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# codex alimentarius commission



FOOD AND AGRICULTURE  
ORGANIZATION  
OF THE UNITED NATIONS



WORLD  
HEALTH  
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JOINT OFFICE: Viale delle Terme di Caracalla 00100 ROME Tel: 39 06 57051 www.codexalimentarius.net Email: codex@fao.org Facsimile: 39 06 5705 4593

## JOINT FAO/WHO FOOD STANDARDS PROGRAMME

### CODEX ALIMENTARIUS COMMISSION

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### **ACTIVITIES OF THE SPS COMMITTEE AND OTHER WTO ACTIVITIES RELEVANT TO FOOD SAFETY IN 2004 TO THE PRESENT**

#### Report by the WTO Secretariat<sup>1</sup>

1. The present report provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2004 and early 2005 to the Twenty-Eight Session of the Codex Alimentarius Commission. It describes work on issues relating to food safety relevant to the Codex Alimentarius Commission, including: specific trade concerns; equivalence; monitoring the use of international standards; the review of the SPS Agreement; special and differential treatment; the Standards and Trade Development Facility (STDF); and technical assistance. The report also includes relevant information on dispute settlement in the WTO which occurred outside the context of the SPS Committee.

2. The SPS Committee has held four regular meetings since January 2004: on 17-18 March 2004, 22-23 June 2004, 27-28 October 2004 and 9-10 March 2005.<sup>2</sup> At the June meeting, Mr. Gregg Young (United States) was appointed Chairperson for the period 2004/2005. The Committee has agreed that regular meetings will be held on 29-30 June and 26-27 October 2005.

#### Specific Trade Concerns

3. A large part of each SPS Committee meeting is devoted to the consideration of specific trade concerns. Any WTO Member can raise particular problems with the food safety, plant or animal health requirements imposed by another WTO Member. Problems raised in this context are usually in relation to the notification of a new or changed measure, or based on the experience of exporters. Often other countries will share the same

<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 2004 meeting is contained in G/SPS/R/33, that of the June 2004 meeting in G/SPS/R/34 and corrigendum, that of the October 2004 meeting in G/SPS/R/35 and that of the March 2005 meeting in G/SPS/R/36.

concerns. At the SPS Committee meetings, Members usually commit themselves to exchange information and hold bilateral consultations to resolve the identified concern.

4. A summary of the specific trade concerns raised in meetings of the SPS Committee is compiled on an annual basis by the Secretariat of the WTO.<sup>3</sup> In the first nine years of implementation of the SPS Agreement, from 1995 to the end of 2004, 27 per cent of specific trade concerns raised were related to food safety.

5. In the SPS Committee meetings in 2004 and in March 2005, nine new issues and ten issues relating to food safety that had been previously raised were discussed.

6. In 2004, six food safety issues were raised for the first time:

- China's concerns regarding EC maximum residue levels for pesticides on food (notifications G/SPS/N/EEC/236 and 237);
- Colombia's concerns regarding EC regulations on ocratoxin A in coffee (notification G/SPS/N/EEC/247);
- China's concerns regarding EC regulations on aflatoxins and ocratoxin A in foods for infants and young children (notification G/SPS/N/EEC/223/Add.1);
- US concerns regarding India's ban on food grade wax;
- China's concerns regarding Japan's standards and specifications for food additives (boscalid) (notification G/SPS/N/121);
- EC concerns on the United States' delisting of France from countries authorized to export certain meat and meat products to the United States.

In March 2005, five new food safety issues were raised:

- Canada's concerns with EC food and feed hygiene rules (document G/SPS/GEN/539);
- China's concerns on Japan's amendment of MRLs for pesticides, veterinary drugs and feed additives;
- China's concerns on EC residual pesticide tolerances and inspection methods for tea;
- US concerns about Panama's inspection regime for food establishments (notifications G/SPS/N/PAN/1, G/SPS/N/PAN/28 and G/SPS/N/PAN/37);
- US concerns regarding Thailand's Regulation 11 on food products (notification G/SPS/N/THA/116).

