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**Written reports from relevant international organizations - Activities of
the SPS Committee and other relevant WTO activities in 2018**

Agenda item 14.3

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ACTIVITIES OF THE SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN 2018

REPORT BY THE WTO SECRETARIAT¹

This report to the fourteenth Session of the Commission on Phytosanitary Measures (CPM) provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2018. 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 2018: on 1-2 March, 12-13 July and 1-2 November.²

1.2. The Committee agreed to the following tentative calendar of regular meetings for 2019: 21-22 March, 18-19 July, and 7-8 November.

1.3. Mr Marcial Espínola of Paraguay served as interim Chairperson at the March 2018 meeting. At the July 2018 meeting, Ms Noncedo Vutula of South Africa was appointed Chairperson for the 2018-2019 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.³ Altogether, 452 STCs were raised in the twenty-four years between 1995 and the end of 2018, of which 24% were related to plant health.

1.6. Only one of the 18 new specific trade concerns raised for the first time in the SPS Committee in 2018 dealt with phytosanitary issues:

- New Zealand's draft import health standard for vehicles, machinery and equipment (STC 440)

In July 2018, Japan raised a concern regarding New Zealand's Import Health Standard for Vehicles, Machinery and Equipment from Japan, notified in document G/SPS/N/NZL/570/Add.1 on 30 May 2018. Japan noted that only nine days had been granted to provide comments and 93 days between the notification and its entry into force. Approximately 300,000 new and used vehicles and

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 and obligations under the WTO.

² The report of the March meeting is contained in G/SPS/R/90 plus corrigendum, that of the July meeting in G/SPS/R/92/Rev.1, and that of the November meeting in G/SPS/R/93.

³ The latest version of this summary will be circulated in document G/SPS/GEN/204/Rev.19. 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>.

machinery were exported to New Zealand every year. Satisfying the new requirements implied extensive costs and efforts and, thus, also sufficient time to prepare. Japan expressed appreciation to New Zealand's efforts to extend the deadline for comments (up to 33 days). However, Japan regretted that its request for the extension up to six months of the entry into force had not been accepted. Japan argued that New Zealand's measures should be based on scientific principles in accordance with the SPS Agreement, and assumed that the basis of the new measures proposed by New Zealand referred to the report "Risk analysis of *Halyomorpha halys* (brown marmorated stink bug) on all pathways" issued by New Zealand in November 2012. However, Japan noted that the mentioned report did not provide any explicit scientific evidence to justify the new measures on new vehicles and machinery imported from Japan. In addition, Japan recalled that SPS measures should not arbitrarily or unjustifiably discriminate among Members. Whereas fumigation or heat treatments on used vehicles and machinery from Japan would be mandatory from 1 September to 30 April every year; they would not be mandatory for products from the United States or Italy. Finally, Japan requested that New Zealand provide at least 60 days for comments, and to ensure at least six months between the notification and the entry into force of the measure.

New Zealand noted that the notification mentioned by Japan was an addendum to the previous notification which had been notified in December 2017, providing 60 days for comments. New Zealand acknowledged Japan's comments and emphasised the significant risk to New Zealand, which led to measures being taken to ensure safe trade, while adhering to all SPS Agreement obligations. New Zealand added that a technical meeting in Tokyo as well as bilateral meetings on the margins of the current meeting had been held on this issue.

