



## JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX ALIMENTARIUS COMMISSION

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### ACTIVITIES OF THE WTO SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN 2013 AND THE FIRST QUARTER OF 2014

#### REPORT BY THE WTO SECRETARIAT<sup>1</sup>

This report to the 37th session of the Codex Alimentarius Commission has been prepared by the Secretariat of the World Trade Organization ("WTO Secretariat"). The report provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") in 2013 and the first quarter of 2014, and identifies the work of relevance to Codex, including: specific trade concerns; transparency; equivalence; monitoring the use of international standards; technical assistance; and SPS-related private standards. The report also includes relevant information on relevant activities of the WTO Committee on Technical Barriers to Trade, WTO dispute settlement cases addressing the SPS and TBT Agreements as well as some information about the newly adopted Trade Facilitation Agreement. A separate report provides information regarding the Standards and Trade Development Facility (STDF).

#### 1 WORK OF THE SPS COMMITTEE

- 1.1. The SPS Committee held three regular meetings in 2013: on 21-22 March, on 27-28 June and on 17-18 October<sup>2</sup>. The Committee held its first meeting in 2014 on 25-26 March.
- 1.2. The Committee agreed to the following tentative calendar of regular meetings for the remainder of 2014: 9-10 July and 15-16 October.
- 1.3. Ms Maria Albarece of the Philippines served as Chairperson at the March 2013 meeting and was subsequently re-elected at the June 2013 meeting for the 2013-2014 period. Mrs. Lillian Bwalya of Zambia is the appointed chairperson for the 2014-2015 period.

#### 1.2 SPECIFIC TRADE CONCERNS

- 1.4. The SPS Committee devotes a large portion of each regular meeting to the consideration of specific trade concerns. Any WTO Member can raise specific concerns about the food safety, plant or animal health requirements imposed by another WTO Member. Issues raised in this context are usually related to the notification of a new or changed measure, or based on the experience of exporters. Often other WTO members will share the same concerns. At the SPS Committee meetings, members usually commit themselves to exchange information and hold bilateral consultations to resolve the identified concern.
- 1.5. A summary of the specific trade concerns (STCs) raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat<sup>3</sup>. Altogether, 368 specific trade concerns were raised in the nineteen years between 1995 through the end of 2013, of which 31% were related to food safety.
- 1.6. In 2013 and first quarter of 2014, 27 new specific trade concerns were raised for the first time in the SPS Committee, including the following nine new food safety issues of relevance to the Codex:

<sup>1</sup> This report has been prepared under the WTO Secretariat's own responsibility and is without prejudice to the positions of WTO Members or to their rights or obligations under the WTO.

<sup>2</sup> The report of the March meeting is contained in G/SPS/R/70, that of June meeting in G/SPS/R/71 and that of the October meeting in G/SPS/R/73.

<sup>3</sup> The latest version of this summary can be found in document G/SPS/GEN/204/Rev.14. This document is a public document available from <https://docs.wto.org/>. Specific trade concerns can also be searched through the SPS Information Management System: <http://spsims.wto.org>.

- China's concerns regarding the US proposed rule on good manufacturing process and hazard analysis and risk-based preventive controls for human food (STC 352).

1.7. China raised concerns over the US proposed rule on "Current Good Manufacturing Practice and Hazard Analysis and Risk-based Preventive Controls for Human Food"<sup>4</sup>. China stated that Part 117, Subpart C, regarding the preventive control measures put in place and monitored by operators of food enterprises, exceeded international standards without scientific justification and was therefore in contravention of the SPS Agreement. The overbroad nature of this requirement would result in reduced effectiveness and increased labour costs, thus resulting in a barrier to trade. Additionally, China took issue with the inclusion of radioactivity hazard analysis in the draft Part 117.130(b)(4), as the internationally recognized HACCP system only required the identification of biological, chemical, and physical hazards. The probability of such a hazard was extremely low and did not justify the cost of running such monitoring programs within the food industry. Lastly, the requirement in the draft Part 117.126 that all food enterprises establish a written safety plan, exceeded the requirements of HACCP and the Codex standards. As such, China requested that the United States provide a scientific basis for these requirements.

1.8. The United States recalled that these measures had been notified to the SPS Committee on 30 April 2013, and would be available for comment through 16 September 2013. The United States urged China and other Members, as well as any other interested members of the international community, to provide comments on the proposed rule.

- Argentina's concerns regarding the EU renewal of GMO approvals (EC Regulation 1829/2003) (STC 353).

