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**ACTIVITIES OF THE WTO SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN
2012 AND THE FIRST QUARTER OF 2013**

REPORT BY THE WTO SECRETARIAT¹

This report to the 36th 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 2012 and the first quarter of 2013, 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 geographical indications and on dispute settlement cases in the WTO addressing the SPS 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 2012: on 27-28 March, 10-11 July and 18-19 October.²

1.2. The first meeting of 2013 took place on 21-22 March.³ The two remaining meetings for 2013 are scheduled to take place on 27-28 June, and on 17-18 October.

1.3. Ms Miriam Chaves, from Argentina, served as interim Chairperson at the March 2012 meeting. At the July 2012 meeting, Ms Maria Albarece of the Philippines was appointed Chairperson for the 2012-2013 periods.

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 countries 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 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/66, that of the July meeting in G/SPS/R/67 plus corrigenda, and that of the October meeting in G/SPS/R/69.

³ The report is contained in G/SPS/R/70.

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.⁴ Altogether, 350 specific trade concerns were raised between 1995 through mid-May 2013, of which 42% were related to food safety.

1.6. In 2012 and the first quarter of 2013, nine food safety issues were raised for the first time in the SPS Committee:

- India's concerns regarding China's testing methods for food additives (STC# 329);
- China's concerns regarding EU limits of aluminium in flour products (STC# 331);
- India's concern regarding Chinese Taipei's MRLs for roasted and powdered coffee (STC# 334);
- India's concern regarding EU testing of pesticide residues (STC# 335);
- India's concern regarding Japan's restrictions on shrimp due to anti-oxidant residues (STC# 342);
- US concern regarding Indonesia's permits on horticultural products (STC# 343);
- EU concern regarding China's import conditions related to phthalates (STC# 345);
- US concern regarding France's ban on Bisphenol A (STC# 346); and
- Panama's concern regarding Costa Rica's MRLs in veterinary medicines (STC# 349).

1.7. Fifteen issues relating to food safety that had been previously raised were discussed again during 2012 and the first quarter of 2013. In addition to the above, these included:

- Colombia's, Ecuador's and Peru's concerns regarding EU application and modification of the EU Regulation on Novel Foods (STC# 238);
- US concerns regarding Chinese Taipei's restrictions on ractopamine in beef and pork (STC# 275);
- Mexico's concern of China's standard for distilled and integrated alcoholic beverages (STC# 278);
- Brazil's concern regarding South Africa's import restrictions on fresh pork meat (STC# 287);
- China's concern regarding US measures on catfish (STC# 289);
- China and India's concerns regarding the US 2009 Food Safety Enhancement Act (STC# 299);
- India's concern regarding EU MRLs for pesticides (STC# 306);
- India's concern regarding Japan's prohibition of certain food additives (STC# 307);
- EU and US concerns regarding Viet Nam's ban on offals (STC# 314);
- Norway's concern regarding Chinese quarantine and testing procedures for salmon (STC# 319);
- Paraguay's concern regarding Japan's MRLs applied to sesame (STC# 321);
- EU concerns regarding Malaysia import restrictions on pork and pork products (STC# 323);
- Colombia's and Ecuador's concerns regarding EU regulations on cadmium in cocoa (STC# 325); and
- India's concern regarding US default MRLs, limits of determination or limits of quantification on basmati rice (STC# 328).

1.8. WTO Members also used the opportunity of the SPS Committee meetings during 2012 and the first quarter of 2013 to provide other information relating to food safety, including:

⁴ The latest version of this summary can be found in document G/SPS/GEN/204/Rev.13. 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>.

- Australia reported that the use of the Australian Quarantine and Inspection Service (AQIS) brand would be retired in 2013. The change would not affect the legal basis or competent authority under which orders, inspections and certifications were undertaken, nor Australia's requirements related to imported agricultural, food, plant and/or animal products.⁵
- The European Union reported on the case of non-labelled horse meat in meat products, emphasizing that the evidence pointed to an issue of fraudulent labelling and not to a matter of food safety. A coordinated control plan and an enhanced sampling programme had been put in place with extensive DNA tests on beef products and verification of the absence of Phenylbutazone in horse meat.⁶
- The United States reported on the progress of the US Food and Drug Administration's (FDA) implementation of the Food Safety Modernization Act (FSMA). The proposed rule for preventive controls for human food would require food makers to develop a formal plan for preventing their food products from causing foodborne illness. International stakeholders' perspectives on how FDA could best implement FSMA were welcome.⁷

1.2 Transparency

1.9. The SPS information management system (SPS-IMS), made public in June 2007, allows easy access and management of all WTO SPS-related documentation, including more details on the trade concerns raised in the SPS Committee, SPS notifications and information provided by Members. These can be accessed at: <http://spsims.wto.org>.

