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# COMMISSION ON PHYTOSANITARY MEASURES

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**Prepared by the WTO Secretariat**

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## **ACTIVITIES OF THE SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN 2016**

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

This report to the Twelfth Session of the Commission on Phytosanitary Measures (CPM-12) provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2016. It identifies the work of relevance to the CPM and the International Plant Protection Convention (IPPC), including: specific trade concerns; transparency; equivalence; regionalization; monitoring the use of international standards; technical assistance; review of the operation and implementation of the SPS Agreement; and private and commercial standards. The report also includes relevant information on dispute settlement in the WTO and on the new Trade Facilitation Agreement. A separate report is provided regarding 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.<sup>2</sup>

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 (STCs). 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 often 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, WTO Members usually commit 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.<sup>3</sup> Altogether, 416 STCs were raised in the twenty two years between 1995 and the end of 2016, of which 24% were related to plant health.

1.6. It is noteworthy that none of the 13 new specific trade concerns raised for the first time in the SPS Committee in 2016 dealt with phytosanitary issues.

1.7. Four issues relating to plant health that had been previously raised were discussed again during 2016, among which one resolved specific trade concern:

- US high cost of certification for mango exports (STC 373)

This issue was raised for the first time in the SPS Committee in July 2014, when India raised its concerns on the high cost of certification for mango exports to the United States. The issue was raised again in October 2014 as well as in all three 2015 Committee meetings.

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<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 and obligations under the WTO.

<sup>2</sup> 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.

<sup>3</sup> 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>.

In March 2016, India recalled its concerns regarding the high US cost of certification for mango exports and thanked the United States for the bilateral technical discussions aimed at resolving the issue. India highlighted two concerns, (i) increasing the number of facilities for irradiation of mangoes before export, and (ii) the requirement that the irradiation process be carried out in the presence of US certified technical experts only. While India reported that there had been progress in the recognition of additional facilities for irradiation, it stressed the high cost linked to flying in US technical experts. India stated that the same irradiation could be carried out in the presence of trained Indian officials approved by the United States to reduce the cost of certification. India also recalled an alternative option of irradiation on arrival, which proved to be equally costly.

The United States restated that Indian mangoes had been approved for export to the United States in April 2007, with India becoming the first country to ship irradiated commodities to the United States. The United States had worked closely with its counterparts in the Indian government and had provided the Ministry of Agriculture with the necessary documentation and procedures to allow importation of Indian mangoes, subject to irradiation upon arrival in the United States. USDA APHIS plant health experts had productive discussions with their Indian counterparts at a bilateral meeting on 23-24 February 2016. The United States also reported that the re-certification visit to Vashi irradiation facility by the APHIS team had taken place on 25 February 2016. APHIS looked forward to working with India to certify the facility for the start of the mango export season. Until that time, the existing irradiation facility at Nasik was the only facility currently certified to irradiate mangoes for shipment to the United States.

In June 2016, India provided an update on its previously raised concern on the high cost of US certification for mango exports. India reported that a USDA APHIS inspector had visited India in April 2016 in order to approve two additional irradiation facilities. One irradiation facility had been approved by USDA APHIS on 7 April 2016, following which exports of irradiated mangos from the facility to the United States had commenced. The certification of the second facility had been approved on 22 June 2016, and the first consignment of irradiated mangoes had been exported to the United States on 23 June 2016. India recognized the substantial progress made on the issue and thanked the United States for approving the two facilities for mango exports. India further stated that a meeting had been held between the United States and Indian technical authorities in February 2016, where it had been agreed to develop a proposed work plan for irradiating mangoes upon arrival in the United States. India noted that it was currently in the process of putting together the technical details requested by the US authorities and further requested the United States to continue its cooperation on this issue.

The United States recalled that Indian mangoes had been exported to the United States since April 2007, and that this trade had been facilitated through a bilateral arrangement for pre clearance based on irradiation in India. The United States also noted that the USDA was in the process of certifying two new irradiation facilities, which would be fully up and running by the end of 2016. The United States highlighted that its requirements for inspection and irradiation of mangoes from India were fully consistent with its obligations under the SPS agreement, and that its experts had closely worked with India on this trade facilitating bilateral arrangement. The United States further noted that subsequent discussions on this matter in the Committee would not be appropriate given the progress registered.