1.9. Argentina raised concerns over the EU renewal procedures and processes for GMO approvals. Argentina contended that risk assessment reviews should only be undertaken in cases of new scientific justification. Furthermore, Argentina stated that the EU process was already overly burdensome and the new requirements were unclear, adding to the heavy burden of seeking GMO approval.

1.10. The European Union responded that it was not intending to adopt legislation as was done for the food/feed new authorizations but rather to prepare a guidance document which would complement Articles 11 and 23 of Regulation 1829/2003 already providing general guidance on the renewal process.

- Japan's concerns regarding import restrictions in response to the nuclear power plant accident (STC 354).

1.11. Japan raised concerns over restrictions on Japanese food exports in the wake of the Fukushima incident. Following the incident, Japan had been closely monitoring food products for the presence of radionuclides and, as of April 2012, had imposed a food intervention exemption level of 1mSv/year – equivalent to the Codex standard. However, the dietary exposure estimates from total diet studies were far below 1 mSv/year across all studies—including those completed in Fukushima Prefecture. Based on this scientific data, Japan requested all Members to lift any import restrictions on Japanese exports. Japan noted that China, Hong Kong, China and Chinese Taipei continued to maintain import bans on many Japanese food exports. For this reason, Japan assured that Japanese foods placed on the market were safe for human consumption without any extra control measures.

- China's concerns regarding the US proposed FSMA-related rule allowing for accreditation of third-party bodies to conduct food safety audits and to issue certifications<sup>5</sup> (STC 357)

1.12. China raised concerns regarding the US proposed FSMA-related rule allowing for accreditation of third-party auditors/certification bodies to conduct food safety audits of foreign entities and to issue food and facility certifications. China noted that the statistics provided by the United States had demonstrated a generally safer level of imported foods than foods domestically produced in the United States. China requested the United States to provide scientific justification for proposing this overly burdensome and costly rule on imported foods. China considered that the proposed rule discriminated unjustifiably between foreign and domestic sources of supply and went beyond international standards without scientific justification. China urged the United States to accept the results of internationally accredited certification/audit bodies, and queried how the United States would recognize the equivalence of foreign food safety programmes, systems and standards. Referencing Article 13 of the SPS Agreement, China enquired what measures the United States would take to ensure that third-party auditors/certification bodies were WTO-compliant, and recalled that under Article 10 of the SPS Agreement, Members are to take into account the special needs of developing country Members in the preparation of SPS measures.

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<sup>4</sup> The rules were notified in G/SPS/N/USA/2502 and G/SPS/N/USA/2503.

<sup>5</sup> The rule was notified in G/SPS/N/USA/2570.

1.13. The United States recalled that it had provided information on the proposed rule in the Committee and elsewhere, including in China, and invited Members to submit their comments through the Federal eRulemaking Portal (<http://www.regulations.gov>).

- EU concerns regarding India's import conditions for pork and pork products (STC 358).

1.14. The European Union noted that it had for several years been urging India to align its import conditions on pork and pork products with international standards. Currently, (a) India requested that the exporting country certify freedom from a number of diseases for which the OIE had not set an international standard, yet India had not provided a science-based justification for these import conditions; (b) India required exporting countries to have country freedom without contemplating the possibility of trade from established disease-free regions; (c) specifically with regard to import conditions for processed meat of pork origin, India required that the exporting country certify that meat was processed so as to achieve an internal temperature of not less than 70°C for 30 minutes, without allowing any alternative treatments. The European Union noted that these requirements by India were not based on the relevant OIE and CODEX standards.

1.15. India noted that a technical expert committee had been established within the Department of Animal Husbandry, Dairying and Fisheries. This committee reviewed all the technical aspects concerned in order to reach a decision on the relevant veterinary certificates.

- Japan's concerns regarding Korea's import restrictions on fishery products with regard to radionuclides (STC 359)

1.16. Japan expressed concerns regarding Korea's fishery import restrictions, including a ban on imports from eight prefectures and additional testing and certification requirements in all cases where radioactive Cesium was detected, even in quantities below the Korean limit of 100 Bq/kg. This requirement applied exclusively to Japanese products; Korean and other trading partners' products could be distributed as long as the radioactive Cesium level remained below 100 Bq/kg. Japan reiterated that contaminated water at the Fukushima Daiichi nuclear power station had been detected only within an area of 0.3 square kilometres inside the port, and that the problem of contaminated water should not be equated with the safety of Japanese fishery products. Japan's central and local governments had taken measures to prevent the distribution of fishery products where required, and the amount of samples exceeding the limit of 100 Bq/kg had drastically decreased both in the Fukushima prefecture (from 53% in March/June 2011 to 2.2% in July/September 2013) and elsewhere (from 6.5% to 0.4% during the same periods). Japan recalled that SPS measures must not arbitrarily or unjustifiably discriminate between trading partners and urged Korea to provide a scientific basis for its measures.