In November 2018, Japan reiterated its concern on New Zealand's SPS measures for vehicles, machinery and equipment from Japan notified on 30 May 2018. Japan recalled that a specific trade concern had been raised at the July 2018 Committee meeting, stressing that measures implemented by New Zealand should be based on sufficient scientific evidence, should not arbitrarily discriminate among Members, and should ensure sufficient time for comments. Despite the concern raised in July 2018, the new measures had entered into force on 1 September 2018. Japan highlighted that the measures put in place by New Zealand lacked scientific justification. Furthermore, the time-period between the notification and the entry into force of the measure had been insufficient. Japan encouraged New Zealand to base its measures on scientific principles, in accordance with Article 2.2 of the SPS Agreement, and reported that the scientific evidence provided by New Zealand had not included clarification on: (i) detection data of *Halyomorpha halys* (brown marmorated stink bug) from consignments, especially machinery exported to New Zealand from Japan; (ii) analysis of likelihood based on effective accumulated temperature on the introduction and establishment of *Halyomorpha halys* in New Zealand; and (iii) the rationale to establish on 1 September 2018 as entry into force of the regulation. Japan urged New Zealand to clarify these points and review the existing pest risk analysis. Japan also reminded New Zealand that SPS measures should not arbitrarily or unjustifiably discriminate among Members where identical or similar conditions prevailed. Finally, Japan highlighted that New Zealand had requested heat or fumigation treatment of used vehicles and used machinery for a certain period of time. However, Japan noted that this requirement had not been mandatory for other countries.

New Zealand considered the brown marmorated stink bug (BMSB) a very serious pest with potentially significant implications on agriculture, aquaculture, and New Zealand's environment. New Zealand underlined that BMSB had been intercepted in vehicles and machinery arriving from Japan, and noted that there were very limited options to manage BMSB. New Zealand was of the view that the measures put in place were consistent with SPS principles and New Zealand's appropriate level of protection. In addition, New Zealand expressed its appreciation for the collaborative work with Japan and hoped to continue to work together in resolving this matter.

1.2 Other information

1.7. WTO Members also used the opportunity of the SPS Committee meetings during 2018 to provide other information relating to plant protection measures and/or technical assistance received, including:

- Belize informed Members that it had attended a workshop on regional pest risk analysis for the khapra beetle (*Trogoderma granarium*) held in Veracruz, Mexico on 25-26 June 2018. The workshop was followed by an epidemiological simulation exercise which had been conducted in and near the Port of Veracruz (27-29 June 2018). Belize thanked OIRSA for sponsoring its

participation in both events which was important in trying to keep the OIRSA region free from the pest.

- The European Union provided an update on the new Plant Health Regulation (EU) No 2016/2031, applicable as of December 2019. The European Union had previously reported to the Committee about this Regulation in March 2017 and circulated document G/SPS/GEN/1541 with further information. The European Union informed the Committee of the on-going developments of implementing measures in two areas: high-risk plants and phytosanitary certificates. Imports into the European Union of plants which showed an unacceptable level of risk following a preliminary risk assessment would require a full risk assessment. Countries interested in exporting high-risk plants to the European Union would have to submit a dossier following the guidance that was being developed by the European Food Safety Authority (EFSA). The Regulation established that all plants imported into the European Union had to be accompanied by a phytosanitary certificate and provided for possible derogations for low-risk commodities. The list of high-risk plants and low-risk commodities would be included in a single legal act. The deadline for the adoption of implementing acts was 14 December 2018, and while discussions with EU member States continued, the European Union would undertake a four-week public consultation. After this consultation, the single act would be notified to the SPS Committee with a comment period. Finally, the European Union would conduct a meeting open to all interested trading partners in autumn in Brussels. The European Union invited Members to visit the EU website on Better Regulation. In response to a question, the European Union further explained that the feedback mechanism and public consultation was part of EU good regulatory practice and that comments would be duly considered by the regulators. In terms of sequencing, the public consultation would take place first and, once the comments had been considered, there would be a second opportunity for comments in the context of the notification under the SPS Agreement.
- Madagascar provided information on the technical assistance received from the European Union for compliance with its new SPS regulations. In December 2017, a COLEACP mission in Madagascar had launched the new EU programme for ACP countries known as Fit for Market, which aimed to strengthen competitiveness and sustainability in the horticulture sector. Information sessions were organized for exporting companies and competent authorities on the need to comply with the new EU Regulation No. 2016/2031. As part of the implementation of the National Indicative Programme (NIP), under the 11th European Development Fund (EDF), more targeted technical assistance activities were planned in the food safety, animal and plant health areas.
- Nigeria acknowledged the technical assistance provided by the Secretariat to Members, and highlighted the SPS-related challenges faced in its vegetable exports to the European Union and hibiscus exports to Mexico, which had resulted in a significant loss of jobs for local farmers. Nigeria requested assistance in the areas of processing, pack houses and training of local farmers, and noted the need for more support to be provided to Nigeria and other developing countries.
- Nigeria further informed Members that technical assistance had been received from UNIDO, with EU-funded support, to undertake activities leading to the identification of all outstanding SPS related regulations for notification. Nigeria indicated the need to establish a SPS-TBT notification system in order to avoid delays in submitting notifications to the WTO Secretariat, which would also increase the efficiency of the NNA and NEP. Nigeria acknowledged AU-IBAR's support which had facilitated Nigeria's participation in the SPS Committee and USDA's support in the review of the Nigerian Food Safety Policy. Nigeria further encouraged donors to provide more support to Nigeria and other African Members in need of capacity building.
- Senegal reported on the establishment of a national system for phytosanitary risk analysis, which grouped its NPPO, research institutes, universities and other related organisms. Skilled centres had been identified and priority sectors had been targeted to carry out detailed risk assessments to respond to market requirements and to bring the country into line with new legislation in the European Union, Senegal's main produce market. Senegal further shared that the European Union had requested ECOWAS countries to implement corrective measures in the mango sector, given fruit fly infestations and the non-conformity notifications received from EU markets. Senegal had therefore introduced new provisions and revised its inspection and certification procedure manual, which would be available on its new trade information portal, in accordance with obligations arising from the Trade Facilitation Agreement. All relevant