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- EU ban on mangoes and certain vegetables from India (STC 374)

This issue was raised for the first time in the SPS Committee in July 2014, when India noted that, as of 1 May 2014, the European Union had banned the import of mangoes and four vegetables from India, on the grounds of the increasing number of interceptions of harmful pests and organisms in the consignments exported to the European Union. The issue was raised again in October 2014, as well as in all three 2015 Committee meetings.

In March 2016, India recalled its concern and noted that while the ban on mangoes had been lifted in February 2015, the ban on vegetables had been extended to December 2016. India requested the European Union to share its findings of the official assessment visit and the gaps in the control system which led to the extension of the ban.

The European Union confirmed that its measures had been introduced in April 2014 due to significant shortcomings detected during previous audits of the European Commission and a high number of interceptions to prevent the introduction of harmful organisms. The ban on mangoes had been lifted in February 2015 and imports of mangoes were allowed if the Indian competent authorities declared the measures taken to ensure freedom from harmful organisms. With regard to four vegetables (taro leaves, bitter gourd, eggplant and snake gourd), the measures remained in place and had been extended until the end of December 2016 because the number of interceptions had remained significantly high. These high numbers raised very serious concerns about the effectiveness of the Indian phytosanitary export/control system, in relation not only to fresh fruits and vegetables but wood packaging materials as well. The European Union indicated that it maintained regular information exchanges with the Indian authorities which had been supported by technical assistance activities.

In June 2016, India recalled its concern regarding the EU ban on four types of vegetables, and noted that the number of interceptions by the European Union on exported fruits and vegetables had decreased from 33 to nine. India emphasized that its implementation of various control measures had led to the decrease in the number of interceptions, which further warranted the European Union's consideration of removing the ban on the four vegetable exports. India also indicated that there had been an improvement in the exporter certification system implemented by its NPPO, which had adopted the sampling procedures as per international SPS standards ISPM 7, ISPM 23 and ISPM 31. With reference to these developments, India requested the European Union to review the ban imposed on the four vegetables.

The European Union confirmed that its measures had been put in place due to significant shortcomings identified in the control systems in India during previous audits conducted by the European Commission. The European Union indicated that it maintained regular information exchanges with the Indian authorities which had been supported by technical assistance activities to improve the effectiveness of India's control systems. The European Union further acknowledged the recent decrease in the number of interceptions and reassured India that the situation would be reassessed after the summer of 2016, following which a decision would be taken on the possible revision of the current emergency measures. The European Union remained open to work cooperatively with India to find a solution to this concern.

- Measures on imports of hibiscus flowers (STC 386) - resolved

This issue was raised for the first time in the SPS Committee in March 2015, when Nigeria expressed concerns on certain verification procedures being used by Mexico on imported hibiscus flowers from Nigeria. The issue was raised again in October 2015.

In March 2016, Nigeria reported that this concern had been resolved. Nigeria expressed its gratitude to Mexico, the Secretariat and to the SPS Committee for the roles played in resolving the issue.

Mexico confirmed the resolution and that it was pleased to have successfully resolved the issue thanks to the commitment of the authorities in both countries. Mexico also highlighted the resolution of the issue as an example of the SPS Committee's effective role in settling trade concerns.

- Costa Rica's suspension of the issuing of phytosanitary import certificates for avocados (STC 394)

This issue was raised for the first time in the SPS Committee in July 2015, when Mexico raised concerns regarding the emergency measure taken by Costa Rica's phytosanitary service in April 2015 temporarily suspending the issuing of import certificates for avocados of various origins. The issue was raised again in October 2015.