1.17. Korea indicated that its measures were in accordance with Article 5.7 of the SPS Agreement, as a result of insufficient scientific evidence and the potentially far-reaching cumulative effects of radioactive contamination on human health.

- India's concerns regarding Russia's non-recognition of testing laboratories for meat products (STC 361).

1.18. India raised its concern regarding the inability to export bovine meat and agricultural products to Russia. It had requested Russian veterinary experts to inspect Indian units and laboratories, and a delegation from the Customs Union Authorities of Kazakhstan (SVPSGO) had conducted site visits, including to meat-processing units, in October 2011. India had complied with all of the requirements identified in the report issued as a result of such visits and sent all the relevant information to the SVPSGO in January 2012. However, Russia had still not recognised the units and laboratories. Consequently, the export of bovine meat and egg powder to Russia had not resumed, although India's track record in the export of boneless bovine meat to over 16 countries worldwide was unblemished. India appreciated Russia's willingness to hold bilateral consultations and expert-level discussions.

- Japan's concerns regarding Turkey's prohibition of certain food additives in traditional foods (STC 367).

1.19. Japan expressed concerns regarding Turkey's new measures which prohibit the use of several additives in some of its traditional foods. Recognizing the importance of traditional foods, Japan noted that Turkey's regulations do not provide a description of kofte. Japan requested that Turkey provide a scientific justification, in terms of food safety, for the prohibition of the use of glutamic acid which is listed in table 3 of the Codex General Standard for Food Additives. If the objective of the prohibition was to preserve traditional culture, then Turkey should bring this matter to the attention of the TBT Committee.

1.20. Turkey recalled that it had notified its new regulations under G/SPS/N/TUR/31. As a candidate country to the European Union, Turkey had aligned its animal and plant health legislation so as to comply with the EU regulations on food additives. However, additional provisions covering traditional Turkish products had also been introduced. This was done in order to protect the originality of these products, taking into consideration consumption habits and traditional ingredients.

- Ukraine's concerns regarding Russia's import restrictions on confectionary products (STC 368).

1.21. Ukraine raised concerns about the non-transparent manner in which Russia had banned imports of confectionary products on 29 July 2013. This measure, based on the Resolution of the Federal Service on Customers' Rights Protection and Human Well-being Surveillance of Russia (No.01/8612-13-23), had not been notified and Russia's SPS Enquiry Point did not provide the relevant information requested by Ukraine on 8 August 2013. No official evidence concerning the alleged presence of contaminants (such as benzopiren) had been officially submitted to Ukraine. Despite bilateral consultations the import ban was still in place. Ukraine believed that the measure was unnecessary and unjustifiably strict, maintained without sufficient scientific evidence, and applied in a discriminatory manner, contrary to Annex C of the SPS Agreement.

1.22. Russia indicated that the reason for suspending Ukrainian confectionary product imports was largely outside the scope of the SPS Agreement. Not all imports of confectionary products had been suspended, but only of one particular brand from Ukraine. The ban was related to the long-term detection of labelling violations in these particular goods, and the fight against deceptive trade practices.

1.23. Nine issues relating to food safety that had been previously raised in the SPS Committee were discussed again during 2013 and the first quarter of 2014. These included:

- EU and US concerns regarding Viet Nam's ban on offals (STC 314);
- Norway's concerns regarding China's quarantine and testing procedures for salmon (STC 319);
- India's concerns regarding EU maximum residue levels of pesticides (STC 306);
- EU concerns regarding China's import conditions related to phthalates (STC 345);
- India's concerns regarding Japan's restrictions on shrimp due to anti-oxidant residues (STC 342);
- China's concerns regarding Indonesia's port closure (STC 330);
- EU concerns regarding Malaysia's import restrictions on pork and pork products (STC 323);
- Paraguay's concerns regarding Japan's MRLs applied to sesame (STC 321);
- Peru's concerns regarding application and modification of the EU Regulation on Novel Foods (STC 238).

