

CODEX ALIMENTARIUS COMMISSION



Food and Agriculture
Organization of the
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World Health
Organization

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JOINT FAO/WHO FOOD STANDARDS PROGRAMME CODEX COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION AND CERTIFICATION SYSTEMS

Twenty-third Session

ACTIVITIES OF FAO AND WHO AND OTHER INTERNATIONAL ORGANISATIONS RELEVANT TO THE WORK OF CCFICS (Report of the WTO Secretariat¹)

A. Activities of the WTO SPS Committee and other relevant WTO Activities in 2016

This report to the 23rd session of the Codex Committee on Food Import and Export Inspection and Certification Systems 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") during 2016, and identifies the work of relevance to Codex, including: specific trade concerns; transparency; equivalence; and monitoring the use of international standards. The report also includes some information about the Trade Facilitation Agreement, which entered into force on 22 February 2017, as well as relevant information on the Standards and Trade Development Facility (STDF).

1 WORK OF THE SPS COMMITTEE

1.1. The SPS Committee held three regular meetings in 2016: on 16-17 March, 30 June - 1 July and 27-28 October.²

1.2. The Committee agreed to the following tentative calendar of regular meetings for 2017: 22-23 March, 13-14 July, and 1-2 November.

1.3. Mr Felipe Hees of Brazil served as Chairperson at the March 2016 meeting. At the June-July 2016 meeting, Ms Marcela Otero of Chile was appointed Chairperson for the 2016-2017 period.

1.1 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 STCs raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.³ Altogether, 416 STCs were raised in the twenty two years between 1995 and the end of 2016, of which 32% were related to food safety.

1.6. In 2016, 13 new specific trade concerns were raised for the first time in the SPS Committee, including seven new food safety issues that may be of relevance to the CCFICS:

- EU restrictions on exports of pork from the State of Santa Catarina (STC 407)

1.7. In March 2016, Brazil expressed its concerns on restrictions on exports of pork from the State of Santa Catarina. Brazil had been requesting access to the EU market since 2007 and had implemented a ractopamine-free segregated production (RFP) scheme in order to comply with EU regulations.

¹ 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.

² The report of the March meeting is contained in G/SPS/R/82 plus corrigendum, that of the July meeting in G/SPS/R/83 plus corrigendum, and that of the October meeting in G/SPS/R/84.

³ The latest version of this summary can be found in document G/SPS/GEN/204/Rev.17. 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>.

1.8. Brazil also recalled that MRLs for ractopamine were adopted at the 35th Session of the CAC. Brazil questioned the EU's testing methods and results on an audit of the RFP scheme and urged the European Union to lift the restrictions. Brazil highlighted that this issue would continue to be discussed under the Brazil-EU SPS mechanism. The European Union recalled that its policy on ractopamine required countries which had authorized its use in pig meat production to have a split production system in place to ensure that pig meat exported to the European Union is not derived from animals treated with ractopamine at any stage of the production cycle. Audits carried out in 2011 and 2013 in Santa Catarina had concluded that Brazil could not provide adequate guarantees that meat produced in this state would comply with EU regulations. The European Union remained open for further bilateral discussions based on any new information provided by Brazil.

1.9. In June 2016, Brazil reiterated its concerns raised in the March 2016 SPS Committee regarding the EU restrictions on pork exports from the State of Santa Catarina. Based on available scientific evidence and the implementation of effective control measures, Brazil had been able to ensure that its pork exports to the European Union were free from ractopamine residues. Brazil urged the European Union to lift its restrictions and to allow Brazilian pork exports under the RFP scheme. The European Union recalled the results of the audits carried out in 2011 and 2013 on the split system for pig production in Santa Catarina. The European Union further informed the Committee of the bilateral exchanges between the European Commission and Brazilian authorities, including a March 2016 written request for Brazil to provide more information on its residue monitoring plan on porcine animals, particularly on any new developments in its split system. The European Commission was currently awaiting a reply to this letter or any additional information on the monitoring plan. The European Union indicated that it had also informed Brazil that an on-site audit of the implementation of the residue monitoring plan would be necessary to re-assess the split system. The European Union remained open for further bilateral discussions on the basis of any new information provided by Brazil.

- Nigerian restrictions on exports of beef and poultry (STC 408)

1.10. In March 2016, Brazil expressed its concerns over Nigeria's import restrictions on all types of refrigerated or frozen meat and foods containing meat due to deficiencies in the Nigerian cold chain. In June 2010, Brazil had sent Nigeria proposals of international sanitary certificates for meat and Nigeria had responded that meat imports were forbidden in accordance with the 2007 legislation. Brazil also highlighted Nigeria's Trade Policy Reviews in 1998 and 2005 in which Nigeria had agreed to reduce the list of prohibited products to align with WTO rules. Brazil requested an explanation of the reasons for maintaining this legislation and feedback on the international sanitary certificates. Brazil urged Nigeria to lift these requirements. It remained committed to continue bilateral discussions, and expressed its appreciation for Nigeria's availability on the margins of the current Committee meeting.