In March 2016, Mexico reiterated its concern regarding Costa Rica's suspension of the issuing of phytosanitary certificates for avocado imports. Mexico considered the measure to be in violation of fundamental principles of technical and scientific justification based on international standards, most-favoured nation, proportionality and transparency, thus violating the SPS Agreement and the SPS Chapter of NAFTA. Mexico had called for consultations with all relevant bodies under the FTA that Costa Rica and Mexico have signed. Mexico described the measure's significant negative impact on its avocado exports, and asked Costa Rica to immediately withdraw its measure in order to resume avocado trade between the two countries. In addition, Mexico requested that Costa Rica (i) provide a prompt written response to the communications and questions sent by Mexico, and (ii) accept Mexico's measures as sufficient to ensure that avocado sunblotch viroid would not spread to Costa Rica.

The United States echoed Mexico's concerns and asked Costa Rica to take steps to restart issuing phytosanitary import permits, since the suspension was not consistent with international standards and guidelines nor scientifically justified. The United States expressed concerns regarding other agricultural trade issues with Costa Rica, including those affecting rice, onions, and potatoes. The United States reported that some importers had been denied import permits for onions despite the absence of phytosanitary restrictions and that those importers had expressed a willingness to pay out-of-quota duties.

Ghana stated that Costa Rica had notified the suspension of import permits from seven other countries, including Ghana. Ghana requested to be removed from that list immediately, as sunblotch viroid was not present in Ghana. Guatemala and Venezuela shared Mexico's concern and indicated that they would follow the issue closely. Venezuela noted that, like Ghana, it was also one of the Members affected by the measure.

Costa Rica recalled that the State Phytosanitary Service (SFE) had suspended the issuance of import permits for Mexican avocados because of the confirmed presence of the avocado sunblotch viroid. Costa Rica explained that since the measure had been adopted provisionally, based on the available scientific data, it had been notified as an emergency measure on 5 May 2015 in G/SPS/N/CRI/160. The SFE had quickly evaluated the scientific evidence, undertaking a pest risk analysis (PRA) which had been notified to the WTO on 13 July 2015 as G/SPS/N/CRI/162, establishing a period of 60 days for comments. Further, the comments of Mexico had been studied by the national authorities. On 12 October 2015, the relevant authorities of both countries had met in San Jose with the aim of reviewing Mexico's concerns. During the meeting, Costa Rica had indicated that the measures were based on the recognized rights within the SPS Agreement to protect the national phytosanitary status, based on scientific evidence. Costa Rica reported that it sent Mexico the most recent version of the PRA, providing a new opportunity to comment. In addition, five bilateral meetings had taken place involving a range of specialists from both countries and Costa Rica had rigorously responded to suggestions made by Mexican authorities. In December 2015, Costa Rica had undertaken another assessment, which found Costa Rica free of the pest. Costa Rica indicated that the phytosanitary authorities were working on the notification of the definitive measures which would apply to avocado imports from Mexico. Costa Rica expressed its willingness to engage in open dialogue with the aim of responding to questions and technical concerns related to this measure with Mexico and other trading partners.

In June 2016, Mexico reiterated its concern regarding Costa Rica's suspension of the issuing of phytosanitary certificates for avocado imports originating from Mexico and noted its preference to promote dialogue between authorities in various consultative formats. However, those efforts had

not been successful as no response had been received from Costa Rican authorities. Mexico indicated that its avocado exports continued to be significantly affected by the restrictions imposed by Costa Rica and further reiterated its request for Costa Rica to immediately withdraw its measure in order to resume avocado trade between the two countries.

The United States shared Mexico's concerns and urged Costa Rica to take steps to recommence issuing phytosanitary import permits, since the suspension was not consistent with international standards and guidelines, nor scientifically justified. The United States also expressed concerns regarding other agricultural trade issues with Costa Rica, including those affecting rice, onions and potatoes. While recent progress had been made with respect to potatoes, some importers continued to be denied import permits for onions, despite the absence of phytosanitary restrictions.

Guatemala supported Mexico's concerns and expressed a systemic interest, given the measure's lack of consistency with international rules, as well as the lack of clarity regarding its scientific justification.