information, in particular with regard to regulatory texts and import and export procedures as well as procedures for the transit of goods, could be found in <https://senegalcommerce.gouv.sn/>.

- Senegal noted the burdensome requirements of the EU phytosanitary legislation, in particular Regulation (EU) No. 2016/2031 and Directive (EU) No. 2017/1279, as well as Implementing Decision (EU) No. 2018/638 with regards to access to certain agricultural products, in terms of risk assessment and post-harvest treatment for the monitoring of certain quarantine pests. Senegal noted that while countries undertook steps to strengthen their pest control activities to meet the EU phytosanitary requirements, the European Union also had obligations under Article 9 of the SPS Agreement. In particular, Senegal indicated that where substantial investment was needed to conform to EU requirements, the European Union should consider granting technical assistance to Senegal in order to facilitate the preservation or growth in market access for the targeted products. The main sectors concerned were mango (for *Bactrocera dorsalis*); sweet corn (for *Spodoptera frugiperda*); and the solanaceous and capsicum family (for *Keiferia lycopersicella* and *Thaumatotibia leucotreta*). Senegal called for the support of EU partners (such as COLEACP, among others) in providing infrastructure for post-harvest activities and increasing technical capacity to align products with EU requirements.
- Senegal expressed its satisfaction with the positive developments in the market access request for agricultural products to Malaysia. In June 2018, the Ministry of Agriculture had undertaken a mission to Kuala Lumpur to finalize the SPS market access document for agricultural products (peanuts, processed mango and cashew nuts). Further to these meetings, Senegal noted Malaysia's commitment to finalize Senegal's market access request for peanuts within six months, its readiness to take on board a market access request for processed mango and cashew nuts, and its willingness to invite Senegal's Ministry of Agriculture and Rural Infrastructure to participate in the MAHA Agriculture Show (22 November – 2 December 2018). Malaysia thanked Senegal for the submission of additional information on peanuts. Malaysia also recalled that the Department of Agriculture was processing Senegal's application for market access and that the pest risk analysis would be completed in due course. Malaysia looked forward to continued co-operation with Senegal.
- Zambia announced that its phytosanitary certificate had been changed in order to enhance various security features. Zambia further indicated that it had informed most of its trading partners of the new features of its revised phytosanitary certificate.