### 1.3 MEMBERS' INFORMATION RELATED TO FOOD SAFETY

1.24. WTO Members used the opportunity of the SPS Committee meetings during 2013 and the first quarter of 2014 to provide other information relating to food safety, including:

- Australia provided an update on its retirement of the Australian Quarantine and Inspection Service ("AQIS") brand. In its place, trading partners would have started to see an Australian Government crest and the words "Department of Agriculture, Fisheries, and Forestry";
- Korea provided updates on its reshuffling of government agencies dealing with issues related to the SPS Agreement;
- The European Union provided information on four legislative proposals, the so-called "Smarter rules for safer food" package which was issued on 6 May 2013. These new risk-based measures, have been notified under the SPS Agreement and aim at a higher level of legal clarity and consistency for a safer agri-food chain;
- The United States provided information on amended BSE import regulations known as APHIS "BSE Comprehensive Rule";
- The US also provided update on the progress of the US Food and Drug Administration's (FDA) implementation of the Food Safety Modernization Act (FSMA);
- Burundi also provided information on the creation of a National Committee of coordination and monitoring of sanitary and phytosanitary measures.

### 1.4 TRANSPARENCY

1.25. The SPS information management system (SPS-IMS) allows easy access and management of all WTO SPS-related documentation.<sup>6</sup>

1.26. The legal obligation of WTO Members is to notify new or modified SPS measures when these deviate from the relevant international standards, including Codex standards. The recommendations of the SPS

<sup>6</sup> See <http://spsims.wto.org>.

Committee, however, now encourage the notification of all new or modified measures even when these conform to international standards.<sup>7</sup> Although this recommendation does not change the legal obligations of WTO Members, it may enhance transparency regarding the application of Codex standards.

1.27. A total of 1,444 notifications of new or proposed SPS measures were submitted to the WTO from 1 May 2013 through end-April 2014. Among these, 667 regular notifications and 21 emergency notifications identified food safety as the objective of the measure. Of these, 226 of the regular and 5 of the emergency notifications identified a Codex standard as relevant, by either indicating the application of the Codex standard or a deviation from it.

1.28. SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). 54% of notifications submitted during 2013 were submitted online.

## 1.5 EQUIVALENCE

1.29. The guidelines on the implementation of Article 4 of the SPS Agreement on equivalence note, inter alia, the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and encourage the further elaboration of specific guidance by these organizations. No contributions were made by any of the standard-setting organizations in 2013 and the first quarter of 2014 under this agenda item.

## 1.6 MONITORING THE USE OF INTERNATIONAL STANDARDS

1.30. The procedure adopted by the SPS Committee to monitor the use of international standards invites WTO Members to identify specific trade problems they have experienced due to the use or non-use of relevant international standards, guidelines or recommendations<sup>8</sup>. These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

1.31. Annual reports on the monitoring procedure summarize the standards-related issues that the Committee has considered and the responses received from the relevant standard-setting organizations. The Fifteenth Annual Report was adopted by the Committee on 28 June 2013<sup>9</sup>.

1.32. In June 2013, Argentina and Chile reiterated their proposal that the SPS Committee's monitoring procedure adequately reflect how international standards are used by Members. Argentina drew the Committee's attention to its proposal on the monitoring procedure<sup>10</sup> and noted that the topic of monitoring the use of international standards could be addressed in the context of the Fourth Review of the Operation and Implementation of the SPS Agreement.

1.33. In October 2013, Argentina recalled its proposal and suggested that this topic be addressed in the context of the Fourth Review and, in particular that it could be included in the catalogue of tools available to WTO Members for the management of SPS issues proposed by Canada.<sup>11</sup>

## 1.7 TECHNICAL ASSISTANCE

1.34. At each of its meetings, the SPS Committee has solicited information from WTO Members regarding their technical assistance needs and activities. The SPS Committee has been kept informed of the training activities and workshops provided by Codex.

1.35. On 14 October 2013, the WTO Secretariat held a Workshop on SPS-Related Market Access Challenges and Opportunities. The workshop was an interactive activity focussing on the funded participants' and other speakers' experiences in addressing specific SPS-related market access challenges. For this workshop, the WTO Secretariat brought together former participants of the WTO's annual advanced SPS courses from 2005-2012. The workshop provided an opportunity to view the longer term benefits of this course, and to evaluate its impact. A summary of the workshop as well as presentations and relevant documents are available through [http://www.wto.org/english/tratop\\_e/spse/wkshop\\_oct13\\_e/wkshop\\_oct13\\_e.htm](http://www.wto.org/english/tratop_e/spse/wkshop_oct13_e/wkshop_oct13_e.htm).