1.11. Nigeria thanked Brazil for the constructive bilateral meeting held on the margins of the current SPS Committee meeting. Nigeria clarified that the import list was currently under review and the restrictions on meat were being applied on an MFN basis. The measures were applied to protect health and life due to a lack of importers' capacity to cope with safety requirements. Nigeria hoped that the measures could be relaxed upon the provision of technical assistance. Nigeria confirmed its commitment to review its trade and SPS policies and to continue working with Brazil to resolve this issue.

- Russian Federation import restrictions on certain animal products from Germany (STC 411)

1.12. In June 2016, the European Union stated that since February 2013, the Russian Federation had introduced a complete ban on imports of fresh and chilled pig meat, beef and poultry meat from the entire territory of Germany, followed by a ban on imports of finished meat and milk products from three German federal states: Bavaria, Lower Saxony and North Rhine Westphalia. These import restrictions had been implemented due to claims by the Russian Federation that German veterinary services had not undertaken proper controls on the exports of such products. The European Union noted that the restrictions were not based on scientific evidence or a risk assessment and were inconsistent with several provisions of the SPS Agreement. The European Union further indicated that in 2013 it had communicated its concerns with respect to these restrictions in its officially submitted comments on the notified Russian Federation measure, as well as in document G/SPS/GEN/1216. Continuous efforts had been made by German authorities to address the issue, including conducting supervisory controls of the official veterinarians responsible for establishments listed for Russian export, and establishing an export coordination unit as a contact point for the Russian authorities and the private sector. Inspection visits had also been carried out by Russian authorities. Despite all efforts, the restrictions still remained in place. The European Union argued that there was no justification for the restrictions and requested the Russian Federation to promptly repeal these measures. The European Union indicated its willingness to engage in discussions with the Russian authorities.

1.13. The Russian Federation stated that more than 600 German processing plants producing animal products were authorized to export to the Russian Federation under the guarantees of the German competent authorities. However, more than 90% had never been inspected by Russian authorities. The Russian

Federation observed that due to several factors, such as unfavourable laboratory monitoring results, border control violations, and errors in the certification of animal products, the Russian authorities had arranged several audits of the processing plants and elements of the system, in order to ensure the safety of animal products exported from Germany. Inspections had been carried out between 2012 and 2015, during which time several restrictions were imposed on imports to the Russian market from individual firms and some regions due to non-compliance with Russian SPS requirements. The Russian Federation noted that it subsequently implemented a ban, following the failure of all German states to meet its SPS requirements. The Russian Federation indicated that although it had informed the German authorities of the recorded violations and requested appropriate measures be taken to prevent export of unsafe products to the Russian market, no proper response had been received from the German veterinarian authorities. The Russian Federation further expressed concerns with the reliability of the guarantees of the German authorities, based on subsequent Russian inspections. Cooperation efforts between the Russian Federation and Germany had resulted in an update of the list of German exporting establishments, delisting more than 300 non-compliant plants. In parallel, measures had been taken to resume imports from establishments which had addressed identified deficiencies and from plants previously subject to restrictions due to laboratory monitoring results. The Rospotrebnadzor had been involved in the drafting of guidelines concerning inspection of German plants, in order to facilitate compliance with the Russian requirements. The Russian Federation further noted that consideration of the removal of the ban would be dependent on the implementation of the guidelines by the German Veterinary Services, submission of a document confirming the removal of deficiencies, and re-inspection by officials from the Rospotrebnadzor, taking into account other ongoing inspections. The Russian Federation emphasized that the upcoming work would heavily rely on collaboration between German and Russian authorities.

1.14. In October 2016, the European Union reiterated its concerns raised in the June 2016 SPS Committee concerning the Russian Federation's import restrictions on certain animal products from Germany. The European Union noted that the German and Russian authorities were working on the issue, and expressed hope that their discussion would result in positive developments. The European Union argued that there was no justification for the restrictions and requested the Russian Federation to promptly repeal these measures. The European Union reaffirmed its willingness to engage in discussions with the Russian authorities.

1.15. The Russian Federation recalled that restrictions had been imposed on certain German export products following the results of inspections carried out between 2012 and 2015, which revealed non-compliance of these products with Russian SPS requirements. The safety guarantee for the importation of these products to the Russian Federation had not yet been confirmed. The Russian Federation recalled that its Rospotrebnadzor had been involved in developing a manual for inspections containing Eurasian Economic Union (EAEU) requirements. The Russian Federation indicated that this manual had been sent to Germany for comments and expected further cooperation with the competent German authorities.

