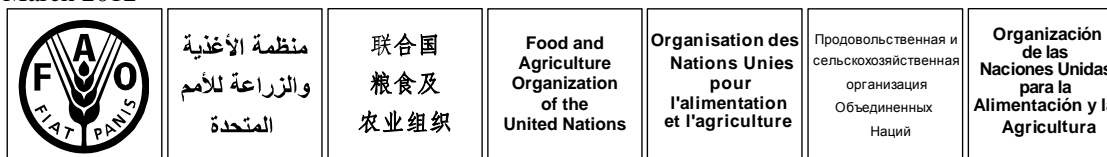


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COMMISSION ON PHYTOSANITARY MEASURES

Seventh Session

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**Report by the WTO Secretariat - Activities of the SPS Committee and other
relevant WTO activities in 2011**

Agenda item 12.4.1 of the Provisional Agenda

I. Introduction

1. This report to the Seventh Session of the Commission on Phytosanitary Measures (CPM-7) provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2011. 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; and private and commercial standards. The report also includes relevant information on dispute settlement in the WTO which occurred outside the context of the SPS Committee. A separate report is provided regarding the Standards and Trade Development Facility (STDF).

II. Work of the SPS Committee

2. The SPS Committee held three regular meetings in 2011: on 30-31 March, 30 June-1 July and 19-20 October.¹
3. The Committee agreed to the following tentative calendar of regular meetings for 2012: 27-29 March, 11-12 July, and 17-18 October.
4. At the end of the March meeting, Mr Deny Kurnia of Indonesia was appointed Chairperson for the 2011-2012 period.

¹ The report of the March meeting is contained in G/SPS/R/62 plus corrigenda, that of the June meeting in G/SPS/R/63, and that of the October meeting in G/SPS/R/64 plus addendum.

Specific Trade Concerns

5. 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.
6. A summary of the specific trade concerns raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.² Altogether, 328 specific trade concerns were raised in the seventeen years between 1995 and the end of 2011, of which 25 percent were related to plant health.
7. In 2011, two new phytosanitary issues were raised for the first time in the SPS Committee:
 - Costa Rica's concerns regarding United States of America's (US) import restrictions on Chrysanthemums; and
 - South Africa's concerns regarding Thailand's restrictions on table grapes, apples and pears.
8. One issue relating to plant health that had been previously raised was discussed again during 2011:
 - European Union's concerns on US import restrictions on plants and plant products.
9. WTO Members also used the opportunity of the SPS Committee meetings during 2011 to provide other information relating to plant protection measures, including:
 - Belize reported on the revision of the Belize Agricultural Health Authority Act, Chapter 211 of the substantive Laws of Belize, 2000 – 2003 Revised Edition. The law covers four major areas: animal health, plant health, food safety and quarantine. The review had resulted in four major bills which, once enacted, would replace the Belize Agricultural Health Authority Act. During the review process, specific deficiencies had been addressed which would be reflected in the new legislation.
 - Chile reported that it had provided support programmes for Ecuador and Colombia in animal husbandry and vegetable farming. The programmes were conducted in Chile, as well as during technical visits to these countries. The Chilean agriculture ministry had recently reached an agreement with OIRSA to support its member countries in the areas of animal health, food safety, and plant safety, and in particular regarding fruit flies and the legal aspects of food safety.
 - Jamaica reported that in September 2009 its Plant Health Committee had received confirmation of the presence of *Liberibacter asiaticus* that causes citrus greening Huanglongbing (HLB), a disease which affects citrus trees and is also known as Yellow Dragon disease. A survey showed that the HLB and its vector, the citrus psyllid, *Diaphorina citri*, were present throughout the island. Starting in November 2010, the FAO had provided technical assistance to facilitate the production of clean nursery stock; public awareness programmes; technical consultancies; production of pathogen free material; and improved capacity for the diagnostic testing for HLB. To restrict the spread of HLB, the Plant Quarantine Branch had issued an order making HLB a notifiable plant pest. A Citrus Nursery Order was also being prepared. An island-wide survey was underway to determine the incidence of the disease in commercial groves. The Ministry of Agriculture and Fisheries had initiated a biological control programme in commercial and residential plots. WTO document G/SPS/GEN/1118 contains additional information.