Ten issues relating to food safety that had been previously raised were discussed again, including:

- EC concerns on import restrictions imposed by Bahrain, Kuwait, Qatar, Oman and the United Arab Emirates on Spanish olive oil;
- US, Canada and Argentina's concerns on EC traceability and labelling of genetically modified organisms and food and feed (notification G/SPS/N/EEC/150);
- Argentina, Australia, Bolivia, Brazil, The Gambia, India, Indonesia, Malaysia, Philippines, Senegal, and Thailand's concerns on EC maximum levels for certain contaminants (aflatoxins) in foodstuffs;
- Colombia and Papua New Guinea's concerns on Germany's maximum tolerance levels for ocratoxin A in coffee (notifications G/SPS/N/DEU/9 and Add.1);
- China and Argentina's concerns on EC maximum residue levels in pesticides (notifications G/SPS/N/EEC/196 and Add.1);
- EC concerns on Japan's regulation on food additives;
- China's concerns on Japan's amendment of the food sanitation law;
- China's concerns regarding Japan's revision of standards and specifications for food and additives (notification G/SPS/N/JPN/104);

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<sup>3</sup> The latest version of this summary can be found in document G/SPS/GEN/204/Rev.5 and Add. 1, 2 and 3. This document is a public document available from <http://docsonline.wto.org>.

- US concerns regarding Korea's guidelines for maximum residue levels (MRL) testing;
- Canada's concerns on Venezuela's import licensing procedures for potatoes, onions, meat and other products.

### Equivalence

7. In October 2001, the SPS Committee developed guidelines on the implementation of Article 4 of the SPS Agreement on equivalence in response to concerns raised by developing countries.<sup>4</sup> In 2002 and 2003, the SPS Committee agreed on clarifications of certain paragraphs of the Decision on Equivalence and in 2004, completed the programme on equivalence with the adoption of the proposed further clarification of paragraph 5 of the Decision.<sup>5</sup> These clarifications note the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and request the further elaboration of specific guidance by these organizations to ensure that such recognition is maintained. In this context, the SPS Committee welcomed the adoption of "Guidelines for the Judgement of Equivalence of Sanitary Measures Associated with Food Inspection and Certification Systems" by the Codex Commission.

8. The SPS Committee has been kept informed of the progress made by Codex on its work relating to the Guidelines adopted in 2003, and on the judgement of equivalence of sanitary measures associated with food inspection and certification systems.<sup>6</sup> The representative of Codex highlighted the work undertaken in December 2004 by the Codex Committee on Food Import and Export Inspection and Certification Systems.<sup>7</sup>

9. No equivalence agreements were notified to the SPS Committee in 2004/2005.

### Monitoring the Use of International Standards

10. The procedure adopted by the SPS Committee in 1997 to monitor the use of international standards invites countries 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.

11. In order to allow Members to better benefit from this procedure the Committee agreed to modify the deadline for identifying issues as established in the agreed procedures, from 30 days to 10 days.<sup>9</sup> The Committee also received regular updates on the standard-setting activities of the Codex, the OIE and IPPC.<sup>10</sup>

12. The WTO Secretariat submitted comments in response to the Codex circular letter regarding the need for a Codex standard for soy sauce. The view expressed by the WTO Secretariat is that should the Codex Alimentarius Commission decide to develop a standard for soy sauce, it would be more beneficial for international trade if an international as opposed to a regional standard were adopted, given that the concerns previously raised in the SPS Committee related to global trade, and were not limited to trade within a single region.

### Review

13. At the WTO Ministerial Meeting in November 2001, Ministers agreed that the review of the operation and implementation of the SPS Agreement should be carried out every four years. The SPS Committee began its

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<sup>4</sup> G/SPS/19.

<sup>5</sup> The agreed clarifications are in G/SPS/19/Rev.2.

<sup>6</sup> G/SPS/R/35, paragraph 118.

<sup>7</sup> G/SPS/R/36., paragraph 114.

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

<sup>9</sup> G/SPS/11/Rev.1.

<sup>10</sup> Codex (G/SPS/GEN/479, G/SPS/GEN/495, G/SPS/GEN/514 and G/SPS/GEN/546); OIE (G/SPS/GEN/476, G/SPS/GEN/478, G/SPS/GEN/500, G/SPS/GEN/501, G/SPS/GEN/512, G/SPS/GEN/542, G/SPS/GEN/550 and G/SPS/GEN/552); IPPC (G/SPS/GEN/482, G/SPS/GEN/513, G/SPS/GEN/528 and G/SPS/GEN/529)

second review of the Agreement in 2004, with the objective of concluding the review at its meeting of 29-30 June 2005.