1.2.1 Fall Armyworm

1.8. WTO Members and observers also used the opportunity of the SPS Committee meetings during 2018 to inform on the fall army worm situation, including:

- The African Union (AU) reported on its activities, detailed in document G/SPS/GEN/1629. The African Union informed the Committee that the Executive Council of the African Union Heads of States had considered the challenges presented by fall armyworm, and that an emergency fund was being established for this topic. The African Union Commission and FAO had also signed a Technical Cooperation Project in October 2017, focused on the reinforcement of plant health governance in Africa through coordinated management of fall armyworm. Other awareness activities related to fall armyworm had been undertaken, such as within the context of the 14th Comprehensive Africa Agriculture Development Programme Partnership Platform (CAADP), held in Gabon.
- Brazil underscored the serious nature of fall armyworm and its impact in Africa. Brazil highlighted its experience in dealing with the problem, its on-going technical support to African countries to combat fall army worm through an integrated pest approach and the successful results obtained. Brazil indicated that expanding implementation activities was being considered, together with USAID and FAO. Brazil further emphasized that this initiative was a good example of the existing tools and technologies which could be used to address SPS issues being faced in the African region. The United States reiterated its commitment, in particular USAID's support, to collaborate with other partners and countries in addressing this pest, especially in the context of addressing the ongoing issue in Africa.
- ECOWAS reported on recent activities of its member States, detailed in document G/SPS/GEN/1620. ECOWAS informed the Committee that the recent introduction of the fall armyworm (FAW), and the discovery of the new alien invasive pest in West Africa were growing

threats of concern to agriculture and food security in 44 countries in the sub-Saharan region, including 15 West African countries. ECOWAS highlighted the crop-destroying nature of the pest and outlined a number of efforts which had already been undertaken to address the issue. In particular, ECOWAS noted that in March 2018, a high-level study tour had taken place in Brazil, which had been organized with the support of USAID, in collaboration with USDA, EMBRAPA, CIMMYT, and the Brazilian Cooperation Agency (ABC). Ten member States, as well as international and private sector organizations had participated. ECOWAS provided an overview of the objectives of the study tour and the existing technologies that had been demonstrated to successfully combat FAW. Several next steps were also outlined which included organizing a regional meeting to update member States on the outcomes of the study tour and piloting biological control technologies for selected member States. Finally, ECOWAS thanked the support provided by USAID, USAID-APHIS, the European Union and AU-IBAR, among other partners, and requested further support for the future implementation of SPS-related activities in the ECOWAS region.

- The European Union, in response to Senegal's concerns on burdensome requirements of the EU phytosanitary legislation, informed Members that it had a specific project on integrated pest management strategies to counter the threat of invasive fall armyworm for food security in Eastern Africa, and that it was prepared to explore other options which could benefit Senegal. In this regard, the European Union invited Senegal to formulate their needs in a more specific manner and to submit this request through the EU delegation in Senegal.
- The IPPC Secretariat reported on several other topics which had been discussed at the SPG meeting, such as the safe trade facilitation action plan, the ePhyto five-year plan and e-commerce. In addition, the IPPC Secretariat was also looking at how it could be involved in issues related to emerging pests, such as fall armyworm.
- Zambia reported on several emerging pests, indicating that the fall armyworm was present and widespread in Zambia, but that government authorities and various stakeholders were working to control the pest. In relation to maize lethal necrosis, Zambia informed the Committee that surveys had been conducted, which had indicated that this disease was not present in Zambia. In addition, Zambia reported that the cassava brown streak disease had recently been detected but had been contained in the far northern part of Zambia. Finally, Zambia noted that further to surveys conducted, the potato cyst nematode was not present in areas where potato was produced.

1.9. In addition, at its November 2018 meeting, the Committee agreed to hold a thematic session on fall armyworm at the March 2019 meeting, following a proposal submitted by several Members in document G/SPS/W/305. A first draft programme of this thematic session was circulated in G/SPS/GEN/1676. Members also agreed to create a working group to discuss fall armyworm, and an open-ended meeting of this working group would be held during the March 2019 informal meeting.

1.3 Transparency

1.10. The SPS Information Management System (SPS IMS) allows easy access and management of all WTO SPS-related documentation.⁴

1.11. 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.⁵ Although this recommendation does not change the legal obligations of WTO Members, it may enhance transparency regarding the application ISPMs.