Costa Rica explained that its state phytosanitary service (SFE) had proposed the measure in order to minimize the risk of introduction of the avocado sunblotch viroid. SFE had continued its analysis of collected scientific evidence with the aim of proposing measures that guaranteed its appropriate level of protection, while at the same time being least trade restrictive. Costa Rica reiterated its willingness and interest to continue bilateral technical discussions in order to clarify any doubts regarding the applied measure.

In October 2016, Mexico reiterated its concern and indicated that its avocado exports continued to be significantly affected by the restrictions imposed by Costa Rica and renewed its request for Costa Rica to immediately withdraw its measure in order to resume avocado trade between the two countries.

The United States shared Mexico's concerns and asked Costa Rica to take steps to recommence issuing phytosanitary import permits since the suspension was not consistent with international standards and guidelines, nor scientifically justified. Guatemala supported Mexico's concerns and expressed a systemic interest in this issue.

Costa Rica recalled that the suspension concerned measures proposed to minimize the risk of introduction of the avocado sun blotch viroid. A pest risk analysis (PRA) had been notified in July 2015 (SPS/N/CRI/162), providing 60 days for comments. Costa Rica indicated that in November 2015 it had circulated a revised PRA, taking into account some of the comments that it had received during the comment period. However, Mexican authorities had indicated that they disagreed with the findings and measures established by this revised PRA. Costa Rica explained that it had therefore broadened the review of the PRA, including an extensive work at the laboratory level. Costa Rica would notify the final PRA and the definitive measures once this work was completed. Costa Rica reaffirmed its commitment to find a mutually satisfactory solution.

1.8. WTO Members also used the opportunity of the SPS Committee meetings during 2016 to provide other information relating to plant protection measures, including:

- Ecuador informed the Committee that a new format for phytosanitary export certificates had entered into force on 4 January 2016 as outlined in G/SPS/GEN/1467. Phytosanitary certificates issued in the old format would remain in effect until 10 March 2016, after which date only new-format phytosanitary certificates would be valid. Ecuador encouraged Members to become familiar with the new format and to submit any enquiries to [relaciones.internacionales@agrocalidad.gob.ec](mailto:relaciones.internacionales@agrocalidad.gob.ec).
- Indonesia extended its appreciation to Chile's NPPO for its support in facilitating a field verification visit concerning the status of Mediterranean fruit fly and acknowledged Chilean eradication efforts. Indonesia had been declared free of Mediterranean fruit fly and therefore was taking precautionary measures for imports. Chile thanked Indonesia for providing information on this issue.

- Turkey informed the Committee of its integrated pest management programmes which were being implemented for various plant products. Turkey noted that it had published more than 500 plant protection technical instructions, over 400 standard and non-standard test methods of plant protection products, all of which had been distributed to its stakeholders. Priority had been placed on the use of alternative methods for chemical control, such as biological control, biotechnical methods, as well as mechanical and physical controls. As a result, Turkey had significantly reduced its use of pesticides, through this environment-friendly approach, and had experienced successful results with respect to controlling certain pests and diseases. Finally, Turkey expressed its commitment to continue the balanced use of all control techniques, in order to protect biological diversity, human health and the environment.
- Zambia acknowledged the technical and financial support that had been provided by all cooperating and development partner organisations in plant health, and in particular, the African Unions and AU-IBAR in supporting its participation in the Committee meeting. Zambia reported that its NPPO had launched its website (<http://www.pqpsz.gov.zm/>). Through this website, all stakeholders would be able to access phytosanitary information and download any plant health application forms related to agriculture and trade.

## 1.2 Transparency

1.9. The SPS Information Management System (SPS IMS) allows easy access and management of all WTO SPS-related documentation.<sup>4</sup>

1.10. The legal obligation of WTO Members is to notify new or modified SPS measures when these deviate from the relevant international standards, including International Standards for Phytosanitary Measures (ISPMs). The recommendations of the SPS Committee, however, now encourage the notification of all new or modified measures even when these conform to international standards.<sup>5</sup> Although this recommendation does not change the legal obligations of WTO Members, it may enhance transparency regarding the application of IPPC's ISPMs.