14. The Secretariat prepared a background document describing the implementation of the Agreement since its last review in 1999 (document G/SPS/GEN/510/Rev.1). Members were invited to identify specific issues to be reviewed, and to provide background documents on these. Following discussions in formal and informal meetings, a draft report of the review was circulated for consideration and adoption in June (document G/SPS/W/173). It identifies a number of issues for future consideration by the SPS Committee.

#### Special and Differential Treatment

15. In August 2004, the WTO General Council instructed the SPS Committee to consider a number of proposals aimed at ensuring the precise, effective and operational implementation of the provisions of the SPS Agreement. These proposals have been discussed at informal and formal meetings of the SPS Committee, on the basis of a background document prepared by the Secretariat (G/SPS/GEN/543). The Committee will consider adopting a draft report on special and differential treatment at its meeting in June (G/SPS/W/175).

#### Technical Assistance

16. The FAO, WHO and other observer organizations keep the SPS Committee regularly informed of their technical assistance activities with relevance to the implementation of the SPS Agreement, and in particular on the FAO/WHO capacity building activities for food standards and regulations.<sup>11</sup> The representative of Codex also reported on the FAO/WHO Trust Fund for enhanced participation in Codex.

17. The Secretariat prepared a background document that lists all SPS technical assistance and training activities undertaken by the Secretariat from 1 September 1994 to 31 August 2004 (document G/SPS/GEN/521). Altogether, 104 SPS technical assistance and training activities have been undertaken for the period under review. Since 1994, representatives from the international standard setting organizations have actively participated in the delivery of SPS regional workshops undertaken by the Secretariat. Codex has participated in 37, OIE in 34 and the IPPC in 32 regional workshops. The beneficiaries of SPS technical assistance and training activities undertaken by the Secretariat have been: 18 per cent from least-developed countries (LDCs), 77 per cent from developing countries, and 5 per cent from developed countries.

18. Altogether, 17 SPS technical assistance and training activities have been undertaken in 2004, including 7 regional or sub-regional workshops, 7 national seminars and 4 "other" activities.<sup>12</sup> The regional or sub-regional workshops were held in: Mozambique on 10-12 February; Chile on 9-11 March; Lebanese Republic on 4-6 April; Austria on 27-29 July (for Central and Eastern Europe and Central Asia); Madagascar on 18-20 August; Bangladesh on 18-20 October; and Singapore on 30 November to 1 December 2004. A representative from the Codex participated in all 7 regional or sub-regional workshops and in 2 of the "other" training activities held in Australia on 9 December and in Thailand on 12-16 July 2004.

19. In 2005, the Secretariat has planned to undertake 6 regional or sub-regional workshops and a number of national seminars in response to new and outstanding requests. One of the regional or sub-regional workshops has already been held in Jamaica on 16-18 February, the others are tentatively scheduled to take place in: South Africa on 1-3 August; Mali on 26-28 September; Thailand on 10-14 October; Nicaragua on 21-23 November and Fiji on 21-24 November. A representative from the Codex has been invited to participate in all of these workshops.

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<sup>11</sup> G/SPS/R/35.

<sup>12</sup> The "other" category refers to all other SPS technical assistance and training activities that do not fall under either the national or regional or sub-regional category. These include, eg, the information sessions provided by the WTO Secretariat during meetings of CCFICs, as well as involvement by the WTO Secretariat in training activities organized by other bodies.

## Other Relevant WTO Activities

### Standards and Trade Development Facility (STDF)

20. The strategic aim of the STDF is to assist developing countries enhance their capacity to meet international sanitary and phytosanitary (SPS) standards, improving human health, animal health and phytosanitary situation, and thus gaining and maintaining market access.

21. The STDF grew out of a joint communiqué issued by the Heads of the Food and Agriculture Organization (FAO), World Organization for Animal Health (OIE), World Bank, World Health Organization (WHO) and the World Trade Organization (WTO) at the Doha Ministerial Conference in November 2001. The STDF was formally established in September 2002 as a financing and a co-ordinating mechanism in the area of SPS standards. The operation of the Facility, its organization and eligibility criteria for applicants are set out in detail in a Business Plan.<sup>13</sup> Codex is an active partner in the STDF.