1.12. A total of 1,322 notifications, that is 1,202 proposed new or revised SPS measures and 120 emergency ones, were submitted to the WTO in 2018. Among these, 210 regular notifications and 12 emergency notifications identified plant protection as the objective of the measure. Of these,

⁴ See <http://spsims.wto.org>.

⁵ G/SPS/7/Rev.3.

140 of the regular and 9 of the emergency notifications identified an ISPM as relevant, with 99% and 100% respectively indicating conformity to an ISPM.

1.13. SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). 72% of notifications submitted during 2017 were submitted online.

1.4 Equivalence

1.14. The guidelines on the implementation of Article 4 of the SPS Agreement on equivalence⁶ 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 2018 under this agenda item.

1.5 Regionalization

1.15. 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 regionalization⁷ 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.

1.16. The WTO Secretariat prepared a report on the implementation of Article 6, covering the period from 1 April 2017 until 31 March 2018, based on information provided by WTO Members through notification and at SPS Committee meetings.⁸ 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.

1.6 Monitoring the Use of International Standards

1.17. 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.⁹ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting organization.

1.18. 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 twentieth Annual Report was circulated to Members on 7 June 2018.¹⁰

1.19. During the July 2018 Committee meeting, The United States thanked Indonesia and Nigeria for drawing Members' attention to ISPM 38 on the international movement of seeds in the March 2018 SPS Committee meeting. ISPM 38, which had been adopted by the CPM in April 2017, provided guidance to assist national plant protection organizations (NPPOs) in identifying, assessing and managing pest risks associated with the international movement of seeds (as a commodity class). In addition, the standard provided guidance on other topics such as procedures to establish phytosanitary import requirements to facilitate the international movement of seeds; and a list of acceptable phytosanitary treatments that included crop treatment, seed treatment, systems approach and prohibition. The United States highlighted the importance of systems approaches, as they provided the opportunity to implement risk reduction measures along the entire seed supply chain. The United States echoed Indonesia's and Nigeria's view that ISPM 38 was particularly timely given the rapid growth of the international seed trade and its increasing complexity. The United

⁶ G/SPS/19/Rev.2.

⁷ G/SPS/48.

⁸ G/SPS/GEN/1618.

⁹ G/SPS/11/Rev.1.

¹⁰ G/SPS/GEN/1617.

States also informed Members that a hemispheric workshop was being planned for early 2019, through the North American Plant Protection Organization (NAPPO), along with the United States, Canada and Mexico to focus on the effective implementation of ISPM 38. The United States encouraged Members to fully implement ISPM 38 to ensure a harmonized approach for managing phytosanitary risks and to facilitate the safe international movement of seeds in commerce. In addition, the United States invited Members and the IPPC Secretariat to provide any reports or updates on the implementation of this standard.

1.20. Australia echoed the importance of ISPM 38 in helping Members undertake risk analysis and to apply justified measures, only to the extent necessary to achieve their ALOP. Australia indicated that it had reviewed the risks posed by a number of vegetable seeds, with a particular focus on seed-transmitted disease risks, the results of which had been published on its website. Australia stated that regulators needed to clearly define import requirements and ensure that they were technically justified, as an international clean seed trading system managing both seed quality and health would significantly facilitate the safe trade in clean seeds. Australia encouraged countries and seed companies to progress that concept as a platform for harmonization of measures and facilitating safe trade in seeds, in recognition of ISPM 38 guidelines.

1.21. Canada reminded Members that seeds could act as a pathway for the introduction of plant pests into countries, and outlined the important guidance provided by ISPM 38 in helping NPPOs to identify, assess and manage pest risks for the international movement of seeds. Canada highlighted its active role in the development of ISPM 38, and noted its involvement in the organization of the NAPPO workshop. This workshop was targeted at regulatory agencies in NAPPO countries, other regional plant protection organizations from the Americas, as well as the seed industry and technical experts, in order to ensure the proper implementation of the standard at the national and regional level.