² The latest version of this summary can be found in document G/SPS/GEN/204/Rev.12 and addenda. This document is a public document available from <http://docsonline.wto.org>. Specific trade concerns can also be searched through the SPS Information Management System: <http://spsims.wto.org>

- Korea reported that as of 15 June 2011, it had consolidated three separate quarantine agencies for animals, plants and fish into one agency called the Animal, Plant and Fishery Quarantine and Inspection Agency (see WTO document G/SPS/GEN/1104).
- Mexico gave details on the "Mexican Electronic Foreign Trade Window", established through a presidential Decree of 14 January 2011 (G/SPS/W/264). The electronic window would provide a single reception point for foreign trade-related information, and would incorporate the foreign trade procedures of the National Agriculture and Food Health, Safety and Quality Service (SENASICA) as of 31 January 2012. Mexico suggested that the SPS Committee discuss and recommend ways to help Members and international bodies to harmonize electronic sanitary and phytosanitary certification procedures.
- New Zealand reported on the amalgamation of the New Zealand Food Safety Authority and the Ministry of Agriculture and Forestry into one organization now known as the New Zealand Ministry of Agriculture and Forestry (see WTO document G/SPS/GEN/1071). This one-stop shop deals with all activities relating to food safety and plant and animal health. SPS technical staff and trading partners could continue to work with the same New Zealand contacts that they had in the past.
- The Philippines indicated that its Bureau of Plant Industry Plant Quarantine Service had participated in a regional training workshop on "Pests Identification for Plant Quarantine Officers" on 6-17 June. The workshop was offered in collaboration with the FAO and the Government of Japan under the FAO trust fund project GCP/RAS/226/JPN, "Co-operation for the improvement of phytosanitary capacity in Asian countries through capacity building". Participants in the training included plant quarantine officers from Cambodia, Lao People's Democratic Rep., Myanmar, Viet Nam, Thailand, and the Philippines. Quarantine officers were now able to conduct better and more improved methods of pest detection and analysis as well as control, consequently reducing the probability of misdiagnosis and thus facilitating trade.

Transparency

10. The SPS information management system (SPS-IMS), made public in June 2007, allows easy access and management of all WTO SPS-related documentation.³

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. The recommendations of the SPS Committee, however, now encourage the notification of all new or modified measures even when these conform to international standards (see WTO document G/SPS/7/Rev.3). Although this recommendation does not change the legal obligations of WTO Members, it is expected that it will enhance transparency regarding the application of IPPC's International Standards for Phytosanitary Measures (ISPM).

12. A total of 1 023 notifications of new or proposed SPS measures were submitted to the WTO in 2011. Among these, 210 regular notifications and 13 emergency notifications identified plant protection as the objective of the measure being taken. Of these, 144 of the regular and 10 of the emergency notifications identified an ISPM as relevant, with 91 percent and 100 per cent respectively indicating conformity to an ISPM. In 42 percent of these, the specific ISPM of relevance was identified, but, unfortunately, the deviation from the standard was not described in most of the cases.

13. At the March 2011 meeting, the Secretariat launched the new SPS Notification Submission System (SPS NSS) which allows National Notification Authorities to fill out and submit SPS notifications online. The SPS NSS allows for more accurate and complete notifications, and a substantial reduction in the time required for the WTO to circulate them. The system was made available to Members on 1 June 2011 upon request. Interested Members are requested to send an e-mail to the Secretariat so that their National Notification Authorities can receive their login names and

³ See <http://spsims.wto.org>.

access passwords. As of 20 February 2012, 31 Members had requested and been given access to the system, and 14 of these had officially submitted notifications via the SPS NSS.

Equivalence

14. 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.⁴ 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 requests the further elaboration of specific guidance by these organizations to ensure that such recognition is maintained. Equivalence remains a standing agenda item of the Committee.

Regionalization

15. In May 2008, the SPS Committee adopted "Guidelines to Further the Practical Implementation of Article 6 of the Agreement on the Application of Sanitary and Phytosanitary Measures", to facilitate the recognition of pest- and disease-free areas or areas of low pest or disease prevalence.⁵ The guidelines identify the type of information normally needed for the recognition of regionalization, 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 Members.

16. At both the 2011 March and October meetings of the SPS Committee, the representative of the IPPC reported on the relevant work underway in the CPM on this issue.