1.11. A total of 1,032 notifications, that is 935 proposed new or revised SPS measures and 97 emergency ones, were submitted to the WTO in 2016. Among these, 174 regular notifications and 9 emergency notifications identified plant protection as the objective of the measure. Of these, 137 of the regular and all of the emergency notifications identified an IPPC standard as relevant, with 99% and 100% respectively indicating conformity to an IPPC standard.

1.12. SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). 68% of notifications submitted during 2016 were submitted online, 11 percentage points higher than in 2015.

## 1.3 Equivalence

1.13. The guidelines on the implementation of Article 4 of the SPS Agreement on equivalence<sup>6</sup> notes, *inter alia*, the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and encourages the further elaboration of specific guidance by these organizations. No contributions were made by any of the standard-setting organizations in 2016 under this agenda item.

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<sup>4</sup> See <http://spsims.wto.org>.

<sup>5</sup> G/SPS/7/Rev.3.

<sup>6</sup> G/SPS/19/Rev.2.

## 1.4 Regionalization

1.14. Article 6 of the SPS Agreement requires that measures take into account pest- or disease-free areas or areas of low pest or disease prevalence. This concept is frequently referred to as "regionalization". Guidelines on regionalization<sup>7</sup> adopted by the SPS Committee identify the type of information normally needed for the recognition of pest- or disease-free areas or areas of low pest or disease prevalence, as well as typical administrative steps in the recognition process. The Committee agreed to monitor the implementation of Article 6, on the basis of information provided by WTO Members.

1.15. The WTO Secretariat prepared a report on the implementation of Article 6, covering the period from 1 April 2015 until 31 March 2016, based on information provided by WTO Members through notification and at SPS Committee meetings.<sup>8</sup> The report summarized (i) requests for recognition of pest- or disease-free areas or areas of low pest or disease prevalence; (ii) determinations on recognition of regionalization; and (iii) Members' experiences in the implementation of Article 6 and the provision of relevant background information by Members on their decisions to other interested Members.

## 1.5 Monitoring the Use of International Standards

1.16. The procedure adopted by the SPS Committee to monitor the use of international standards invites WTO Members to identify specific trade problems they have experienced due to the use or non-use of relevant international standards, guidelines or recommendations.<sup>9</sup> These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting organization.

1.17. 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.<sup>10</sup>

1.18. During the March 2016 Committee meeting, the United States raised concerns regarding Members' use of phytosanitary certificate requirements for processed products, as set out in ISPM 32 on 'Categorization of Commodities according to their Pest Risk'. This standard categorized products into four categories, whereby category 1 products were defined as commodities having been processed to the point where they did not remain capable of being infested with quarantine pests. The United States explained that in such cases, no phytosanitary measures should be required and that such a commodity should not be deemed to require phytosanitary certification. The United States further noted that Annex 1 to ISPM 32 provided examples of processes and the resultant commodities that could meet the criteria for category 1, e.g. cooking, fermentation, etc. Furthermore, Appendix 2 provided some illustrative examples of commodities meeting the criteria for category 1, such as cotton lint, flour and industrial products made of cereal, potato starch and many more. The United States expressed its concern that some Members continued to require phytosanitary certification for products that had been sufficiently processed to mitigate any pest risk, and that this trend had been increasing rather than diminishing in recent years. The United States urged those Members to employ a risk-based approach and to act consistently with the guidance of ISPM 32, by not imposing any phytosanitary measures or requiring phytosanitary certification for such products.

1.19. Canada supported the concerns of the United States and encouraged Members to use international standards when establishing phytosanitary measures, and to support the principles set out in ISPM 32. Canada highlighted that this standard encouraged Members to take into account factors such as the level of processing of the products in considering their categorization. Canada further indicated its appreciation to the IPPC for hosting a training session on ISPM 32 in April 2016, prior to the 11th Session of the CPM.

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<sup>7</sup> G/SPS/48.

<sup>8</sup> G/SPS/GEN/1491.

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

<sup>10</sup> G/SPS/GEN/1490.