- EU MRLs for bitertanol, tebufenpyrad and chlormequat⁴ (STC 412)

1.16. In October 2016, India expressed concerns regarding proposed amendments to Regulation (EC) No. 396/2005 to change maximum residue levels (MRLs) for bitertanol, tebufenpyrad and chlormequat in certain products. India had provided detailed comments on the proposed regulation intended to come into effect in February 2017. India highlighted its particular concern with the lowering of MRLs for chlormequat in table grapes from 0.05 mg/kg to 0.01mg/kg, which would seriously impact Indian grape exports to the European Union, which accounted for almost 25% of India's grape exports. India further noted that according to a European Food Safety Authority (EFSA) study conducted in 2010, residue concentrates of chlormequat in table grapes were safe up to 1.06 mg/kg. Codex had not fixed any acceptable daily intake limits for chlormequat in table grapes, but had recommended an MRL of 0.05 mg per kg. India further highlighted that other countries had set higher MRLs for chlormequat in table grapes, such as Australia and New Zealand at 0.75 mg/kg or Japan at 0.10 mg/kg. The scientific reference included in the EU notification did not provide any specific recommendation on grapes. Thus the proposed lower MRL had no scientific justification, was not based on any relevant international standard and would have negative trade effects.

1.17. India further expressed its concern with respect to residue levels for bitertanol in wheat, set at a default level of 0.01 mg/kg from 0.05 mg/kg. India questioned the rationale behind the European Union decision of undertaking a detailed assessment on the Codex limit. India requested the European Union to provide relevant scientific justification in light of Articles 5.4 and 5.8 of the SPS Agreement, and to maintain the current MRLs. India welcomed bilateral discussions.

1.18. The European Union recognised Indian producers' and regulatory bodies' efforts to comply with the existing MRL of 0.05 mg/kg for chlormequat. Since 2010 table grapes from India had complied with this MRL. For the time being, the European Union had decided to maintain the current MRL of 0.05mg/kg in grapes because the manufacturer had submitted new trial data supporting this level, and to review it on the basis of

⁴ The rules were notified in G/SPS/N/EU/168.

the 2017 JMPR evaluation aimed at establishing a Codex standard. In light of the above, the European Union considered that this concern of India had been addressed. The European Union explained that the default value of 0.01mg/kg for bitertanol resulted from a recommendation of the EU reference laboratories and not from EFSA's reasoned opinion. EFSA had highlighted that the lack of information on the toxicological relevance of certain impurities prevented the assessment of Codex levels and the inclusion of such levels in the EU legislation. The same issue had been raised in a previous EFSA opinion in 2010. The European Union informed India that it could make a request for an import tolerance under Article 6(4) of Regulation (EC) No. 396/2005 and submit additional data that would support re-establishing an MRL and alleviate any concerns about the metabolites. The European Union finally expressed its openness to bilateral consultations.

- Guatemala's restrictions on egg products (STC 413)

1.19. In October 2016, Mexico expressed its concern on Guatemala's restrictions on egg products. Mexico considered the measure to be in violation of fundamental principles of technical and scientific justification based on international standards, principles enshrined in the SPS Agreement and the free trade agreement between Mexico and Central America. Mexico noted its preference to promote dialogue; however, these efforts had not been successful. Guatemala continued to impose import restrictions on Mexican egg products even though its legislation allowed imports of heat treated avian products. Mexico indicated that its exports of egg products were significantly affected by the restrictions and requested that Guatemala withdraw its measure in order to resume trade of egg products between the two countries.

1.20. Guatemala replied that in October, it had informed Mexico that it was currently conducting a risk assessment and would contact Mexico upon the conclusion of the analysis.

- Indonesia's food safety measures affecting horticultural products and animal products (STC 414)

1.21. In October 2016, the Philippines expressed its concern regarding Indonesia's food safety measures affecting horticultural products and animal products, and in particular with Ministry of Agriculture (MoA) Regulations No.88/2011, No. 42/2012 and No. 04/2015. The Philippines regretted that no progress had been made through all bilateral avenues tried so far. The Philippines considered the regulations to be in violation, among others, of Articles 2.2, 4, 5.4 and 5.6 of the SPS Agreement, as well as the national treatment principle under Article III of GATT 1994. The measures had no scientific justification and were more trade restrictive than necessary to achieve Indonesia's appropriate level of protection (ALOP). Exports of horticultural exports had been growing until 2011, when the measures were first imposed, without posing any serious health or safety risks. Furthermore, Indonesia's closure of its main entry port in Jakarta in 2012 heavily impacted Philippine exports of bananas and shallots. Indonesia had unduly delayed the processing of the Philippines' applications for recognition of its food safety control system for horticultural products, laboratory accreditation and accreditation for animal products, despite follow-up in writing and bilateral discussions on numerous occasions. Indonesia's latest measures under MOA Regulation No. 04/2015 further overshadowed efforts to recognise the Philippines' food safety control system. The Philippines recognized that some measures, currently being reviewed by dispute settlement panels, might not be covered by the SPS Agreement, but noted that the combined effect of both SPS and non-SPS measures made Indonesia's system more potentially trade restrictive. The Philippines expressed its appreciation for Indonesia's availability on the margins of the current Committee meeting and remained committed to continue bilateral discussions to resolve this issue.