1.22. The IPPC Secretariat informed the Committee that it was working closely with the International Seed Federation to help countries implement the new standard. An IPPC regional workshop was also being organized in 2018 on how to implement the standards, among other topics.

1.7 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 Secretariat and relevant technical assistance activities of the FAO.

1.24. On 9 and 10 July 2018, the WTO organized a workshop on SPS control, inspection and approval procedures 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. The objective of the workshop was to bring together officials responsible for implementing the SPS Agreement, as well as the relevant international standard-setting bodies and other international organizations, for discussion and experience sharing on developments, challenges and practices in implementing Article 8 and Annex C of the SPS Agreement on control, inspection and approval procedures. Through presentations, practical case stories and discussions, the workshop aimed at expanding Members' understanding of the relevant provisions, jurisprudence, guidance from the international standard-setting bodies, as well as regional and national experiences. A summary of the various sessions of the workshop is provided in the workshop report.¹¹

1.25. The programme¹² 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).

1.26. At the March 2019 SPS Committee meeting, the WTO Secretariat will present its report entitled "SPS Technical Assistance and Training Activities", containing detailed information on all

¹¹ G/SPS/R/91.

¹² G/SPS/GEN/1613/Rev.2.

SPS-specific technical assistance activities undertaken by the WTO Secretariat from 1994 to the end of 2018.¹³

1.27. Document G/SPS/GEN/997/Rev.9 will provide information on all WTO technical assistance activities in the SPS area planned for 2019, 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 2018, 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>.

1.8 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 future work. In accordance with the procedures for the Fourth Review, the Committee considered the revised report of the Review¹⁴ for adoption at its October 2014 meeting. The report was further revised¹⁵ based on Members' comments and suggestions at the October 2014 meeting, and Members were invited to submit comments in writing by the end of 2014, with a view to its adoption during the March 2015 regular meeting. Members accepted the inclusion of the first two suggestions contained in document G/SPS/W/282. However, the Committee did not reach consensus on the report's adoption and Members continued discussions during 2015 and 2016 to bridge differences particularly on a recommendation under section 14 on SPS-related private standards.

1.29. At its July 2017 regular meeting, the Committee agreed on the inclusion of new language in section 14, circulated in document RD/SPS/15 and adopted the report on the Fourth Review of the Operation and Implementation of the SPS Agreement.¹⁶

1.30. In the November 2017 Committee meeting, Members requested the Secretariat to prepare a draft process for the Fifth Review of the Operation and Implementation of the SPS Agreement.¹⁷ Members discussed this draft process in the March 2018 Committee meeting and adopted it with a few modifications, thereby launching the Fifth Review.¹⁸ The SPS Committee also adopted the Catalogue of Instruments to Manage SPS Issues¹⁹, which had initially been tabled as part of the Fourth Review of the Operation and Implementation of the SPS Agreement.

1.31. In July and October 2018, the SPS Committee considered 13 proposals submitted by 29 Members for work under the Fifth Review. The proposals cover recognition of equivalence of SPS measures, and in particular of systems approaches; adaptation of SPS measures to regional conditions, including pest- or disease-free areas; transparency and notifications under the SPS vs. TBT Agreement; national coordination among SPS agencies; trade issues related to pesticide MRLs; the role of Codex, IPPC and OIE in addressing specific trade concerns; third party assurance systems and the development of guidelines for implementation of Article 13; risk assessment, appropriate levels of protection, and science; and efforts to address fall armyworm infestation. In addition, Members' indicated interest in initiating work on Annex C on control, inspection and approval procedures.

1.32. In the context of the Fifth Review, the SPS Committee held the first part of a thematic session on equivalence in October 2018 following a proposal submitted by Canada. Other Members also submitted proposals recommending that the Committee further discuss the concept of equivalence, including examining the existing guidance on the recognition of equivalence (G/SPS/19/Rev.2).