1.20. The IPPC expressed its appreciation to the United States and Canada for raising the issue of ISPMs and urged Members to contact the IPPC should they have any queries related to IPPC standards or their interpretation. The IPPC also indicated its continuous efforts in capacity building activities to assist developing countries in implementing and adhering to these standards.

1.21. During the March 2016 Committee meeting, Senegal also raised concerns regarding the provisions contained in ISPM 13 on notifications of non-compliance, noting that non-conformity in relation to emergency actions was not well documented by Members. Senegal observed that ISPM 13 required the importing party to deliver a range of documentation, in the event of destruction, to the relevant competent authority. Senegal highlighted that this issue mainly concerned its exports of plant and fishery products to the Russian Federation and the European Union. Senegal requested the Russian Federation to review the requirements for notifying non-conformity and to further provide information in this regard.

1.22. Burkina Faso supported Senegal's concern with regard to the use of the guidelines for the notifications of non-compliance in emergency cases. Burkina Faso cited the example of the destruction of its mangoes exported to the European Union and further requested information on the implementation of ISPM 13 in such cases, so as to understand the problems faced by economic operators.

## **1.6 Technical Assistance**

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

1.24. On 24 and 25 October 2016, the WTO organized a workshop on pesticide maximum residue levels in Geneva. The workshop was open to all Members, Observer governments and organizations with observer status in the SPS Committee. Various funding arrangements made it possible for a large number of developing country and least developed country (LDC) participants to attend the workshop. Approximately 180 participants looked at pesticide MRLs from different angles, including the Codex system for setting MRLs, different national frameworks and regional initiatives. They also discussed difficulties in establishing MRLs for so-called "minor use crops" and the impact of default MRLs (often set at limits of detection). The workshop sparked proposals for further work including on increased transparency and harmonization; and how to ensure the best use of the limited resources available for MRL development and reduce duplication of work.

1.25. The programme<sup>11</sup> and presentations of the workshop are available from the "Events, workshops and training" section under the WTO SPS Gateway ([http://www.wto.org/english/tratop\\_e/sps\\_e/events\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/events_e.htm)).

1.26. At the March 2017 SPS Committee meeting, the WTO Secretariat will present 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 1994 to the end of 2016.<sup>12</sup>

1.27. Document G/SPS/GEN/997/Rev.7, circulated on 27 February 2017, provides information on all WTO technical assistance activities in the SPS area planned for 2017, including the Geneva-based advanced course which provides in-depth and hands-on training to government officials. The WTO Secretariat will schedule regional SPS workshops in 2017, upon request from regional organizations. National seminars are provided upon request by WTO Members and acceding governments. Further information on SPS activities is available through <http://www.wto.org/sps/ta>.

## **1.7 Review of the Operation and Implementation of the SPS Agreement**

1.28. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years, including proposals submitted by Members for possible areas of

<sup>11</sup> G/SPS/GEN/1514.

<sup>12</sup> G/SPS/GEN/521/Rev.12.

future work. Since October 2014, the Committee has been at an impasse in its adoption of the Report of the Fourth Review of the Operation and Implementation of the SPS Agreement<sup>13</sup>. A recommendation regarding the Committee's future work on private standards has been a point of contention in the adoption of the Review Report and, although following several initiatives by the Chair, several Members worked together to find a solution, they could not bridge the remaining differences. The Committee is now considering options on how to move beyond the impasse on the Review.

## **1.8 Private and Commercial Standards**

1.29. Since June 2005, the SPS Committee has discussed the issue of private and commercial standards, and several information sessions have been held in the margins of the SPS Committee meetings. WTO Members have raised a number of concerns regarding the trade, development and legal implications of private standards. In March 2011, the Committee adopted five actions to address some of the identified concerns.<sup>14</sup> These actions relate to defining the scope of the discussions on these private standards and promoting information exchange among various actors in this area, including the SPS Committee, the relevant international standard-setting organizations, WTO Members, entities involved in SPS-related private standards, and the WTO Secretariat.

