g. accepting only one way of achieving a desired food safety outcome) than official import requirements, thus acting as additional barriers to market access.

- Development: Many Members have expressed the concern that the costs of complying with private standards, and the additional cost of certification, sometimes for multiple sets of standards for different buyers, can be a problem, especially for small-scale producers and particularly (but not exclusively) in developing countries.

- WTO law: While some Members are of the view that setting standards for the products they purchase is a legitimate private-sector activity with which governments should not interfere, others insist that the SPS Agreement makes governments in importing countries responsible for the standards included in the scope of this Agreement and set by their private sectors. The latter are concerned that these standards do not meet WTO requirements such as transparency and scientific justification of sanitary and phytosanitary (mainly food safety) measures and are more trade-restrictive than necessary to protect health.

Key words: World Trade Organization – WTO – SPS Agreement – SPS Committee – private standard – international trade in animals and animal products
1. Introduction: discussion of private standards in the SPS Committee

At meetings of the SPS Committee, Members of the World Trade Organization (WTO) have the opportunity of raising specific trade concerns, for example if they believe that another country’s sanitary and phytosanitary (SPS) measures are more trade-restrictive than necessary for health protection. In June 2005, St.-Vincent-and-the-Grenadines raised such a concern with respect to EurepGAP (now GlobalGAP) pesticide requirements for the importation of bananas, enquiring about the relationship between GlobalGAP and official EU requirements. Other developing countries shared this concern, wondering what recourse was available to affected developing countries. The European Communities replied that GlobalGAP standards were not official EU requirements and even if they went beyond official EU regulations, they were not in conflict with EU legislation.

Since June 2005, private standards have been on the agenda of every meeting of the SPS Committee. At Members’ request, the Secretariat organized two informal information sessions; a first one in October 2006 with the participation of GlobalGAP and UNCTAD representatives, and a second one organized jointly with UNCTAD in June 2007. Several private standards’ schemes provided information to WTO Members at this second session, and a number of speakers presented case studies on the impact of private standards in different countries and sectors. These illustrated the different coping strategies adopted by exporting countries. For example, several countries have developed national GAP schemes, with varying levels of government involvement. The information sessions have provided the opportunity for two-way education and awareness-raising: increasing the knowledge and understanding of government regulatory officials about the operation of various private standard schemes and their objectives, while at the same time making the operators of the private schemes aware of the concerns and effects of these on developing countries.

Although the SPS Committee first started considering private standards through a specific trade concern raised by a developing country Member, since then very few specific examples have been submitted. So far, no concrete example of difficulties with private standards related to animal health has been provided ― discussions have either been very general or have focused on fresh fruits and vegetables. At the last meeting of the SPS Committee, the Director General of the World Organisation for Animal Health (OIE) made a statement to launch a discussion on private standards in the animal health area, emphasizing that there was no need to go beyond OIE standards to address animal health risks and zoonoses. Many Members spoke to stress the importance of international standards in facilitating safe trade and to express concern about the role of private standards.

2. Background: private standards in international trade

In January 2007, the WTO Secretariat prepared a background note on private standards for the SPS Committee. Some of the information from that document is reproduced in this section. At the time, UNCTAD estimated the number of private schemes at 400 and rising. Schemes range from those developed by individual firms to collective industry-wide international schemes and are not exclusive to a particular country, geographical region or even level of development. Private standards have very diverse objectives, in many cases related to social and environmental concerns or to animal welfare, which are not covered by the SPS Agreement. In the context of the SPS Agreement, the focus is on sanitary or phytosanitary aspects of private standards, which in the large majority of cases relate to food safety. In this respect, the same factors and companies driving the use of private standards are at work in developed, developing and least-developed countries.

Table 1 gives examples of private standards. The list of standards given in the table is an illustrative one; it is far from exhaustive. The twelve schemes identified serve to demonstrate some of the diversity of the 400 plus schemes in operation.