1.36. For the March 2014 SPS Committee meeting the WTO Secretariat prepared a report entitled "SPS Technical Assistance and Training Activities<sup>12</sup>", containing detailed information on all SPS-specific technical assistance activities undertaken by the WTO Secretariat from 1994 to the end of 2013<sup>13</sup>.

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<sup>7</sup> G/SPS/7/Rev.3.

<sup>8</sup> G/SPS/11/Rev.1.

<sup>9</sup> G/SPS/60.

<sup>10</sup> G/SPS/W/268.

<sup>11</sup> G/SPS/W/271.

<sup>12</sup> GEN/521/Rev.9.

<sup>13</sup> G/SPS/GEN/521/Rev.9.

1.37. Document G/SPS/GEN/997/Rev.4 and Add. 1 provide information on all WTO technical assistance activities in the SPS area planned for 2014, including the Geneva-based advanced course which provides in-depth and hands-on training to government officials. This year it will be offered in Spanish. Three regional workshops on the SPS Agreement are scheduled for 2014. National seminars are provided upon request by WTO members and acceding governments. Further information on SPS activities is available through <http://www.wto.org/sps/ta>.

1.38. In 2013, the Codex secretariat participated as resource persons in a number of WTO regional or sub regional workshops held in Arab and Middle East Countries (United Arab Emirates), in Africa (Gabon) as well as in the Advanced Course on the SPS Agreement held in Geneva, with 24 participants. As always, these contributions were highly appreciated.

## 1.8 REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE SPS AGREEMENT

1.39. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. As agreed in its Second Review<sup>14</sup>, the Committee is developing a procedure to facilitate the use of ad hoc consultations and negotiations to resolve trade problems. The results of an electronic Working Group were discussed in March 2013. Subsequent revisions to a draft proposal failed to reach consensus for adoption and a new deadline was set for December 2013. The procedure was again considered at the March 2014 Committee meeting, but one delegation was unable to join the consensus and the text will again be considered at the July 2014 meeting of the SPS Committee.

1.40. The SPS Committee adopted a procedure and time-frame for undertaking the Fourth Review of the Operation and Implementation of the Agreement<sup>15</sup>, which will take place in 2014. To facilitate this process, the Secretariat circulated a background document summarizing information regarding the implementation of the Agreement, as well as the work of the Committee since the Third Review<sup>16</sup>. Several WTO Members have submitted issues for consideration as part of the Fourth Review<sup>17</sup>. Specifically, Canada presented its proposal on a catalogue of available instruments for the management of SPS issues<sup>18</sup>. Many members recognized the importance of transparency and highlighted the need for quality, completeness and timeliness of the information provided in the notifications, and four members made specific proposals in this context<sup>19</sup>. Finally, a United States proposed workshop on risk analysis (G/SPS/W/275) was welcomed and will be held in October 2014<sup>20</sup>.

## 1.9 PRIVATE AND COMMERCIAL STANDARDS

1.41. Since June 2005, the SPS Committee has discussed the issue of private and commercial standards, and several information sessions have been held in the margins of the SPS Committee meetings. WTO Members have raised a number of concerns regarding the trade, development and legal implications of private standards. In March 2011, the Committee adopted five actions to address some of the identified concerns<sup>21</sup>. These actions relate to defining the scope of the discussions on these private standards and promoting information exchange among various actors in this area, including the SPS Committee, the relevant international standard-setting organizations, WTO Members, entities involved in SPS-related private standards, and the WTO Secretariat.

1.42. Discussions in 2013 continued to focus mainly on the development of a working definition of "SPS-related private standards"<sup>22</sup>. In light of the lack of consensus on the joint definition tabled by China and New Zealand, the Committee agreed to move the process forward by forming an electronic working group focussed on developing a working definition of an SPS-related private standard, with China and New Zealand as "co-stewards". As consensus was not reached on language for a working definition, the co-stewards provided a working definition on their own responsibility for consideration at the March 2014 SPS Committee meeting. No consensus emerged at that meeting and Canada proposed to research existing definitions of "private standards" from other international organizations.

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<sup>14</sup> G/SPS/36.

<sup>15</sup> G/SPS/W/270 and Add.1.

<sup>16</sup> G/SPS/W/273.

<sup>17</sup> These issues are summarized in document G/SPS/GEN/1312.

<sup>18</sup> G/SPS/W/271.

<sup>19</sup> G/SPS/W/274 (European Union), G/SPS/W/277 (Chile, European Union, Morocco and Norway).

<sup>20</sup> The most recent version of the draft programme is available in document G/SPS/GEN/997/Rev.4 and G/SPS/GEN/997/Rev.4/Add.1.

