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Committee on Sanitary and Phytosanitary Measures

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CATALOGUE OF INSTRUMENTS AVAILABLE TO WTO MEMBERS TO MANAGE SPS ISSUES

Submission by Canada and Kenya

Revision

The following communication, received on 25 February 2015, is being circulated at the request of the Delegations of Canada and Kenya.

Tools available to Members	Description
Within the WTO SPS Agreement	
Request information on the measure to the WTO SPS Enquiry Point and/or Codex, IPPC and OIE contact points	<p><i>Legal provisions of the SPS Agreement</i> Annex B.3 "Each Member shall ensure that one enquiry point exists which is responsible for the provision of answers to all reasonable questions from interested Members as well as for the provision of relevant documents regarding:</p> <ol style="list-style-type: none"> a) any sanitary or phytosanitary regulations adopted or proposed within its territory; b) any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures, which are operated within its territory; c) risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection; d) the membership and participation of the Member, or of relevant bodies within its territory, in international and regional sanitary and phytosanitary organizations and systems, as well as in bilateral and multilateral agreements and arrangements within the scope of this Agreement, and the texts of such agreements and arrangements." <p><i>SPS Committee Work</i> According to Art. 7 and Annex B.3 of the SPS Agreement, WTO Members have to establish an Enquiry Point responsible for providing answers and documentation to all reasonable questions from interested Members.</p> <p>The Committee has developed "Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement (Article 7) (G/SPS/7/Rev.3 [http://goo.gl/1qfO1o]). The Recommended Transparency Procedures include guidance on the handling of comments on notifications.</p> <p>Contact information on SPS Enquiry Points and Notifications Authorities are available online from the SPS Information Management System (SPS IMS: http://spsims.wto.org).</p> <p><i>Outside the WTO¹</i> Codex contact points are available from http://www.codexalimentarius.org/contact-links.</p> <p>IPPC contact points are available from https://www.ippc.int/countries/contactpoints.</p> <p>OIE delegates are available from http://www.oie.int/en/about-us/our-members/delegates-new.</p>

Tools available to Members	Description
Comment on notifications	<p>Legal provisions of the SPS Agreement Annex B.5(d) "Members shall... (d) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account."</p> <p>SPS Committee Work According to Annex B.5(d) of the SPS Agreement Members are required to allow reasonable time for other Members to make comments in writing.</p> <p>The Recommended Transparency Procedures state that a 60-day comment period should be provided with respect to regular notifications.</p>
Meet to discuss comments on notification	<p>Legal provisions of the SPS Agreement Annex B.5(d) "Members shall... (d) without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take the comments and the results of the discussions into account."</p> <p>SPS Committee Work According to Annex B.5(d) of the SPS Agreement Members are required to discuss comments made on notifications upon request, and to take the comments and results of these comments into account. For additional guidance, see also the Recommended Transparency Procedures.</p>
Request to meet bilaterally on margins of the SPS Committee	<p>Request to meet with another Member regarding a concern with an SPS issue. This can be a formal meeting or something less formal.</p> <p>Outside the WTO Bilateral discussions prior to resorting to mediated settlement: A practice of many Members to take advantage of being in Geneva for the WTO SPS Committee meeting to raise SPS market access issues with trading partners.</p>

Tools available to Members	Description
Request recognition of equivalence of specific SPS measure or measures related to a certain product or category of products, or on a systems-wide basis	<p>Legal provisions of the SPS Agreement Article 4</p> <p>"4.1 Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures.</p> <p>4.2. Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures."</p> <p>SPS Committee Work The Committee has developed guidelines to facilitate the application of Article 4 of the SPS Agreement: "Decision on the Implementation of Article 4 of the Agreement on the Application of SPS Measures (Equivalence)" (G/SPS/19/Rev.2 [http://goo.gl/RtGcHC]).</p> <p>Outside the WTO Codex standards, guidelines and recommendations are available from: http://www.codexalimentarius.org/standards/list-of-standards.</p> <p>IPPC standards, guidelines and recommendations are available from: https://www.ippc.int/standards.</p> <p>OIE standards, guidelines and recommendations are available from: http://www.oie.int/international-standard-setting/overview.</p>
Request recognition of pest- or disease-free areas and areas of low pest or disease prevalence	<p>Legal provisions of the SPS Agreement Article 6</p> <p>"6.1. Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area — whether all of a country, part of a country, or all or parts of several countries — from which the product originated and to which the product is destined. In assessing the sanitary or phytosanitary characteristics of a region, Members shall take into account, <i>inter alia</i>, the level of prevalence of specific diseases or pests, the existence of eradication or control programmes, and appropriate criteria or guidelines which may be developed by the relevant international organizations.</p>