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2 GAP standards for good agricultural practices, and the GlobalGAP standard is required by several retailers in Europe and elsewhere.
3 UNCTAD: United Nations Conference on Trade and Development
4 Document G/SPS/GEN/746
Table 1. Examples of private standards

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<thead>
<tr>
<th>Individual firm schemes</th>
<th>Collective national schemes</th>
<th>Collective international schemes</th>
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<tr>
<td>Tesco Nature's Choice</td>
<td>Assured Food Standards</td>
<td>GlobalGAP</td>
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<td>Carrefour Filière Qualité</td>
<td>British Retail Consortium Global Standard - Food</td>
<td>International Food Standard</td>
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<td>QS Qualité Sicherheit</td>
<td>Global Food Safety Initiative</td>
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<td></td>
<td>Food and Drink Federation/British Retail Consortium Technical Standard for the Supply of</td>
<td>ISO 22000: Food safety management systems</td>
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<td></td>
<td>Identity Preserved Non-Genetically Modified Food Ingredients and Product</td>
<td>Safe Quality Food (SQF) 1000 and 2000</td>
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<td></td>
<td></td>
<td>ISO 22005: Traceability in the feed and food chain</td>
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The categorization used in the table between individual firm schemes, collective national and collective international schemes is one of several possible categorizations. Distinctions can also be drawn between pre- and post-farm gate standards, or between business-to-business standards or standards tied to a particular labeling or logo scheme intended for consumers. Collective schemes may also tackle a particular supply chain issue or objective, at a national or international level. The schemes listed above cover all these categories. For example, while GlobalGAP is primarily a pre-farm gate standard, the British Retail Consortium (BRC) Global Standard and International Food Standard are aimed at packing and processing facilities. Similarly, while the Assured Farm scheme is linked to logos displayed on food packaging, the GlobalGAP scheme is not. Likewise, the joint Food and Drink Federation/British Retail Consortium Technical Standard and the ISO 22005 scheme tackle specific supply chain issues — at both a national and international level.

Table 1 serves to demonstrate the diversity of private standards. It also highlights the rise of private standard-setting collations which are seeking to harmonize industry-wide efforts to control particular risks. The proliferation of standards schemes nationally and internationally is also stimulating a trend towards ‘benchmarking’ — which provides a means to compare requirements. For example, GlobalGAP has a process through which other schemes may be ‘benchmarked’ against it — such as the ChileGAP scheme for fresh fruit. Another example of this process is the Global Food Safety Initiative (GFSI). The GFSI was founded with the idea of ‘benchmarking’ national schemes internationally against a set of key elements. However, benchmarking does not necessarily imply equivalence.

Private standards are not mandatory. Suppliers are not required by law to meet private standards. Compliance with private standards is a choice on the part of the supplier. Where private standards become the industry norm, however, choice is limited. Consolidation in food retailing may be a key factor to consider in this context. Where a small number of food retailers account for a high proportion of food sales, the options for suppliers who do not participate in either an individual or collective retailer standard scheme can be considerably reduced. Furthermore, the retailer scheme may be de facto applied as the industry norm by all actors in the supply chain. Thus the choice of whether or not to comply with a voluntary standard becomes a choice between compliance or exit from the market. In this way, the distinction between private voluntary standards and mandatory ‘official’ or ‘public’ requirements can blur.

3. Issues raised in the SPS Committee

The discussions of private standards in the SPS Committee have focused on three themes:

a. Market access

Some Members have taken the view that standards set by the private sector can help suppliers improve the quality of their products and gain and maintain access to high-quality markets. Other Members have argued that private standards can be both more restrictive (e.g. requiring lower levels of pesticide residues) and more prescriptive (e.g. accepting only one way of achieving a desired food safety outcome) than official import requirements, thus acting as additional barriers to market access.
b. Development

Many Members have expressed the concern that the costs of complying with private standards, and the additional cost of certification, sometimes for multiple sets of standards for different buyers, can be a problem, especially for small-scale producers and particularly (but not exclusively) in developing countries.

c. WTO law

While some Members are of the view that setting standards for the products they purchase is a legitimate private-sector activity with which governments should not interfere, others insist that the SPS Agreement makes governments in importing countries responsible for the standards included in the scope of this Agreement and set by their private sectors. The latter are concerned that these standards do not meet WTO requirements such as transparency and scientific justification of sanitary and phytosanitary (mainly food safety) measures and are more trade-restrictive than necessary to protect health. This last point is taken up in more detail in the following section.

A list of relevant documents circulated in the SPS Committee is contained in Appendix I to this paper.

4. Private standards and the SPS Agreement

Several WTO Members have expressed concerns that the proliferation of private standards could undermine some of the progress made in regulating sanitary and phytosanitary measures through adoption and implementation of the SPS Agreement. The SPS Agreement was negotiated by governmental food safety, plant and animal health regulators to impose significant disciplines on what restrictions can be applied to products moving in international trade in the name of health protection. The basic requirement under the SPS Agreement is that measures can be taken only to the extent necessary for health protection, with scientific evidence required to demonstrate this ‘necessity’ (except for emergency situations when temporary actions may be taken).