22. Since the adoption of the Business Plan at the STDF Policy Committee in September 2004, several donors have made contributions to the Facility. In addition to contributions from the World Bank and the WTO, the STDF has attracted funding from France, the Netherlands, the United Kingdom, Denmark and Canada. Further contacts with other donors are on-going.

23. The STDF website, [www.standardsfacility.org](http://www.standardsfacility.org), has been established in English, French and Spanish. In addition to information on the operation of the Facility, it contains training material on SPS standards made available by STDF partner organizations.

24. In September 2003, the STDF technical assistance database was established, <http://stdfdb.wto.org>, with the objective to provide an overview of planned and delivered SPS-related technical assistance; to assist coordination between the partner institutions of the STDF; to enable information sharing between institutions, thereby creating opportunities to identify gaps and exploit synergies, and to minimize and/or avoid duplication in the provision of technical assistance. Efforts are currently underway to update existing information prior to the next STDF Working Group meeting in September 2005.

25. An updated summary of on-going and recently approved projects relating to food safety will be available by the end of June 2005. As of March 2005, the STDF had approved grants for 3 projects relating to food safety capacity building:

- *STDF 9: Model Programme for Developing Food Standards within a Risk Analysis Framework*
- *STDF 10: International Portal on Food Safety, Animal and Plant Health Project*
- *STDF 56: Capacity Building for the Implementation of the Codex Alimentarius Code of Practice for Animal Feeding*

26. In addition, 8 project preparation grants were approved at the last STDF Working Group. It is expected that many of the projects proposed with these grants will relate to food safety capacity building.

27. Further grants and project preparation grants in the area of food safety are expected to be approved at the next meeting of the STDF Working Group in September 2005. Applications for STDF funding for either a project preparation grant (up to a maximum of US\$ 20,000) or for a project grant can be submitted at any time. However, applications must be received 45 days in advance of a STDF Working Group meeting for consideration at that meeting. The next deadline for application is 1 July 2005. Applications can be submitted via the website: [www.standardsfacility.org](http://www.standardsfacility.org)

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<sup>13</sup> See document G/SPS/GEN/523.

## Dispute Settlement

28. In 2004, dispute settlement reports were adopted in the case regarding Japan's trade restrictions on apples due to fire blight, while panel proceedings commenced in the case regarding the European Communities' measures affecting the approval and marketing of biotech products. Later in 2004, the implementation of the *Fire blight* case and the *EC – Hormones* case were brought back to the WTO dispute settlement procedure.

## The WTO dispute settlement procedure

29. Any WTO Member may invoke the formal dispute resolution procedures of the WTO if they consider that a particular measure imposed by another WTO Member violates any of the WTO Agreements, including the SPS Agreement. If formal consultations on the problem, the first step of the WTO dispute procedure, are unsuccessful, a WTO Member may request that a panel be established to consider the complaint.<sup>14</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.

30. According to 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 in all SPS-related disputes. The experts are usually selected from lists provided by the standard-setting organizations referenced in the SPS Agreement, including the Codex Alimentarius Commission. The parties to the dispute are consulted in the selection of experts and regarding the information solicited from the experts.

31. As of 2004, four SPS-related issues have been considered by panels, and a fifth was underway. One dispute case concerned food safety regulations – the EC ban on imports of meat treated with growth-promoting hormones, challenged by both the United States and by Canada (*Hormones*).<sup>15</sup> One SPS case dealt with diseases of fish, brought by Canada against Australia's import restriction on fresh, chilled or frozen salmon (*Salmon*).<sup>16</sup> (A US complaint on this same issue was resolved before the Panel completed its examination.) Two SPS cases dealt with plant pests and quarantine requirements: a US complaint about Japan's requirement for testing each variety of fruit for efficacy of treatment against codling moth (*Variety testing*)<sup>17</sup>; and a US complaint about Japan's set of requirements on apples imported from the United States relating to fire blight (*Fire blight*).<sup>18</sup>

## Further developments in recent SPS-related trade disputes

32. The most recently concluded case was the dispute regarding *Fire blight*. The panel and Appellate body reports in that case were issued during 2003.