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	<p>6.2. Members shall, in particular, recognize the concepts of pest- or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls.</p> <p>6.3. Exporting Members claiming that areas within their territories are pest- or disease-free areas or areas of low pest or disease prevalence shall provide the necessary evidence thereof in order to objectively demonstrate to the importing Member that such areas are, and are likely to remain, pest- or disease-free areas or areas of low pest or disease prevalence, respectively. For this purpose, reasonable access shall be given, upon request, to the importing Member for inspection, testing and other relevant procedures."</p> <p>SPS Committee Work The Committee has developed guidelines to facilitate the application of Article 6 of the SPS Agreement: "Guidelines to Further the Practical Implementation of Article 6 of the Agreement on the Application of SPS Measures (Regionalization)" (G/SPS/48 [http://goo.gl/SDCNu8]). They include "Typical Administrative Steps in the Recognition Process".</p> <p>Outside the WTO</p> <p>IPPC standards, guidelines and recommendations are available from: https://www.ippc.int/standards.</p> <p>OIE standards, guidelines and recommendations are available from: http://www.oie.int/international-standard-setting/overview.</p>
Request an explanation of the reasons for a sanitary or phytosanitary measure	<p>Legal provisions of the SPS Agreement Article 5.8</p> <p>"5.8. When a Member has reason to believe that a specific sanitary or phytosanitary measure introduced or maintained by another Member is constraining, or has the potential to constrain, its exports and the measure is not based on the relevant international standards, guidelines or recommendations, or such standards, guidelines or recommendations do not exist, an explanation of the reasons for such sanitary or phytosanitary measure may be requested and shall be provided by the Member maintaining the measure."</p>
Request technical assistance	<p>Legal provisions of the SPS Agreement Article 9</p> <p>"9.1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, <i>inter alia</i>, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such</p>

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	<p>countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.</p> <p>9.2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved."</p> <p>WTO technical assistance For more information on technical assistance and training activities related to the SPS Agreement available from the WTO Secretariat, see: http://www.wto.org/sps/ta.</p>
Request Special and Differential Treatment	<p>Legal provisions of the SPS Agreement Article 10.2</p> <p>"10.2 Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports."</p> <p>SPS Committee Work The Committee has developed guidelines to facilitate the application of Article 10.1 of the SPS Agreement: "Procedure to Enhance Transparency of Special and Differential Treatment in Favour of Developing Country Members" (G/SPS/33/Rev.1 [http://goo.gl/Np9r8L]). They include procedures to be followed.</p>
Request specified, time-limited exceptions in whole or in part from the obligations under the SPS Agreement	<p>Legal provisions of the SPS Agreement Article 10.3</p> <p>"10.3. With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs."</p>
Request facilitated ad hoc consultations or negotiations (i.e. "Good offices of the Chair") on specific sanitary or phytosanitary issues	<p>A process by which a Member can request facilitated discussions with another Member on specific SPS issues.</p> <p>Paragraph 6 of the Working Procedures of the Committee (G/SPS/1 [http://goo.gl/82d9dk]) states: "With respect to any matter which has been raised under the Agreement, the Chairperson may, at the request of the Members directly concerned, assist them in dealing with the matter in question...."</p> <p>Guidance on how to request facilitated ad hoc consultations or negotiations found in "Procedure to Encourage and Facilitate the Resolution of Specific Sanitary or Phytosanitary Issues Among Members in Accordance with Article 12.2" (G/SPS/61 [http://goo.gl/pWq4DK]).</p>

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Propose that a specific issue be considered under the regular Review of the Operation and Implementation of the SPS Agreement	<p><i>Legal provisions of the SPS Agreement</i> Article 12.7</p> <p>12.7 "The Committee shall review the operation and implementation of this Agreement three years after the date of entry into force of the WTO Agreement, and thereafter as the need arises. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, <i>inter alia</i>, to the experience gained in its implementation."</p>
WTO SPS Committee agenda	
Raise an issue as a specific trade concern agenda item	<p>Members may request, in writing to the Secretariat, to include an issue on the WTO SPS Committee Agenda for an upcoming meeting, at least 11 calendar days before the meeting.</p> <p>This request should be made consistent timelines established by the Secretariat. Members proposing to raise any matter relevant to the implementation of the agreement, including any matter relating to a particular notification, should give notice to the other Member(s) concerned with an outline of the matter to be raised, as far as possible in advance of the SPS Committee meeting.</p> <p>Working procedures of the WTO SPS Committee (G/SPS/1 [http://goo.gl/82d9dk]).</p>
Raise an issue under the Monitoring the Use of International Standards Agenda item	<p>Members may request, in writing to the Secretariat, to include concrete examples of what they consider to be problems with a significant trade impact which are related to the non-existence or inappropriateness or non-use of relevant international standards, guidelines or this issue on the WTO SPS Committee Agenda for an upcoming meeting.</p> <p>This request to raise an issue on the Agenda should be made as per the timelines established by the Secretariat.</p> <p>WTO SPS Committee Decision, "Procedure to Monitor the Process of International Harmonization" (G/SPS/11/Rev.1 [http://goo.gl/bW9lwq]), paragraphs 4.6 and 4.7.</p>
Raise an issue under the 'Regionalization' Agenda item of the WTO SPS Committee meeting	<p>Members may request to include a specific item regarding information on a Member's pest- or disease-free areas and areas of low pest or disease prevalence or on a Members' experience in recognition of pest-or disease-free areas.</p> <p>Working procedures of the SPS Committee (G/SPS/1 [http://goo.gl/82d9dk]).</p> <p>The Committee has developed guidelines to facilitate the application of Article 6 of the SPS Agreement: "Guidelines to further the practical implementation of Article 6 of the SPS Agreement" (G/SPS/48 [http://goo.gl/SDCNu8]).</p>