<sup>21</sup> G/SPS/55.

<sup>22</sup> G/SPS/W/265/Rev.2.

## 2 WORK OF THE TBT COMMITTEE

2.1. The TBT Committee held three regular meetings in 2013: on 6-7 March, on 19-20 June and on 30-31 October. The Committee held its first meeting in 2014 on 19-20 March.

2.2. The Committee agreed to the following tentative calendar of regular meetings for the remainder of 2014: 18-19 June and 5-6 November 2014.

### 2.2 SPECIFIC TRADE CONCERNS

2.3. In 2013, forty-two new specific trade concerns were raised for the first time in the TBT Committee<sup>23</sup>, including the following four new issues of relevance to the Codex:

- US concerns regarding Chile's proposed amendment to the Food Health Regulations, Supreme Decree No. 977/96

2.4. The United States expressed concerns regarding Chile's proposed regulation implementing Law No. 20,606 on nutrition and composition of food and its advertising. The United States stated that the draft regulation lacked critical information needed to assess trade impacts, such as: explanation of application to foods served in restaurants; application to existing commercial inventory; and, whether imports can comply through the use of supplemental labels or stickers. The United States also reported that this measure addressed the definition of serving and portion size, and that this was related to nutrient limits – on which Chile had recently submitted a notification.

2.5. The United States noted alternative approaches contained in Codex guidance, which provide consumers with information to make appropriate dietary choices and reduce their risk of diet-related Non-Communicable Diseases. The United States cited the Codex Guidelines for Use of Nutrition and Health Claims (CAC/GL 23-1997) and the Codex Guidelines on Nutrition Labelling (CAC/GL2-1985) establishing conditions for voluntary "low", "free", or "no added" claims in tandem with mandatory nutrition labelling.

2.6. Chile contended that the proposed amendment to the Food Health Regulations, Supreme Decree No. 977/96 sought to solve intractable health problems. The country was experiencing an obesity epidemic, especially amongst young people who consume a large amount of these food elements. Chile also explained the amendment would communicate specific health information and provide a warning that would be easily understandable for consumers, and guide them to the best consumption choices.

- China's concerns regarding Canada's improved food inspection model: The Case for Change<sup>24</sup>

2.7. China requested the Canadian authorities to base any changes in their measures on relevant international standards, such as Codex standards. China also stated that it looked forward to receiving the notification of this measure and the opportunity to send comments.

2.8. Canada explained that it was developing a more consistent and comprehensive inspection approach that could be applied across all foods. Canada was consulting with Members and Canadian stakeholders on ways that its site-based inspection system could be enhanced to best manage current food safety challenges and emerging trends. Canada had already provided two opportunities for Members to comment on items related to this initiative.

- Mexico's concerns regarding Peru's act to Promote Healthy Eating among Children and Adolescents

2.9. Mexico raised concerns with regard to Peru's act to Promote Healthy Eating among Children and Adolescents. Mexico considered that the use of expressions in the measures such as "high in" casted doubts as to whether this was the least burdensome measure possible. Mexico referred to other alternative measures, such as the "daily meal guides", used in other countries and based on the Codex, which showed the absolute amount of certain nutrients and their percentage in the daily food values. Mexico also noted that the measure did not mention any scientific basis proving that the use of expressions to inform consumers a product was "high in" a given nutrient - as well as the prohibition to sell such products in schools - would reduce the obesity of the population. Furthermore, it was difficult to know the impact that this law would have since the regulation has not been issued with the list of the foods that would be appropriate for each age as well as the technical parameters that allow for such determination.

2.10. Peru stated that the measure's objective was to reduce obesity and other risks to non-communicable diseases.

- Brazil's concerns regarding Indonesia's regulation on halal food<sup>25</sup>.

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<sup>23</sup> G/TBT/34.

<sup>24</sup> G/TBT/N/CAN/365, G/TBT/N/CAN/365/Rev.1, G/TBT/N/CAN/365/Rev.1/Add.1, G/TBT/N/CAN/365/Rev.1/Add.2.

2.11. Brazil expressed concerns regarding Indonesia's regulations on halal foods. Brazil noted a lack of clarity in the requirements, particularly a previously existing requirement for poultry exporters seeking access to the Indonesian market to utilize specific slaughterhouses employing halal-compliant slaughter practices. Brazil wished to know whether measures in this area were compliant with the guidelines of the Codex Alimentarius for the use of the term "halal". Specifically, Brazil drew attention to Article 2.2.1, allowing for the preparation, processing, or storing of halal food in different sections or lines within the same premises where non-halal foods were produced. Brazil also drew attention to Article 2.2.2, allowing for the preparation, processing, or storing of halal food using facilities which had previously been used for non-halal foods provided that cleaning procedures compliant with Islamic requirements have been observed. Brazil reminded Indonesia that if its requirements went beyond international guidelines, Indonesia may be required, upon the request of another Member, to explain the justification of the technical regulation in terms of the provisions of paragraphs 2-4 of Article 2.5 of the TBT Agreement.