Under the SPS Agreement, the preferred way of meeting the scientific justification requirement is through the use of internationally developed food safety, animal and plant health protection standards —that is, those adopted by the OIE, the Codex Alimentarius Commission (Codex) and the International Plant Protection Convention (IPPC) Commission on Phytosanitary Measures (CPM). The harmonisation of national requirements on the basis of these international standards facilitates trade by reducing the proliferation of distinct national requirements.

Alternatively, governments can justify national requirements if these are based on an appropriate risk assessment, but the measures imposed must be no more trade restrictive than required to achieve the desired level of health protection. And the level of health protection sought by governments, while a sovereign decision, cannot be arbitrary and should be consistent in the face of similar health risks.

Importantly, the SPS Agreement contains a number of provisions to ensure the transparency of sanitary and phytosanitary requirements. Not only must governments give advance notice of their intention to modify SPS measures, but they must take into consideration any comments submitted by trading partners, provide associated documents upon request (including risk assessments and the scientific evidence underpinning measures), and ensure that all measures are published promptly.

In the WTO, sanitary and phytosanitary measures are subject to a different set of legal obligations than what is applied to quality and environmental measures or measures adopted to avoid the deception of consumers. These latter types of measures are covered by a different legal framework, the Agreement on Technical Barriers to Trade. The existence of these two agreements pushes governments to identify the objectives of their import requirements, and to more clearly separate and distinguish between requirements imposed for health protection and those imposed for other purposes.

Finally, the WTO agreement ensures that SPS requirements can be challenged by other trading partners, through the use of the WTO’s unified dispute settlement procedures.

In contrast to these globally negotiated disciplines on governmental actions, some developing country Members have expressed the concern that private standards are going in a different direction. The private standards address a mix of SPS and other objectives – including social and environmental concerns that are not related to food safety or plant/animal health protection. These private requirements may have no scientific justification, but may address consumer perceptions of what is safe or unsafe. Or the requirements
may reflect production practices common in developed countries but unknown and perhaps unsuitable for developing country producers.

Some developing country Members have also expressed concerns that there is a proliferation of distinct private requirements, with little harmonisation. Certification is done by private companies, at much greater expense than governmental schemes which at most seek to recover costs. And certification must be renewed regularly, whether or not there is any reason to believe that the production conditions have changed.

The SPS Agreement encourages the participation of developing countries in the preparation and adoption of international standards, which has been addressed through the creation of trust funds and various assistance programs. Other provisions of the SPS Agreement require consideration of the special needs of developing countries, through the provision of special and differential treatment. The SPS Agreement also requires that there be no unjustified costs in testing, certification or approval procedures, to ensure that these do not function as barriers to trade.

Some developing country Members have argued that private standards bodies have apparently not taken into account the effects of their standards on developing countries or the degree of their trade restrictiveness. These Members have reported on growing concerns in the private sector within their countries regarding the effects of these private standards and the degree of their trade restrictiveness, especially in countries where meeting internationally agreed standards is still a challenge.

At the information sessions held for the SPS Committee, some representatives of private standard bodies indicated that they had recognized this problem and some efforts to ‘benchmark’ or accept other private standard schemes as equivalent are underway, as well as some efforts to improve transparency. Still, some WTO Members feel that compared to the disciplines that the SPS Agreement places on government regulations, there is little transparency in the development of private standards, and there is no forum for challenging private standards comparable to the SPS Committee or the dispute settlement mechanism of the WTO.

**Article 13 of the SPS Agreement**

Does the SPS Agreement apply to private standards? WTO Members are of different views about this question. This disagreement stems *inter alia* from different interpretations of Article 13 of the SPS Agreement. Some WTO Members are of the view that Article 13 obliges Members to ensure that private standard-setting bodies on their territories comply with the SPS Agreement, while others disagree.

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**Article 13**

**Implementation**

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall 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.

The last three sentences of Article 13 deal with ‘non-governmental entities’ and the role of Members in ensuring that such entities comply with the SPS Agreement. The term ‘non-governmental entities’ is not defined in the SPS Agreement. While some have argued that it would cover private standards bodies, others are of the view that only private entities that have been mandated by a government to carry out certain tasks would be included5.