1.10. The legal obligation of WTO Members is to notify proposed new or modified SPS measures when the measure is still in a draft form and comments from trading partners can be considered, except for emergency situations. While the obligation is to notify measure that deviate from the relevant international standards (including Codex standards), the recommendations of the SPS Committee encourage the notification of all new or modified measures even when these conform to international standards.⁸ Although this recommendation does not change the legal obligations of WTO Members, it provides greater transparency regarding the application of relevant Codex standards.

1.11. Since June 2011, SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). The SPS NSS allows for more accurate and complete notifications, and a substantial reduction in the time required for the WTO to circulate them. Interested WTO Members should request login names and access passwords from the WTO Secretariat. As of May 2013, 50 Members had requested and been given access to the system, and about half of notifications are now submitted on-line.

1.12. A total of 1,192 notifications (1,083 regular and 109 emergencies) of new or proposed SPS measures were submitted to the WTO from January 2012 through mid-May 2013. Among these, 726 regular notifications and 20 emergency notifications identified food safety as the objective of the measure being taken. Of these, 275 of the regular and 5 of the emergency notifications identified a Codex standard as relevant, with 61% and 80% respectively indicating conformity to a Codex standard. Unfortunately, in most of the cases where conformity was not claimed, the deviation from the standard was not described.

1.3 Equivalence

1.13. In July 2004, the SPS Committee completed its work on guidelines on the implementation of Article 4 of the SPS Agreement on equivalence in response to concerns raised by developing countries.⁹ The Decision on Equivalence adopted by the SPS Committee notes, inter alia, the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and requested the further elaboration of specific guidance by

⁵ G/SPS/R/67,70

⁶ G/SPS/R/70

⁷ G/SPS/R/70

⁸ G/SPS/7/Rev.3.

⁹ G/SPS/19/Rev.2.

these organizations to ensure that such recognition is maintained. The Codex secretariat has kept the SPS Committee informed of developments in Codex work relating to equivalence.

1.4 Monitoring the Use of International Standards

1.14. 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, or the lack of a relevant standard.¹⁰ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

1.15. 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 Fourteenth Annual Report was adopted by the Committee on 11 July 2012.¹¹

1.16. At the 2012 July meeting, Brazil presented a document regarding the increase in demand for scientific advice to support food control systems.¹² Argentina, Belize, Canada, Chile, the European Union, and the United States all supported the communication and in particular the crucial role of the scientific advice bodies. Belize emphasized the limited scientific capability of developing countries. The European Union and Chile stressed the importance of seeking further funding for the scientific advice bodies. Codex explained the budgetary resources of WHO and FAO, and highlighted the budgetary problems in scientific advice.

1.17. At the 2012 July meeting, Argentina submitted a proposal to revise the monitoring procedure¹³, which was further discussed at the 2012 October meeting. The proposed modifications to the procedure would enable the Secretariat to include in the annual report the issues that have been raised under the agenda item on specific trade concerns when these related to non-use of international standards or the absence of existing standards, to better reflect the actual importance of the international standards. No consensus has been reached on the proposal by Argentina and the SPS Chairperson encouraged bilateral discussions amongst WTO Members on the subject matter.

1.18. At the 2012 October meeting, the United States encouraged all WTO Members to promote the use of international standards in their national SPS programmes and to actively participate in the on-going work of IPPC, Codex and OIE. Brazil, Canada, Chile and Paraguay also stressed that the international standards-setting bodies (ISSBs) needed to be inclusive to achieve harmonization. By participating in the work of the ISSBs and ascribing to these international standards, Members would contribute to minimizing diverging requirements. Benin, Burkina Faso and Morocco recognized the importance of the standard-setting bodies, and noted the problem faced by developing countries in conducting risk assessments in the absence of standards. An appeal was made to speed up the process of standard-setting, especially where there was a need for specialist / technical knowledge, and to support developing countries in producing local exposure data for conducting risk assessments.

1.19. The representative of Codex indicated that it did not have a specific system of monitoring like the IPPC, but regularly gathered information on how Codex standards were being used, the needs of Member countries and/or why standards were not being used in certain regions. Codex used a regular questionnaire for this monitoring process. The Codex trust fund initially had the objective of ensuring effective participation and addressing the issue of generation of data to ensure risk assessments were based on data gathered throughout the world. The Trust Fund was financing pilot projects relating to food hygiene and food safety as part of the capacity-building on the regional and sometimes national level.

1.5 Technical Assistance

1.20. At each of its meetings, the SPS Committee has solicited information from WTO Members regarding their technical assistance needs and activities.

¹⁰ G/SPS/11/Rev.1.

¹¹ G/SPS/59.

¹² G/SPS/GEN/1165.

¹³ G/SPS/W/268.

1.21. At its March 2013 SPS Committee meeting, the WTO Secretariat presented its report entitled "SPS Technical Assistance and Training Activities", containing detailed information on all SPS-specific technical assistance activities undertaken by the WTO Secretariat from 1 September 1994 to 31 December 2012.¹⁴

1.22. Document G/SPS/GEN/997/Rev.3, circulated in March 2013, provides information on all WTO technical assistance activities in the SPS area planned for 2013, including the Geneva-based advanced course which provides in-depth and hands-on training to government officials. Two regional workshops on the SPS Agreement are scheduled for 2013. National seminars are provided upon request by WTO Members and acceding governments. Further information on SPS activities is available through <http://www.wto.org/sp/ta>.