2.12. Indonesia noted that the concern was also raised in the SPS Committee. Note of Brazil's concerns was taken and the issue would be brought to capital for discussions with the Ministry of Agriculture.

### 3 OTHER RELEVANT WTO ACTIVITIES

#### 3.1 THE WTO DISPUTE SETTLEMENT PROCEDURE

3.1. Any WTO Member may invoke the formal dispute resolution procedures of the WTO if they consider that a measure imposed by another WTO Member violates any of the WTO Agreements, including the SPS Agreement. If formal consultations on the problem are unsuccessful, a WTO Member may request that a panel be established to consider the complaint<sup>26</sup>. A panel of three individuals considers written and oral arguments submitted by the parties to the dispute and issues a written report of its legal findings and recommendations. The parties to the dispute may appeal a panel's decision before the WTO's Appellate Body. The Appellate Body examines the legal findings of the panel and may uphold or reverse these. As with a panel report, the Appellate Body report is adopted automatically unless there is a consensus against adoption.

##### 3.1.2 SPS DISPUTES

3.2. Under the SPS Agreement, when a dispute involves scientific or technical issues, the panel should seek advice from appropriate scientific and technical experts. Scientific experts have been consulted on an individual basis in SPS-related disputes. The experts are usually selected from lists provided by the Codex, IPPC, and OIE, and other relevant organizations. The parties to the dispute are consulted throughout the expert consultation process. In addition, WTO dispute settlement panels may also seek information from relevant international organizations with regard to their standards, guidelines, recommendations and procedures.

3.3. As of May 2014, more than 478 complaints had formally been raised under the WTO's dispute settlement mechanism. Forty-three complaints were put forward in the context of the SPS Agreement. Twenty-four SPS-related complaints, over the interpretation and application of eleven different SPS measures, have been referred for adjudication by panels.<sup>27</sup> Of the seventeen panel reports adopted, nine contained findings under the SPS Agreement.

3.4. Ten complaints addressed food-safety related issues:

- complaints by the United States and Canada in 1996 regarding the European Communities' ban on meat treated with growth-promoting hormones; *EC – Hormones* (WT/DS26 and WT/DS48, respectively);
- complaints by the United States, Canada and Argentina in 2006 regarding the European Communities' measures affecting the approval and marketing of biotech products; *EC - Approval and Marketing of Biotech Products* (also referred to as *EC - GMOs*) (WT/DS291, WT/DS292 and WT/DS293, respectively);
- complaints by the European Communities in 2008 regarding the United States' and Canada's continued suspension of obligations relating to the *EC-Hormones* dispute; *US - Continued Suspension* and *Canada - Continued Suspension* (WT/DS320 and WT/DS321, respectively);

<sup>25</sup> IMS ID 397

<sup>26</sup> A flow chart of the dispute resolution process is available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/disp2\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp2_e.htm).

<sup>27</sup> For summaries of all disputes that have cited the SPS Agreement please refer to: [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_agreements\\_index\\_e.htm?id=A19#selected\\_agreement](http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19#selected_agreement).



- complaint by the United States in 2009 regarding European Communities' measures affecting poultry meat and poultry meat products; *EC - Poultry* (WT/DS389);
- complaint by Canada in 2009 regarding Korea's measures affecting the importation of bovine meat and meat products from Canada; *Korea - Bovine Products* (WT/DS391); and
- complaint by China in 2009 regarding US measures affecting imports of poultry; *US - Poultry* (WT/DS392).

3.5. Dispute settlement panel/Appellate Body reports have been adopted with respect to the following food safety issues: (i) the EU ban on imports of meat treated with growth-promoting hormones, challenged by the United States and by Canada (EC-Hormones) and the subsequent EU challenge of compensatory measures imposed by Canada and the United States; (ii) EU measures affecting the approval and marketing of biotech products, brought by the United States, Canada and Argentina (EC - Approval and Marketing of Biotech Products); and (iii) US measures affecting imports of poultry from China (US - Poultry). No panel has to date been composed to consider the US complaint regarding EU poultry restrictions, and Canada and Korea announced a mutually satisfactory solution in their BSE-related dispute before the panel issued its report.