1.22. Indonesia indicated that some regulations at issue were no longer in force. A revision of MoA Regulation No. 88/2011 had been notified⁵ and implemented in February 2016. The regulation set out food safety control systems recognition and laboratory registration requirements to export fresh foods of plant origin to Indonesia. Since 2012, the Philippines had submitted applications for food safety recognition systems for bananas, shallots and pineapples and had applied for registration of its food safety testing laboratory in June 2016. However, Indonesia was still waiting for additional data necessary for conducting the risk assessment. The requirements applied to all WTO Members and, so far, 26 countries had been granted access to the Indonesian market. Indonesia thanked the Philippines for the explanations received during their bilateral talks in the margins of the Committee, and expressed its willingness to continue bilateral discussions towards finding a solution.

- China's import ban on fresh mangosteen (STC 416)

1.23. In October 2016, Indonesia expressed its concern regarding China's import ban on fresh mangosteen fruit since February 2013. Indonesia recognized China's right to adopt measures to protect human, animal and plant health, but considered the measures to be more trade restrictive than necessary and discriminatory. Indonesia reported that it had taken actions to resolve the alleged pest and heavy metal contamination detected on its mangosteen fruits. Such actions included field and laboratories verification, as well as negotiations with China on its proposed export protocol. Indonesia further expressed its appreciation to China

⁵ The rules were notified in G/SPS/N/IDN/94.

for a field verification visit held in August 2014, and hoped to receive the report soon. Indonesia requested that China comply with Articles 2.3, 5.6, 7, 8 and Annex C (1a) of the SPS Agreement in order to resume mangosteen trade between the two countries, and expressed its willingness to continue bilateral engagement. China stated that in 2013 it had detected quarantine pests and measured levels of cadmium above the level specified in its standard in Indonesian's mangosteen exports. China said that despite several bilateral consultations, the two sides had not been able to agree on the protocol issues yet. China urged Indonesia to continue to work closely with the competent authority of China with a view to finding a mutually satisfactory solution to the pending issue.

1.24. Eight issues relating to food safety that had been previously raised in the SPS Committee were discussed again during 2016. These included:

- Paraguay and US concerns regarding China's proposed amendments to the implementation regulations on safety assessment of agricultural GMOs (STC 395);
- Japan's concerns regarding Chinese Taipei's import restrictions in response to the nuclear power plant accident (STC 387);
- Japan's concerns regarding China's import restrictions in response to the nuclear power plant accident (STC 354);
- Colombia, Ecuador and Peru's concerns regarding the application and modification of the EU Regulation on Novel Foods (STC 238);
- Argentina, Paraguay and US concerns regarding the EU proposal to amend Regulation (EC) No. 1829/2003 to allow EU member States to restrict or prohibit the use of genetically modified food and feed (STC 396);
- Argentina, China and US concerns regarding the European Union revised proposal for categorization of compounds as endocrine disruptors (STC 382);
- EU's concerns regarding India's amended standards for food additives (STC 403); and,
- EU's concerns regarding the Russian Federation's import restrictions on processed fishery products from Estonia and Latvia (STC 390).

1.2 Members' information related to food safety

1.25. WTO Members used the opportunity of the SPS Committee meetings to provide other information relating to food safety, including:

- Australia provided information on the BSE food safety risk assessments which had been completed for Japan and Sweden by Food Standards Australia New Zealand (FSANZ);
- The European Union highlighted some of the improvements introduced by its new Regulation 2015/2283 on novel foods, which was adopted on 25 November 2015;⁶
- The European Union informed the Committee of its ongoing process to review the current MRLs for pesticides, including how countries outside the European Union could contribute to the process;⁷
- Indonesia provided an update on its Regulation No. 04/2015 on Food Safety Control on Importation and Exportation of Fresh Food of Plant Origin;⁸
- Japan informed the Committee of the most recent data from its food monitoring exercise, including its ongoing efforts to ensure food safety, as well as an update on the latest assessment by the International Atomic Energy Agency (IAEA), which indicated that the situation remained stable;
- Peru informed Members of the recent revision of its sanitary requirements governing the importation of processed foods, other than fishery and aquaculture products;⁹
- The Russian Federation provided an update on the spread of African swine fever (ASF) in the Eurasian region, noting that several ASF cases had been reported in 2016;
- The Russian Federation provided an overview of its recent activities undertaken in cooperation with Codex, which included the hosting of two Codex events and the submission of a state policy report on healthy nutrition to FAO;

⁶ G/SPS/GEN/1472.