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5 For a more detailed analysis of Article 13 and of other articles of the SPS and TBT Agreement, please see document G/SPS/GEN/802, submitted by the United Kingdom. This document contains non official legal analysis carried out by O'Connor and Company, a law firm based in Brussels.
Of particular interest in this context is the third sentence of Article 13: “Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement.” Even if this were found to apply to private standards bodies, it seems clear that the “reasonable measures” to be taken by a particular government to ensure that a specific non-governmental entity complies with the SPS Agreement would have to be studied on a case-by-case basis.

5. **The way forward**

The SPS Committee has discussed several possible ways to continue to address private standards, but has so far not made a decision. The following options have been suggested:

a. **A focus on practical trade problems with particular standards**

The Chairman of the SPS Committee encouraged Members to identify specific instances where a private standard seems to be restricting trade so that the Committee could study these examples and discuss possible solutions. Such an approach might also allow a better understanding of the problem in general, and thus help to identify horizontal approaches.

b. **Finding another forum to discuss private standards**

Since many private standards schemes address issues that go beyond sanitary and phytosanitary measures, some Members have suggested that different fora may be more appropriate their discussion, e.g. the TBT Committee, UNCTAD, OECD, the Trade Standards Practitioners Network of the World Bank, etc. Other Members have made it clear that they wish to continue discussing private standards in the SPS Committee.

c. **Dialogue between government regulators and private standards bodies at the national and international levels**

Informal information sessions and discussions in the SPS Committee and other fora have already led to increased awareness of concerns and objectives on both sides; this could possibly be enhanced through continued formal or informal exchanges.

d. **Guidance on the implementation of Article 13 of the SPS Agreement**

The SPS Committee has adopted decisions or guidelines on several subjects in the past, for example on the practical implementation of Article 4 on equivalence. Some Members have suggested that the SPS Committee could attempt to develop similar guidance for the implementation of Article 13, or a code of good practice for private standards bodies similar to that contained in the TBT Agreement. Given Members’ diverging positions on the issue it would presumably not be easy to reach the required consensus. According to Article 12.7 of the SPS Agreement, the Committee could also elaborate a proposal to amend the text of the SPS Agreement, but the possibility of reaching consensus on such an amendment seems remote.

e. **Dispute settlement**

A Member who believes that another Member is violating its WTO obligations can begin a formal dispute settlement process at the WTO. However, the findings of such a case are likely to be highly specific to the particular situation of the case examined and may not be very helpful to clarify the issue in general.

At the April 2008 meeting of the SPS Committee, there was a proposal to establish a small working group to discuss the way forward, while continuing to keep private standards on the agenda of future meetings of the Committee. This proposal received much support and will be discussed at an informal meeting prior to the regular SPS Committee meeting during the week of 23 June 2008. Given the widespread interest in the issue, any working group that may form is unlikely to be very small.
### Appendix I

#### Documents on private standards circulated in the SPS Committee

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<tr>
<th>Author / document symbol</th>
<th>Title and date</th>
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<tr>
<td>WTO Secretariat G/SPS/GEN/746</td>
<td>Private Standards and the SPS Agreement 24 January 2007</td>
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<tr>
<td>ISO G/SPS/GEN/750</td>
<td>Submission by the International Organization for Standardization (ISO) to the SPS Committee Meeting – 28 February and 1 March 2007 16 February 2007</td>
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<tr>
<td>Bahamas G/SPS/GEN/764</td>
<td>Report by the Commonwealth of the Bahamas to the WTO-SPS Committee on Private Standards and the SPS Agreement: the Bahamas Experience 28 February 2007</td>
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<td>Ecuador G/SPS/GEN/792</td>
<td>Private and Commercial Standards 5 July 2007</td>
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<td>DFID G/SPS/GEN/802</td>
<td>Private Voluntary Standards within the WTO Multilateral Framework 9 October 2007</td>
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<tr>
<td>OIE G/SPS/GEN/822</td>
<td>Considerations Relevant to Private Standards in the Field of Animal Health, Food Safety and Animal Welfare 25 February 2008</td>
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Information on the Joint UNCTAD/WTO Informal Information Session on Private Standards held on 25 June 2007 is available at: [http://www.wto.org/english/tratop_e/spse/private_standards_june07_e/private_standards_june07_e.htm](http://www.wto.org/english/tratop_e/spse/private_standards_june07_e/private_standards_june07_e.htm)

More information on sanitary and phytosanitary measures is available through the WTO SPS gateway at [http://www.wto.org/english/tratop_e/spse/spse_e.htm](http://www.wto.org/english/tratop_e/spse/spse_e.htm)