1.30. In October 2013, the SPS Committee formed an electronic working group (e-WG) focussed on developing a working definition of an SPS-related private standard, with China and New Zealand as "co-stewards". In 2014, the co-stewards circulated two reports on the work of the e-WG<sup>15</sup>, but no consensus was reached by the Committee on a working definition. In March 2015, the co-stewards presented their latest report on the work of the e-WG.<sup>16</sup> They noted that the e-WG, while very close, had not been able to reach consensus on the working definition and therefore the SPS Committee agreed that the e-WG take a cooling off period.

1.31. In an effort to advance the work of the Committee on the Fourth Review and on private standards, the Chair tabled in October 2015 a package on SPS-related private standards that attempts to break the Committee's deadlock. The package contains a draft working definition of the term "SPS-related private standard", recommendations for inclusion in the Report of the Fourth Review, and three future actions for the Committee with regards to private standards. The hope was that the package would allow for trade-offs and make it easier to find a solution. Several consultations took place in 2016, with two groups of Members also discussing the Report on the Fourth Review and the recommendations for future work on SPS-related private standards contained therein. However, the Committee did not make any further progress on text for the outstanding recommendations on private standards. The Committee was also split on a new proposal from China to develop guidelines on private standards. Private standards remain a growing concern among developing countries, many of which urged continued efforts to find a compromise.

## **2 OTHER RELEVANT WTO ACTIVITIES**

### **2.1 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.<sup>17</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

<sup>13</sup> G/SPS/W/280/Rev.2.

<sup>14</sup> G/SPS/55.

<sup>15</sup> G/SPS/W/276 and G/SPS/W/281.

<sup>16</sup> G/SPS/W/283.

<sup>17</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).

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 Codex, IPPC, and OIE standard-setting bodies 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 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.

2.4. Three panel reports have concerned plant pests and quarantine requirements: (i) the United States complaint about Japan's requirement for testing each variety of fruit for efficacy of treatment against codling moth (*Japan-Agricultural Products*)<sup>18</sup>; (ii) the United States' complaint about Japan's set of requirements on apples imported from the United States relating to fire blight (*Japan-Apples*)<sup>19</sup>; and (iii) New Zealand's complaint against Australia's restrictions on apples (*Australia-Apples*).<sup>20</sup>

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

## **2.2 Trade Facilitation**

2.6. At the WTO's 9th Ministerial Conference in Bali, Indonesia in December 2013, Members concluded negotiations of the Trade Facilitation (TF) Agreement.<sup>21</sup> Trade facilitation, which in a nutshell could be described as simplification of trade procedures in order to move goods in cross-border trade more efficiently, has been a topic of discussion since the WTO's Singapore Ministerial Conference in December 1996. After several years of exploratory work, WTO Members launched negotiations on trade facilitation in July 2004.

2.7. 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 Amendment<sup>22</sup> to insert the new Agreement into Annex 1A of the WTO Agreement. The TF Agreement has 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.<sup>23</sup> The TF Agreement is the first multilateral trade deal delivered by the WTO since its creation and represents a major breakthrough in the history of the organization.

2.8. 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.

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<sup>18</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>19</sup> The report of the panel is contained in document WT/DS245/R. The Appellate Body report is contained in document WT/DS245/AB/R.

<sup>20</sup> The report of the panel is contained in document WT/DS367/R. The Appellate Body report is contained in document WT/DS367/AB/R.

<sup>21</sup> WT/MIN(13)/36, WT/L/911.

<sup>22</sup> WT/L/940.

<sup>23</sup> WT/MIN(13)/36, WT/L/911, paragraph 2.

2.9. 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.<sup>24</sup>

2.10. In July 2014, the WTO announced the launch of the Trade Facilitation Agreement Facility, which will assist developing and least-developed country Members in implementing the WTO's TF Agreement. The Facility became operational in November 2014.

2.11. 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 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.

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<sup>24</sup> Developing and LDC Members are to designate all the substantive provisions in three categories: Category A, which they can implement upon entry into force of the Agreement; Category B, which they can implement only after a transitional period; and Category C, which they can implement only after a transitional period and capacity building.