1.6 Review of the Operation and Implementation of the SPS Agreement

1.23. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. As agreed in its Second Review¹⁵, the Committee is developing a procedure to facilitate the use of ad hoc consultations and negotiations to resolve trade problems. At its 2012 October meeting, the Committee agreed that an electronic "working group" (open to all interested WTO Members), would work with "stewards" to seek compromises on each of the five main issues of disaccord¹⁶. Following discussions at the March 2013 Committee meeting, a further revision of the draft procedure, as developed by the electronic working group and "stewards",¹⁷ will be circulated to Members for consideration at the June SPS Committee meeting.

1.24. Following the Third Review¹⁸, the SPS Committee agreed to prioritize three issues for further consideration: (i) cooperation between the SPS Committee and the Three Sisters; (ii) improving the procedure for monitoring the use of international standards; and (iii) control, inspection and approval procedures (Article 8 and Annex C).

1.25. Members were encouraged to discuss their experiences with control, inspection and approval procedures, and the European Union presented its approach to SPS audits and inspections in third countries.

1.26. In October 2011, the WTO Secretariat organized a Geneva-based workshop on coordination of SPS matters at the national and regional levels. The workshop brought together officials responsible for participation in and implementation of the SPS Agreement, Codex, IPPC and/or OIE for an in-depth discussion, at a technical level, on best practices in coordination at national and regional levels.¹⁹ The workshop addressed recommendations to national governments and regional bodies, and also recommended that the SPS Committee consider developing guidelines for good national coordination and/or a manual of good practices. Also, the SPS Committee formally agreed to a proposal from Canada and Japan to encourage the Three Sisters to undertake joint work on cross-cutting issues, such as, inter alia, certification, inspection, approval procedures and/or risk analysis.²⁰

1.7 Private and Commercial Standards

1.27. Since June 2005, the SPS Committee has discussed the issue of private and commercial standards on a number of occasions. The issue was initially raised by St. Vincent and the Grenadines with regard to EurepGAP (now GlobalGAP) requirements on pesticides used on bananas destined for sale in European markets.

1.28. Informal information sessions have been held in the margins of the SPS Committee meetings and a number of international organizations working on the issue of private standards, including OECD and

¹⁴ G/SPS/GEN/521/Rev.8.

¹⁵ G/SPS/36.

¹⁶ (1) The mandatory/voluntary nature of the procedure; (2) issues of transparency/confidentiality; (3) the role of facilitator; (4) timeframes for the procedure; and (5) relationship with other initiatives in the context of the Doha negotiations.

¹⁷ "Proposed Recommended Procedure Relating to the Implementation of Article 12.2" (G/SPS/W/259/Rev.5).

¹⁸ G/SPS/53.

¹⁹ G/SPS/R/65.

²⁰ G/SPS/58.

UNCTAD, as well as a number of private standardizing groups, including GlobalGAP, have provided information regarding commercial and private standards. WTO Members have raised a number of concerns regarding the trade, development and legal implications of private standards.

1.29. An ad hoc working group identified "Possible Actions for the SPS Committee Regarding SPS-Related Private Standards". At its March 2011 meeting, the Committee adopted five of the actions put forward by the working group. 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.²¹

1.30. Discussions in 2012 and the first quarter of 2013 focused mainly on the development of a working definition of "SPS-related private standards"²², although no consensus has yet been reached. A number of Members are of the view that this issue is not within the mandate of the SPS Committee. Belize reported that every single one of its agricultural export products is affected by SPS-related private standards.

1.31. At its meetings during 2012 and the first quarter of 2013, the SPS Committee also discussed how to implement the other four agreed actions, as well as how to make progress on the seven outstanding proposed actions on which there is no consensus. Several Members shared information on relevant developments and their interactions with the private standard-setting bodies.

Other Relevant WTO Activities

Dispute Settlement

The WTO Dispute Settlement Procedure

2.1. 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.²³ 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.

2.2. 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 OIE, IPPC and Codex, as the standard-setting organizations referenced in the SPS Agreement. The parties to the dispute are consulted in the selection of experts and regarding the information solicited from the experts.

SPS Disputes

2.3. As of May 2013, more than 450 complaints have formally been raised under the WTO's dispute settlement procedures. Of these, 42 alleged violations of the SPS Agreement, and two disputes addressed the SPS Agreement, although it had not been identified in the request for consultations.²⁴ Twenty SPS-related complaints, on 15 issues, have been referred to panels.²⁵ Ten complaints addressed food-safety related issues:

²¹ G/SPS/55.

²² G/SPS/W/265/Rev.2.

²³ 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.

²⁴ WT/DS320 and WT/DS321.

²⁵ 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.

- 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);
- 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).

2.4. 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.

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