1.33. This thematic session provided an opportunity to introduce the concept of equivalence, and for WTO Members to increase their awareness of the relevant provisions of the SPS Agreement, the guidance from the Committee (G/SPS/19/Rev.2), and related jurisprudence. Based on the comments received from one Member, the thematic session also included a presentation from the Secretariat on equivalence from a TBT perspective. In addition, representatives of Codex, IPPC and OIE

¹³ G/SPS/GEN/521/Rev.14.

¹⁴ G/SPS/W/280/Rev.1.

¹⁵ G/SPS/W/280/Rev.2.

¹⁶ G/SPS/62.

¹⁷ G/SPS/W/296.

¹⁸ G/SPS/W/296/Rev.1.

¹⁹ G/SPS/63.

explained how the concept of equivalence is applied in their areas, as well as the relevant international standards.²⁰ The second part of this thematic session will be held in March 2019, and will focus on Members' experiences with the implementation of equivalence.

1.9 Private and Commercial Standards

1.34. 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.²¹ 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.

1.35. In October 2013, the SPS Committee formed an electronic working group (e-WG) focused 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-WG²², 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.²³ 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.

1.36. In 2015 and 2016, Members continued discussing the topic, however, the Committee did not make any further progress. Private standards remain a growing concern among developing countries, many of which urged continued efforts to find a compromise.

1.37. In the November 2017 SPS Committee meeting, Belize suggested that the Committee could organize a workshop or thematic session, where Members could volunteer to share their perspectives and experiences on third party certification schemes. Some Members expressed their willingness to consider the suggestion of the thematic session, subject to views from their capitals, and without prejudice to their previously stated positions on private standards.

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.²⁴ 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 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.

²⁰ See report on the thematic session in G/SPS/R/93, paras. 4.37-4.40.

²¹ G/SPS/55.

²² G/SPS/W/276 and G/SPS/W/281.

²³ G/SPS/W/283.

²⁴ 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.

SPS Disputes

2.3. As of February 2019, more than 575 complaints had formally been raised under the WTO's dispute settlement procedures. Of these, 48 alleged violations of the SPS Agreement, and the SPS Agreement was relevant also in two other disputes. Twenty-five SPS-related complaints, on 20 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*)²⁵; (ii) the United States' complaint about Japan's set of requirements on apples imported from the United States relating to fire blight (*Japan-Apples*)²⁶; and (iii) New Zealand's complaint against Australia's restrictions on apples (*Australia-Apples*).²⁷

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.²⁸ 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 Amendment²⁹ 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.³⁰ 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.

2.9. The first meeting of the Trade Facilitation Committee was held in May 2017. In 2018, it held meetings in May, June and October.³¹

2.10. 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 those measures for which it needs more time and technical assistance.³²

²⁵ The report of the panel is contained in document WT/DS76/R. The Appellate Body report is contained in document WT/DS76/AB/R.

²⁶ The report of the panel is contained in document WT/DS245/R. The Appellate Body report is contained in document WT/DS245/AB/R.

²⁷ The report of the panel is contained in document WT/DS367/R. The Appellate Body report is contained in document WT/DS367/AB/R.

²⁸ WT/MIN(13)/36, WT/L/911.

²⁹ WT/L/940.

³⁰ WT/MIN(13)/36, WT/L/911, paragraph 2.

³¹ More information can be found on the Trade Facilitation gateway page: https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm.

³² 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.

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

2.12. In November 2018, the WTO participated, together with IPPC Secretariat and STDF among others, in the Border Agency Cooperation workshop held in Cape Town, South Africa, funded by the TFAF and the World Bank Group. Over 80 participants from the ministries of Trade, Agriculture, Health, Transport and more took part in the event. The purpose of the workshop was to improve border agency cooperation at the national and regional levels as provided in articles 8, 10 and 11 of the TFA. Specifically, the workshop sought to raise awareness of the linkages between the TFA and SPS Agreement, and explore ways in which coordinating border clearance processes could facilitate trade, while ensuring/reinforcing human, animal or plant life and health. Attention was also given to improving cooperation among border agencies in transit countries.

2.13. 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.