### 3.1.3 RECENT DEVELOPMENTS ON SPS DISPUTES

3.6. Argentina requested the establishment of a panel regarding the United States import prohibition of fresh (chilled and frozen) beef due to FMD concerns. The panel was composed on 8 August 2013 and deliberations are on-going.<sup>28</sup>

3.7. Also ongoing are the deliberations in the case on India's import restrictions on poultry products and pigs due to avian influenza, a dispute initiated by the United States<sup>29</sup>.

3.8. On 8 April 2014, the European Union requested consultations with Russia regarding measures affecting the importation of live pigs and their genetic material, pork and pork products due to African swine fever<sup>30</sup>.

3.9. The developments in these and other disputes can be followed at <http://www.wto.org/disputes>.

### 3.1.4 TBT DISPUTES

3.10. As of January 1995, 49 cases have cited the TBT Agreement in their request for consultations. Nine TBT-related complaints have been referred to a panel.

3.11. One of these disputes referred to a Codex standard: Peru's complaints against the EU Regulation (EEC) 2136/89 which prevented Peruvian exporters to use the trade description "sardines" for their products<sup>31</sup>.

## 3.2 THE STANDARDS AND TRADE DEVELOPMENT FACILITY

3.12. The Standards and Trade Development Facility (STDF) is a fund created by the FAO, OIE, the World Bank, the World Health Organization (WHO) and the World Trade Organization (WTO) to assist developing countries enhance their capacity to meet international sanitary and phytosanitary (SPS) standards, improving the human health, animal health and phytosanitary situation, and thus gaining and maintaining market access. The WTO is the administrator of the STDF and provides the secretariat. Relevant information regarding the operation of the STDF is being provided in a separate document.

## 3.3 TRADE FACILITATION

3.13. At the WTO's 9<sup>th</sup> Ministerial Conference in Bali, Indonesia in December 2013, Members concluded negotiations of the Trade Facilitation (TF) Agreement<sup>32</sup>. Trade facilitation, which in a nutshell could be described as simplification of trade procedures in order to move goods in cross-border trade more efficiently, has been a topic of discussion since the WTO's Singapore Ministerial Conference in December 1996. After several years of exploratory work, WTO Members launched negotiations on trade facilitation in July 2004.

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<sup>28</sup> WT/DS447.

<sup>29</sup> WT/DS430.

<sup>30</sup> WT/DS475.

<sup>31</sup> WT/DS231

<sup>32</sup> WT/MIN(13)/36, WT/L/911.

3.14. The TF Agreement will enter into force after a formalistic legal review, notifications from developing and least-developed country Members on the planned implementation of the Agreement, Members accepting a protocol to insert the TF Agreement into Annex 1A of the WTO Agreement alongside the other multilateral trade agreements on goods by 31 July 2015, and ratification by two thirds of WTO Members in accordance with Article X:3 of the WTO Agreement<sup>33</sup>.

3.15. The TF Agreement consists of two main sections. Section I sets out the substantive obligations on facilitating customs and other border procedures in 13 articles. Section II contains special and differential treatment provisions for developing and least-developed country Members. These WTO Members have flexibilities in implementing the Agreement, and are to designate, by 31 July 2014, which commitments they can implement immediately, and which they can only implement with more time and/or technical assistance<sup>34</sup>.

3.16. The TF Agreement concerns all border agencies – not just customs authorities – and therefore raises interesting questions with regard to its relationship with the SPS and TBT Agreements given that many SPS and TBT controls are implemented at the border. Possible conflicts between the TF and SPS/TBT Agreements are addressed in paragraph 6 of the Final Provisions of the TF Agreement, according to which "nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures". This provision would seem to safeguard the areas in which SPS and TBT provisions differ from those in the TF Agreement. On the other hand, there are a few provisions where the TF Agreement goes beyond the SPS and TBT Agreements and can contribute to facilitating trade in goods subject to SPS and TBT controls (there is often room for streamlining SPS and TBT measures and their application), without diminishing Members' existing right to take science-based measures to protect human, animal or plant life or health within their territories, or to pursue other legitimate objectives.

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<sup>33</sup> WT/MIN(13)/36, WT/L/911, paragraph 2.

<sup>34</sup> Developing and LDC Members are to designate all the substantive provisions in three categories: Category A, which they can implement upon entry into force of the Agreement; Category B, which they can implement only after a transitional period; and Category C, which they can implement only after a transitional period and capacity building