⁷ G/SPS/GEN/1494.

⁸ G/SPS/N/IDN/94.

⁹ G/SPS/GEN/1496. More details can be found at: http://www.digesa.sld.pe/Orientacion/Requisitos_Sanitarios.asp.

- Ukraine provided information on the progress made in the restructuring of its previously independent agencies into a single competent authority, the Food Safety and Consumer Protection Service; and
- The United States provided an update on the Food and Drug Administration (FDA) Food Safety Modernization Act (FSMA), highlighting that the FDA had now finalized its seven risk-based foundational rules to implement FSMA.¹⁰

1.3 Transparency

1.26. A total of 1,392 notifications were submitted to the WTO in 2016. Among these, 687 regular notifications and 31 emergency notifications identified food safety as the objective of the measure. Of these, 224 of the regular and 1 of the emergency notifications identified a Codex standard as relevant, by either indicating the application of the Codex standard or a deviation from it.

1.27. SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). Sixty-eight percent of notifications submitted during 2016 were submitted online, 11 percentage points higher than in 2015.

1.4 Equivalence

1.28. 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 further information was provided by the Codex regarding work on equivalence in 2016. Members updated the Committee on relevant information related to equivalence:

- Madagascar – Memorandum of understanding with China for shrimp exports

1.29. In the March 2016 Committee meeting, Madagascar informed Members about the equivalence arrangements in place with regard to fishery products. Since the last inspection mission of the Food Veterinary Office of the European Commission in June 2012, the regulatory measures applied by the competent authority (Autorité Sanitaire Halieutique) to products intended for the European market were recognized as equivalent to those provided in the European sanitary regulations. Further Madagascar reported that after an inspection mission to Madagascar in 2014, the competent Chinese veterinary authority had also recognized measures applied by the competent authority as equivalent to their measures. In 2014, Madagascar signed a Memorandum of Understanding with China that governed shrimp exports to the Chinese market.

1.30. China took the floor and thanked Madagascar for its particular comments on cooperation on SPS requirements regarding its shrimp exports to China. China highlighted that it attached great importance to friendly and mutually beneficial cooperation with African countries and also that it welcomes high quality food and agriculture products on the Chinese market. China expressed that it looked forward to working more closely with Madagascar and other African countries in good faith to boost economic growth in Africa.

1.5 Monitoring the Use of International Standards

1.31. 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.¹¹ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting organization.

1.32. 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 Eighteenth Annual Report was circulated to Members on 27 May 2016.¹²

1.33. During the June and October 2016 Committee meetings, the United States reiterated concerns over the fact that some Members had already taken action, or were considering taking action, to no longer apply the Codex MRL for glyphosate. The measures being considered did not appear to be based on international standards or on risk of exposure. The United States recalled that a JMPR report from May 2016 had concluded that glyphosate was "unlikely to be genotoxic" and "unlikely to pose a carcinogenic risk to humans from exposure through diet." It was therefore important to distinguish these findings from that of IARC, which were based on hazard and not risk. The US EPA had recently published its review on glyphosate using all available data and would be seeking external peer review from a scientific advisory panel under the Federal Insecticide, Fungicide, and Rodenticide Act. The US EPA review had classified glyphosate as "not likely to be carcinogenic to humans at doses relevant for human health risk assessment."

¹⁰G/SPS/N/USA/2503/Add.6, G/SPS/N/USA/2569/Add.3, G/SPS/N/USA/2570/Add.4., G/SPS/N/USA/2631/Add.2 and G/SPS/N/USA/2610/Add.2.

¹¹ G/SPS/11/Rev.1.

¹² G/SPS/GEN/1490.

1.34. The US EPA was currently in the process of rescheduling the meeting of the fifth scientific advisory panel to ensure additional epidemiological expertise would be available to the panel. The United States stressed the importance of following international standards and basing SPS measures on risk assessments, recalling Article 12.4 of the SPS Agreement and the direction given in G/SPS/11/Rev.2. The United States invited Members to think of how the Committee could provide greater understanding of how risk-based regulation of pesticides could ensure food safety in trade.

1.35. Argentina, Australia, Brazil, Canada and New Zealand echoed the concern of the United States and stressed the importance of aligning national MRLs for glyphosate with the relevant Codex standard.

OTHER RELEVANT WTO ACTIVITIES

1.6 The WTO dispute settlement procedure

1.36. 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.¹³ 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.

1.6.1 SPS disputes

1.37. 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.

1.38. As of February 2017, more than 520 complaints had formally been raised under the WTO's dispute settlement procedures. Of these, 46 alleged violations of the SPS Agreement, and the SPS Agreement was relevant also in two other disputes. Twenty-four SPS-related complaints, on 19 issues, have been referred to a panel.

