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Private Standards and the WTO SPS Agreement

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Executive Summary

Private standards were first brought to the World Trade Organization (WTO) through an Specific Trade Concern raised by St. Vincent and the Grenadines at the WTO Sanitary and Phytosanitary (SPS) Committee, in June 2005. At that occasion, St. Vincent and the Grenadines argued that the EurepGAP (now GlobalGAP) pesticide and certification requirements being asked mainly by large European retailers for the importation of bananas exceeded those established by the Codex Alimentarius Commission. Their concerns were immediately supported by several other developing countries Members, who shared similar concerns regarding an array of private standards on SPS. The European Communities replied that EurepGAP standards were not official EU requirements, and rather standards applied between private parties in their commercial transactions.

Since then, private standards have been on the agenda of every meeting of the WTO SPS Committee, and several Members and Observer Organizations have circulated papers and studies on private standards. In addition, the WTO Secretariat organized informative sessions with the participation of representatives from the private standards setting organizations and some international organizations. These informative sessions aimed at better understanding the nature and coverage of private standards and their implications for international trade.

In sum, private standards have been discussed in the SPS Committee based on three core elements:

a) Market access: several Members argue that for many markets private standards became de facto requirements for their exports, which 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, and thus acting as additional barriers to market access. On the other hand, some Members have taken the view that standards set by the private sector can help suppliers to improve the quality of their products and gain and maintain access to high-quality markets.

b) Developmental aspects: many Members have expressed concerns regarding the costs of complying with private standards, and the additional costs of certification, sometimes for multiple sets of standards for different buyers, which can be a problem, especially for small-scale producers in particularly in developing countries.

c) WTO law: some Members defend the position that the SPS Agreement makes governments countries responsible for the standards set by their private sectors. They are concerned that these standards do not meet WTO requirements, specially on transparency and scientific justification, making private standards more trade-restrictive than necessary to protect health. However, some

other 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.

In the end of 2008, the Chair of the WTO SPS Committee gathered a group of thirty interested Members to be part of an informal ad hoc group to discuss ways to collect more information on the implications by private standards to trade, and prepare informative reports to be discussed in the SPS Committee.

In this effort, 21 Members have replied to a questionnaire identifying the effects (both positive and negative) of specific private standards to certain products. These responses will be included in a descriptive report expected to be circulated to the SPS Committee in June 2009. Based on this descriptive report, the informal ad hoc group shall elaborate an analytical report, proposing possible actions to be taken by the WTO SPS Committee on this matter, if any at all.