Monitoring the Use of International Standards

17. The procedure adopted by the SPS Committee to monitor the use of international standards invites countries to identify specific trade problems they have experienced due to the use or non-use of relevant international standards, guidelines or recommendations.⁶ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

18. In July 2011, the SPS Committee adopted the Thirteenth Annual Report on the procedure to monitor the process of international harmonization.⁷

19. The representative of the IPPC, at the October 2011 Committee meeting, noted that, thanks to generous support from the EU, it had put in place an Implementation Review and Support System (IRSS), which would follow a three-year cycle. The IRSS addresses the use and implementation of standards. A questionnaire would be sent to Members to collect information on the implementation of the IPPC and ISPMs. In addition, the implementation of ISPM 6 (1997) was being assessed, and a preliminary report would be available in March 2012. The IPPC was also developing a Help Desk facility whereby Members could contact the IPPC for assistance with the use and implementation of international standards, and which would contain, *inter alia*, databases, rosters of experts, lists of donors, and criteria for funding.

20. The representative of Chile thanked the IPPC for their assistance in helping Members to make the best use of international standards, and urged Members to correctly complete SPS notification forms rather than indicate that no relevant standards existed.

Technical Assistance

21. At each of its meetings, the SPS Committee has solicited information from 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.

⁴ G/SPS/19/Rev.2.

⁵ G/SPS/48.

⁶ G/SPS/11/Rev.1.

⁷ G/SPS/56.

22. In March 2012, 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 1 September 1994 to 31 December 2011.⁸

23. WTO document G/SPS/GEN/997/Rev.2, which will be circulated in March 2012, will provide information on all technical assistance activities in the SPS area planned for 2012, including the Geneva-based advanced course which aims to provide in-depth and hands-on training to government officials. Four regional workshops on the SPS Agreement are scheduled for 2012. 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>.

Review of the Operation and Implementation of the SPS Agreement

24. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. The Second Review of the Agreement was completed in July 2005.⁹ As agreed by the Committee in its Second Review, the Committee has been considering proposals to facilitate the use of ad hoc consultations and negotiations to resolve trade problems. WTO Members have different views regarding this mechanism, as reflected in the current working draft.¹⁰

25. The SPS Committee completed the Third Review of the Operation and Implementation of the SPS Agreement in March 2010. At the October 2010 informal meeting, Members agreed to prioritize three issues for consideration under the work of the Committee arising from the Third Review: (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).

26. Members have been encouraged to discuss their experiences with control, inspection and approval procedures. The EU presented its approach to SPS audits and inspections in third countries. Argentina noted that it was currently reviewing on-site audit procedures at the national level, and that it might present the results of this work to the SPS Committee when available.

27. On cooperation between the SPS Committee and the Three Sisters, following a proposal submitted by Japan, the WTO Secretariat organized, on 17 October 2011, a Geneva-based workshop on coordination of SPS matters at the national and regional levels. The objective of the workshop was to bring 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. The WTO Secretariat, in its brief report on the coordination workshop, highlighted two specific recommendations resulting from it, namely a possibility to develop guidelines for good national coordination and/or a manual of good practices. Also, at its October meeting, 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.¹¹

Private and Commercial Standards

28. 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.

29. On several occasions, informal information sessions have been held in the margins of the SPS Committee meetings. A number of international organizations working on the issue of private standards, including OECD and UNCTAD, as well as a number of private standardizing groups, including GlobalGAP, have provided information regarding commercial and private standards. WTO

⁸ G/SPS/GEN/521/Rev.7.

⁹ G/SPS/36.

¹⁰ G/SPS/W/259/rev.2.

¹¹ G/SPS/58.

Members have raised a number of concerns regarding the trade, development and legal implications of private standards.

30. An ad hoc working group identified "Possible Actions for the SPS Committee Regarding SPS-Related Private Standards".¹² At its March 2011 meeting, the Committee adopted five of the six actions put forward by the working group.¹³ 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.

31. In its June and October 2011 meetings, WTO Members discussed how to implement the agreed actions with a particular focus on the development of a working definition of SPS-related private standards. At the March 2012 meeting, Members will pursue discussions on how to implement the five agreed actions, as well as on the outstanding proposed actions on which there was no consensus.

III. Other Relevant WTO Activities

A. Dispute Settlement

The WTO Dispute Settlement Procedure

32. 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.¹⁴ 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.