33. On 9 January 2004, the WTO Dispute Settlement Body (DSB) adopted the panel and Appellate Body reports which recommended that Japan bring the measures at issue into conformity with WTO obligations. The United States and Japan agreed that Japan would have until 30 June 2004 to comply with the panel findings. However, in July 2004, the United States requested the establishment of a panel under Article 21.5 of the Dispute Settlement Understanding to examine the alleged failure of Japan to comply with the original panel's rulings, and

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<sup>14</sup> A flow chart of the dispute resolution process can be consulted 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>15</sup> The reports of the Panels are contained in documents WT/DS26/R/USA and WT/DS48/R/CAN. The Appellate Body report is in document WT/DS/26/AB/R and WT/DS48/AB/R.

<sup>16</sup> The reports of the Panels are contained in documents WT/DS18/RW. The Appellate Body report is in document WT/DS18/AB/R.

<sup>17</sup> The report of the Panel is contained in document WT/DS76/R. The Appellate Body report is contained in document WT/DS76/AB/R.

<sup>18</sup> The report of the Panel is contained in document WT/DS245/R. The Appellate Body report is contained in document WT/DS254/AB/R.

requested authorization to retaliate against this failure. At the same meeting, Japan requested that an arbitrator be appointed to consider the amount of trade which could be affected by the US retaliation. Both the Article 21.5 panel and 22.6 arbitration were established on 30 July, with the original panel members serving both cases. Japan and the United States immediately suspended the 22.6 arbitration proceeding, pending the conclusions of the 21.5 panel. The panel is examining the revised requirements imposed by Japan, and its new risk assessment. It is expected to issue its report in June 2005.

### New Disputes

34. Three new panels were established on SPS-related issues during 2004. On 29 August 2003, a panel was established to consider the complaints by the United States, Canada and Argentina regarding the European Communities measures affecting the approval and marketing of biotech products.<sup>19</sup> The panel procedure is underway and the panel report is expected to be circulated during the second half of 2005.

35. A second panel was established, also on 29 August 2004, to examine complaints by the Philippines against the procedures applied by Australia on imports of fresh fruit and vegetables, including fresh bananas, papaya, and plantains.<sup>20</sup> To date, neither of the parties has indicated their further intentions in progressing with this dispute.

36. On 7 November 2003, another panel was established at the request of the European Communities to examine Australia's quarantine regime for imports, including tomatoes, fresh citrus fruit, apples, peaches, nectarines, cucumber, lettuce, carrots, apricots, edible eggs and egg products, uncooked pigmeat, pig semen, uncooked poultry meat, calf- milk replacer, and organic fertiliser based on chicken manure.<sup>21</sup> To date, neither of the parties has indicated their further intentions in progressing with this dispute.

### Disputes brought back to the WTO dispute settlement procedure

37. On 13 February 1998, the WTO Dispute Settlement Body adopted the panel and Appellate Body reports in the *EC – Hormone* case which recommended that the European Communities bring the measures at issue into conformity with WTO obligations. When the European Communities was unable to implement by the 13 May 1999 deadline, the US and Canada obtained authorisation from the DSB on 26 July 1999 to suspend obligations up to the level of US\$116.8 million and CDN\$11.3 million per year, respectively. On 28 October 2003, the European Communities announced that its measures were now in compliance with the rulings, and on 8 November 2004, requested consultations with the US and Canada on the continued suspension of concessions. On 13 January 2005, the European Communities requested the establishment of two panels. On 17 February 2005, the Dispute Settlement Body established two panels to examine the United States' and Canada's continued sanctions against the European Communities' import ban on hormone-treated beef.<sup>22</sup>

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<sup>19</sup> The requests for the establishment of a panel by the US, Canada and Argentina are found in the documents WT/DS291/23, WT/DS292/17, and WT/DS293/17.

<sup>20</sup> The request by the Philippines for the establishment of a panel is found in document WT/DS270/5/Rev.1.

<sup>21</sup> The request by the European Communities for the establishment of a panel is found in document WT/DS287/7.

<sup>22</sup> The requests by the European Communities for the establishment of the panels are found in document WT/DS320 and WT/DS321, respectively.