1.39. Thirteen 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);
- A complaint by the United States in 2009 regarding European Communities' measures affecting poultry meat and poultry meat products; *EC - Poultry* (WT/DS389);
- A 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);
- A complaint by China in 2009 regarding US measures affecting imports of poultry; *US - Poultry* (WT/DS392);
- A complaint by Brazil in 2014 regarding Indonesia's measures concerning the importation of chicken meat and chicken products; *Indonesia – Chicken* (WT/DS484);
- A complaint by Japan in 2015 regarding Korea's measures on import bans, and testing and certification requirements for radionuclides; *Korea – Radionuclides* (WT/DS495);

¹³ 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.

- A complaint by Brazil in 2016 regarding certain measures imposed by Indonesia on the importation of meat from cattle of the species *Bos Taurus*; *Indonesia — Bovine Meat* (WT/DS506).

1.40. 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. Panel deliberations are ongoing for: Brazil's complaint regarding Indonesia's measures on chicken meat and chicken products; and Japan's complaint regarding Korea's measures related to radionuclides. Brazil's complaint against Indonesia's measures concerning the importation of bovine meat is still at the consultation stage.

1.6.2 Recent developments on SPS disputes

1.41. The European Union requested the establishment of a panel concerning certain measures adopted by Russia affecting the importation of live pigs and their genetic material, pork and pork products due to African swine fever on 27 June 2014.¹⁴ The panel was composed on 22 July 2014, following which the panel report was circulated in August 2016 and the Appellate Body report in February 2017.

1.42. On 8 March 2017, Mexico requested consultations with Costa Rica regarding certain measures concerning the importation of fresh avocados.¹⁵

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

1.7 Trade facilitation

1.44. At the WTO's 9th Ministerial Conference in Bali, Indonesia in December 2013, Members concluded negotiations of the Trade Facilitation (TF) Agreement.¹⁶ 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.

1.45. In line with the decision adopted in Bali, Members undertook a legal review of the text and adopted on 27 November 2014 a Protocol of Amendment¹⁷ to insert the new Agreement into Annex 1A of the WTO Agreement. The TF Agreement entered into force on 22 February 2017, after two-thirds of WTO Members completed their domestic ratification process, in accordance with Article X:3 of the WTO Agreement.¹⁸

1.46. The TF Agreement consists of three main sections: Section I, which sets out the substantive obligations on facilitating customs and other border procedures in 12 articles; Section II, which contains special and differential treatment provisions that provide implementation flexibilities for developing and least-developed country Members; and Section III, which contains provisions that establish a permanent committee on trade facilitation at the WTO, require Members to have a national committee to facilitate domestic coordination and implementation of the provisions of the Agreement and sets out a few final provisions.

1.47. In order for a WTO Member to take advantage of the implementation flexibilities, it must designate and notify to the WTO the measures that it can implement immediately, and which it can only implement with more time and/or technical assistance.¹⁹

1.48. In July 2014, the WTO announced the launch of the Trade Facilitation Agreement Facility, which will assist developing and least-developed countries in implementing the WTO's TF Agreement. The Facility became operational in November 2014. More information on this Facility is available at <http://www.tfafacility.org/>

1.49. The TF Agreement concerns all border agencies – not just customs authorities. Although the negotiators took care to avoid overlap or clash with provisions of the SPS Agreement, they also included language to address possible conflicts. Paragraph 6 of the Final Provisions of the TF Agreement states that "nothing in this

¹⁴ WT/DS475.

¹⁵ WT/DS524.

¹⁶ WT/MIN (13)/36, WT/L/911.

¹⁷ WT/L/940.

¹⁸ WT/MIN (13)/36, WT/L/911, paragraph 3.

¹⁹ 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.

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 language makes it clear that the TF Agreement will not diminish Members' existing right to take science-based measures to protect human, animal or plant life or health within their territories. However, implementation of the TF Agreement can contribute to facilitating trade in goods subject to SPS controls (there is often room for streamlining SPS measures and their application), for example, by making import requirements more accessible through internet publication, by reviewing and reducing formalities, and by allowing advance filing of import documents so that processing can begin before the goods arrive. It would also provide more fairness in border procedures, for example, by requiring authorities to inform the importer when goods are detained, allowing the possibility of a second test, and protecting importers interests in the application of an import alert system.

2 THE STANDARDS AND TRADE DEVELOPMENT FACILITY

2.1. The Standards and Trade Development Facility (STDF) is a global partnership that helps developing countries in building their SPS capacity and their ability to gain and maintain market access. In doing so, the STDF contributes to broader sustainable development goals such as enhanced economic growth, poverty reduction and food security. Established by the FAO, OIE, World Bank, WHO and WTO, the STDF is financed by voluntary contributions. The WTO provides the Secretariat and manages the STDF trust fund. Many international and regional organizations that have a role in SPS capacity building, participate actively in the STDF. This includes the Codex and IPPC Secretariats.