33. 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, 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

34. As of February 2012, more than 400 complaints have formally been raised under the WTO's dispute settlement procedures. Of these, 37 alleged violations of the SPS Agreement, and two disputes addressed the SPS Agreement, although it had not been claimed in the request for consultations (WT/DS320 and WT/DS321). Eighteen SPS-related complaints, on 12 issues, have been referred to a panel:¹⁵

- complaints by the US and Canada in 1996 regarding the European Communities' ban on meat treated with growth-promoting hormones; *EC – Hormones* (WT/DS26 and WT/DS48, respectively)

¹² G/SPS/W/256.

¹³ G/SPS/55.

¹⁴ 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).

¹⁵ 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 Canada and the US in 1997 regarding Australia's restrictions on imports of fresh, chilled or frozen salmon; *Australia - Salmon* (WT/DS18 and WT/DS21, respectively)
- complaint by the US in 1997 regarding Japan's requirement that each variety of certain fruits be tested with regard to the efficacy of fumigation treatment; *Japan Agricultural Products II* (also referred to as *Japan - Varietals*) (WT/DS76)
- complaint by Ecuador in 2001 regarding Turkey's import requirements for fresh fruit, especially bananas; *Turkey- Fresh Fruit Import Procedures* (WT/DS237)
- complaint by the US in 2002 regarding Japan's restrictions on apples due to fire blight; *Japan - Apples* (WT/DS245)
- complaint by the Philippines in 2002 regarding Australia's restrictions on fresh fruits and vegetables, including bananas; *Australia - Fresh Fruit and Vegetables* (WT/DS270)
- complaints by the US, 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)
- complaint by the European Community in 2007 regarding Australia's quarantine procedures; *Australia - Quarantine Regime* (WT/DS287)
- complaints by the European Communities in 2008 regarding the US' 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 New Zealand in 2008 regarding Australia's restrictions on apples in 2008; *Australia - Apples* (WT/DS367)
- complaint by the US 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).

35. Three panel reports have concerned plant pests and quarantine requirements: (i) the US complaint about Japan's requirement for testing each variety of fruit for efficacy of treatment against codling moth (*Japan-Agricultural Products*)¹⁶; (ii) the US complaint about Japan's set of requirements on apples imported from the US relating to fire blight (*Japan-Apples*)¹⁷; and (iii) New Zealand's complaint against Australia's restrictions on apples (*Australia-Apples*).¹⁸

Developments on SPS Disputes during 2011

36. On 21 January 2008, a panel was established to examine the complaint by New Zealand against Australia's restrictions on imports of apples. New Zealand considered that the measures specified in and required by Australia pursuant to the *Final import risk analysis report for apples from New Zealand* were inconsistent with the obligations of Australia under the SPS Agreement. The full request for the establishment of a Panel by New Zealand is contained in WT/DS367/5. In August 2010, the panel report was circulated to Members. The report addressed 16 phytosanitary measures adopted by Australia for the importation of New Zealand apples, including eight measures adopted against the risk of fire blight, four against European canker, one against apple leafcurling midge (ALCM) and three measures applying generally to all of these three pests. Among the various findings, the panel found that the 16 measures were not based on a proper risk assessment. Australia appealed the panel's findings and in November 2010, the Appellate Body report was circulated to

¹⁶ The report of the panel is contained in document WT/DS76/R. The Appellate Body report is contained in document WT/DS76/AB/R.

¹⁷ The report of the panel is contained in document WT/DS245/R. The Appellate Body report is contained in document WT/DS245/AB/R.

¹⁸ The report of the panel is contained in document WT/DS367/R. The Appellate Body report is contained in document WT/DS367/AB/R.

Members. The Appellate Body upheld the panel's finding that the 16 measures were not based on a proper risk assessment. On 2 September 2011, Australia reported that it had adopted measures to comply with the Dispute Settlement Body's (DSB) recommendations and rulings. Two weeks later, New Zealand and Australia notified to the DSB an agreement on specific procedural matters should New Zealand decide to challenge Australia's measure taken to comply in WTO dispute settlement.

B. The Standards and Trade Development Facility

37. The Standards and Trade Development Facility (STDF) is a fund created by the FAO, OIE, the World Bank, the World Health Organization (WHO) and the World Trade Organization (WTO) to assist developing countries enhance their capacity to meet international sanitary and phytosanitary (SPS) standards, improving the human health, animal health and phytosanitary situation, and thus gaining and maintaining market access. The WTO is the administrator of the STDF and provides the secretariat. Relevant information regarding the operation of the STDF is being provided in a separate document.