Tools available to Members	Description
Raise an issue under the "Equivalence" Agenda item of the WTO SPS Committee meeting	<p>Members may request to include a specific item regarding information on a Member's experience with equivalence on the WTO SPS Committee Agenda for an upcoming meeting.</p> <p>Working procedures of the SPS Committee (G/SPS/1 [http://goo.gl/82d9dk]).</p> <p>The Committee has developed guidelines to facilitate the application of Article 4 of the SPS Agreement: "Decision on the implementation of Article 4 of the SPS Agreement" (G/SPS/19/Rev.2 [http://goo.gl/JkjoN]).</p>
Raise an issue under the "Implementation of Special and Differential Treatment" Agenda item of the WTO SPS Committee meeting	<p>Members may request to include a specific item regarding information on a Member's experience regarding special and differential treatment on the WTO SPS Committee Agenda for an upcoming meeting.</p> <p>Working procedures of the SPS Committee (G/SPS/1 [http://goo.gl/82d9dk]).</p>
Within WTO system	
Ask questions as part of the Trade Policy Review process	<p>Each Member undergoes a trade policy review (the frequency of each country's review varies according to its share of world trade). WTO Members are given the opportunity to review and ask comments to another Member on its trade policy.</p> <p>For more information on the WTO Trade Policy Review mechanism, see: http://www.wto.org/TPR.</p>
Raise issues/ask questions as part of the WTO Accession process	<p>As countries seek to accede to the WTO, Members have the opportunity to raise specific issues with the acceding countries, including issues related to the acceding country's Laws, regulations and requirements.</p> <p>For more information on the WTO accessions process, see: http://www.wto.org/accessions.</p>
Explore raising it in other WTO Bodies	<p>For example and as appropriate, the Committee on Import Licensing, Council on Trade in Goods, Committee on Trade Facilitation.</p>

Tools available to Members	Description
Request formal Dispute Settlement Consultations	<p><i>Legal provisions of Dispute Settlement Understanding</i> Article 4</p> <p>"4.1. Members affirm their resolve to strengthen and improve the effectiveness of the consultation procedures employed by Members.</p> <p>4.2. Each Member undertakes to accord sympathetic consideration to and afford adequate opportunity for consultation regarding any representations made by another Member concerning measures affecting the operation of any covered agreement taken within the territory of the former.³</p> <p>4.3. If a request for consultations is made pursuant to a covered agreement, the Member to which the request is made shall, unless otherwise mutually agreed, reply to the request within 10 days after the date of its receipt and shall enter into consultations in good faith within a period of no more than 30 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution. If the Member does not respond within 10 days after the date of receipt of the request, or does not enter into consultations within a period of no more than 30 days, or a period otherwise mutually agreed, after the date of receipt of the request, then the Member that requested the holding of consultations may proceed directly to request the establishment of a panel."</p> <p>4.4. All such requests for consultations shall be notified to the DSB and the relevant Councils and Committees by the Member which requests consultations. Any request for consultations shall be submitted in writing and shall give the reasons for the request, including identification of the measures at issue and an indication of the legal basis for the complaint.</p> <p>4.5. In the course of consultations in accordance with the provisions of a covered agreement, before resorting to further action under this Understanding, Members should attempt to obtain satisfactory adjustment of the matter.</p> <p>4.6. Consultations shall be confidential, and without prejudice to the rights of any Member in any further proceedings.</p> <p>4.7. If the consultations fail to settle a dispute within 60 days after the date of receipt of the request for consultations, the complaining party may request the establishment of a panel. The complaining party may request a panel during the 60-day period if the consulting parties jointly consider that consultations have failed to settle the dispute.</p> <p>4.8. In cases of urgency, including those which concern perishable goods, Members shall enter into consultations within a period of no more than 10 days after the date of receipt of the request. If the consultations have failed to settle the dispute within a period of 20 days after the date of receipt of the request, the complaining party may request the establishment of a panel.</p> <p>4.9 In cases of urgency, including those which concern perishable goods, the parties to the dispute, panels and the Appellate Body shall make every effort to accelerate the proceedings to the greatest extent possible.</p> <p>4.10. During consultations Members should give special attention to the particular problems and interests of developing country Members.</p>