2.2. The STDF acts as a coordinating and financing mechanism. As part of its coordination role, the STDF raises awareness on the importance of enhancing SPS capacity, identifies and disseminates good practices and strengthens collaboration among providers of SPS assistance. The STDF also provides support and funding for the development and implementation of innovative and collaborative SPS projects.

2.1 Global coordination and knowledge platform

2.3. The STDF promotes coherence and coordination in the planning and implementation of SPS capacity building activities to enhance the results of technical cooperation. By bringing together the SPS expertise and skills of its founding partners and other organizations, the STDF provides a unique forum to exchange information, encourage collaboration and synergies in SPS capacity building, enabling stakeholders involved to achieve more effective and sustainable results together than would be possible alone.

2.4. As part of this work, the STDF regularly leads a number of priority activities to identify and disseminate good practice to support SPS capacity building. This includes research and analysis on cross-cutting thematic topics, production of visual aid materials, films and a wide range of information and outreach activities. Examples of STDF's most recent work are provided below:

Prioritizing SPS investment options

2.5. Experiences to date in several developing countries have highlighted a number of benefits of applying an evidence-based approach to decision-making, for instance to facilitate public-private dialogue on SPS matters, increase political awareness about the benefits of strengthening SPS capacity, inform and improve national SPS planning and decision-making processes, support project design and leverage additional funding resources. To facilitate this process in developing countries, in February 2016 the STDF published a user guide "*Prioritizing SPS Investments for Market Access (P-IMA): A framework to inform and improve SPS decision-making processes*". This guide, as well as a briefing note, is available for download on the STDF website.²⁰ Developing countries who would like to have more information on how to use and benefit from the P-IMA framework are encouraged to contact the STDF Secretariat.

Partnering with the private sector

2.6. One of STDF's flagship publications compiles lessons learned from a wide range of public private partnerships (PPPs) to strengthen the implementation of SPS measures, improve SPS outcomes, enhance market access and raise competitiveness. The publication highlights the private sector's contribution in stimulating innovation, leveraging knowledge and resources, and addressing SPS infrastructure deficits, and includes a chapter on co-regulatory approaches in the food safety area.²¹ A recent STDF briefing note provides numerous examples of how the STDF works with the private sector on specific projects to build SPS capacity in developing countries.²²

²⁰ See www.standardsfacility.org/p-ima.

²¹ See <http://www.standardsfacility.org/public-private-partnerships>.

²² See <http://www.standardsfacility.org/partnering-private-sector>.

Improving SPS compliance in Least Developed Countries

2.7. The STDF and the Enhanced Integrated Framework (EIF) have undertaken a joint study that analyses the coverage of SPS issues in EIF Diagnostic Trade Integration Studies (DTIS) and identifies good practice for future studies and their implementation.²³ The study highlights good practices and makes strategic recommendations to improve the analysis of SPS issues in the DTIS process, enhance capacity to implement SPS-related actions and promote synergies between EIF and STDF-related processes. This includes recommendations to make better use of SPS-related capacity evaluation tools and to consider ways to actively engage SPS agencies and ministries at a national level, as well as international organizations in the DTIS process. The study will be available shortly on the EIF and STDF websites. An EIF/STDF briefing note, highlighting the findings and recommendations of this joint work is available on the EIF and STDF websites.²⁴

Facilitating safe trade

2.8. Trade costs remain particularly high in critical sectors where growth is associated with strong poverty reduction effects, most prominently in the agriculture sector. Research work by the STDF in selected countries in Southern Africa and Southeast Asia has identified key needs, opportunities and good practices to improve the implementation of SPS measures in a way that reduces SPS-related costs, while maintaining and reinforcing health protection. Findings, conclusions and recommendations are summarized in an STDF briefing note.²⁵ In addition, the STDF produced a short film ("Safe Trade Solutions") which takes a look at what Chile, Peru and Colombia have done to make goods flow faster across their borders, while preventing the spread of pests or diseases among animals and plants, and ensuring that food is safe for consumers.²⁶

2.9. In June 2016, the STDF organized a seminar on Electronic SPS Certification, bringing together over 150 participants from Members, international organizations (including Codex) and global business. SPS e-cert can contribute to faster movement of food and agricultural products, reducing transaction costs, reducing errors and fraud, and improved health protection. The seminar was successful in raising awareness of the opportunities and challenges related to the implementation of electronic SPS certification systems. The seminar also identified good practices and avenues to support the smooth transition from paper-based to automated SPS controls systems in developing countries.²⁷ The STDF will organize a side-event on SPS e-cert during the 6th Global Review of Aid for Trade, to be held at the WTO from 11-13 July, under the theme "Promoting Connectivity".²⁸

2.10. The STDF Working Group is currently discussing options for future STDF work on Good Regulatory Practice (GRP) in the SPS area. The purpose would be to identify good practices and recommendations to enhance the development and implementation of SPS rules and regulations in order to strengthen the effectiveness of regulatory interventions, improve compliance with international standards and the SPS Agreement, facilitate trade and ensure health protection.

Other relevant STDF products

2.11. The STDF briefing note "Inclusive Trade Solutions: Women in STDF projects" examines how the STDF works to build women's capacity on SPS issues through its knowledge hub and grassroots project. Women working in agricultural value chains often face more obstacles to plugging the knowledge gap on SPS issues and accessing domestic and export markets.²⁹

2.12. The STDF film: "Cocoa: a sweet value chain" follows the journey of the cocoa bean from a tropical plantation to one of the world's most loved products, chocolate. The film illustrates how in today's global value chain, SPS capacity helps to make sure that cocoa plants are free from pests and diseases and that chocolate is safe for consumers.³⁰

2.2 Support for project development

2.13. The STDF provides advice and support to applicants on issues related to SPS project development and finances project preparation grants (PPGs). PPGs, normally up to US\$50,000, are available to help applicants articulate their SPS needs and develop technically sound and sustainable project proposals. PPGs can be requested to: (i) apply SPS capacity evaluation and prioritization tools; (ii) prepare feasibility studies before

²³ The EIF is a trade capacity building programme for Least Developed Countries (LDCs). For more information, see: <http://www.enhancedif.org/en/about/how-does-it-work>. The DTIS is the cornerstone of the EIF in LDCs to mainstream and integrate trade into national development plans. The DTIS sets the basis for all subsequent interventions and establishes priorities to increase exports from LDCs.

²⁴ See http://www.standardsfacility.org/sites/default/files/STDF_Briefing_no12_EN.pdf.

²⁵ See <http://www.standardsfacility.org/facilitating-safe-trade>.

²⁶ See <http://www.standardsfacility.org/video-gallery>.

²⁷ See <http://www.standardsfacility.org/SPS-eCert>.

²⁸ The SPS Committee will be held that same week. SPS delegates will be encouraged to participate.

²⁹ See <http://www.standardsfacility.org/women-sps-capacity>.

³⁰ See <http://www.standardsfacility.org/stdf-film-cocoa>.

project development to assess the potential impact and economic viability of proposals in terms of costs and benefits; and (iii) develop project proposals for funding by donors and/or the STDF.

2.14. A total of 81 PPGs have been approved and funded by the STDF since its inception. Information on on-going and completed PPGs is available on the STDF website.³¹

2.3 Financing innovative and collaborative projects

2.15. Project grant financing is also available from the STDF. Favourable consideration is given to projects that: (i) identify, develop and disseminate good practice in SPS-related technical cooperation, including the development and application of innovative and replicable approaches; (ii) apply regional approaches to address SPS constraints; and/or (iii) implement collaborative approaches across food safety, animal and plant health and trade.

2.16. Beneficiaries must contribute to the project -- from their own resources, either in the form of financial or in-kind contributions such as staff time, use of premises, vehicles or other existing assets.

2.17. To date, the STDF has approved 76 projects to help developing countries build their knowledge and capability of SPS measures, promote safe trade in food and agriculture and raise incomes of small-scale producers. Information on on-going and completed PGs is available on the STDF website.³² Under the title "Driving SPS capacity, delivering results" short stories highlight the results and impacts achieved of STDF projects on the ground in Africa, Asia and Latin America.³³

2.18. Applications for STDF funding can be made at any point in the year but should be received at least 60 working days in advance of each Working Group meeting in order to be considered at that meeting. The next deadline for the submission of applications is 4 August 2017.

Box: Recommended steps when seeking funding opportunities with the STDF

- Browse our PPG <http://www.standardsfacility.org/projectpreparationgrants> and PG <http://www.standardsfacility.org/projectgrants> webpages for examples of previous projects.
- Carefully read our guidance note for applicants: http://standardsfacility.org/sites/default/files/STDFGuidanceNote_English_FINAL_2015.pdf
- Consult relevant stakeholders in the country/region.
- Send us a brief concept note of your potential project for feedback on eligibility and likelihood of funding (STDFSecretariat@wto.org).
- Fill out an application form (<http://www.standardsfacility.org/application-forms>) and submit it electronically before the deadline.

³¹ See <http://www.standardsfacility.org/projectpreparationgrants>.

³² See <http://www.standardsfacility.org/projectgrants>.

³³ See <http://www.standardsfacility.org/driving-sps-capacity-delivering-results-series>.