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	<p>4.11. Whenever a Member other than the consulting Members considers that it has a substantial trade interest in consultations being held pursuant to paragraph 1 of Article XXII of GATT 1994, paragraph 1 of Article XXII of GATS, or the corresponding provisions in other covered agreements⁴, such Member may notify the consulting Members and the DSB, within 10 days after the date of the circulation of the request for consultations under said Article, of its desire to be joined in the consultations. Such Member shall be joined in the consultations, provided that the Member to which the request for consultations was addressed agrees that the claim of substantial interest is well-founded. In that event they shall so inform the DSB. If the request to be joined in the consultations is not accepted, the applicant Member shall be free to request consultations under paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATT 1994, paragraph 1 of Article XXII or paragraph 1 of Article XXIII of GATS, or the corresponding provisions in other covered agreements."</p>
Request formal "Good offices", conciliation and mediation	<p><i>Legal provisions of Dispute Settlement Understanding</i> Article 5</p> <p>"5.1 Good offices, conciliation and mediation are procedures that are undertaken voluntarily if the parties of the dispute so agree."</p>
Request the establishment of a dispute settlement panel	<p><i>Legal provisions of Dispute Settlement Understanding</i> Article 6</p> <p>"6.1 If the complaining party so requests, a panel shall be established at the latest at the DSB meeting following that at which the request first appears as an item on the DSB's agenda, unless at that meeting the DSB decides by consensus not to establish a panel.</p> <p>6.2 The request for the establishment of a panel shall be made in writing. It shall indicate whether consultations were held, identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly."</p>

Tools available to Members	Description
Beyond WTO System	
IPPC dispute settlement procedures	<p>In cases where a phytosanitary dispute arises, contracting parties are encouraged to consult with the IPPC Secretariat concerning the range of dispute settlement procedures that are available and what might be appropriate for the dispute in question. There are three main types of procedures: 1) informal consultation, formal consultation, good offices, mediation or arbitrations; 2) formal non-binding conciliation process; 3) a dispute settlement procedure (may produce a binding agreement for the parties to the agreement).</p> <p>Note: the IPPC Dispute Settlement procedure is currently under review.</p> <p><i>Legal provisions of the SPS Agreement</i> Article 11.3 "11.3 Nothing impairs the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement."</p> <p><i>Outside the WTO</i> Article XIII of the IPPC Settlement of disputes (Paragraphs 1-6) https://www.ippc.int/publications/1997-international-plant-protection-convention-new-revised-text.</p> <p>Article XVI of the IPPC Supplementary agreements (paragraphs 1-3) https://www.ippc.int/publications/1997-international-plant-protection-convention-new-revised-text.</p>
OIE informal mediation procedure	<p>In the case where an OIE Member considers that another OIE Member does not comply with OIE standards, both parties can agree to request the voluntary, informal OIE mediation procedure which focusses on scientific and technical aspects to seek to find a mutually agreeable solution.</p> <p><i>Legal provisions of the SPS Agreement</i> Article 11.3 "11.3 Nothing impairs the rights of Members under other international agreements, including the right to resort to the good offices or dispute settlement mechanisms of other international organizations or established under any international agreement."</p> <p><i>Outside the WTO</i> Chapter 5.3.8 of the OIE Terrestrial Animal Health Code provides details on the OIE informal procedure for dispute mediation. http://www.oie.int/international-standard-setting/terrestrial-code/access-online.</p>

Tools available to Members	Description
Meet on issues bilaterally	<p>At any time, a Member may request to hold a bilateral meeting or discussion regarding an SPS issue. Alternatively, these discussions could take place on the margins of regularly scheduled meetings.</p> <p><i>Outside the WTO</i> Not a concept included in the WTO framework, however, can be a 'best practice' when managing SPS issues.</p>

Links to the major decisions and reference documents under the Sanitary and Phytosanitary Measures Committee can be found online at http://www.wto.org/english/tratop_e/sps_e/decisions06_e.htm.

ⁱ All references to websites are current as of March 2015.