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ACTIVITIES OF THE SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN 2013

REPORT BY THE WTO SECRETARIAT¹

This report to the Ninth Session of the Commission on Phytosanitary Measures (CPM-9) provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2013. 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. 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 2013: on 21-22 March, 27-28 June and 16-17 October.²

1.2. The Committee agreed to the following tentative calendar of regular meetings for 2014: 25-26 March, 9-10 July, and 15-16 October.

1.3. Ms Maria Albarece of the Philippines served as Chairperson at the March 2013 meeting and was subsequently re-elected at the June 2013 meeting for the 2013-2014 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, 368 STCs were raised in the nineteen years between 1995 and the end of 2013, of which 24% were related to plant health.

1.6. In 2013, 24 new specific trade concerns were raised for the first time in the SPS Committee, including the following five new phytosanitary issues:

- India's import restrictions on apples, pears and citrus (STC 347)

In March 2013, Argentina raised concerns regarding India's import restrictions on fresh apples and pears put in place in 2004. India had alleged that its authorities must conduct a pest risk analysis (PRA) for those products. Argentina submitted the required information to India in 2004, while requesting that access to India's market for Argentine exports not be disrupted until the results of the PRA were known. In 2006, India had agreed to prioritise completion of the risk analysis required for market access prior to the following harvest of December 2006. Despite additional information being supplied by Argentina, a technical inspection, bilateral meetings and the proposal for an MOU, India had not

¹ This report has been prepared under the WTO Secretariat's own responsibility and is without prejudice to the positions of WTO Members or to their rights or obligations under the WTO.

² The report of the March meeting is contained in G/SPS/R/70 plus corrigendum, that of the June meeting in G/SPS/R/71, and that of the October meeting in G/SPS/R/73.

³ The latest version of this summary can be found in document G/SPS/GEN/204/Rev.14. 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>

completed the requisite risk analysis. Argentina requested India to allow effective access of apples, pears and citrus into the Indian market in order to comply with its formal commitments and, thus, remedy the lengthy trade interruption that was not based on scientific evidence and that caused commercial damage to its producers as a result of lost market share.

Chile supported Argentina's concern and reported that it had faced the same problems relating to its fruit exports to India. Although Chilean export and safety conditions had been improved, Chile had not received any information from India regarding the specific requirements for obtaining market access. Chile requested a response from India to the questions it had submitted in writing.

The European Union also supported Argentina's concern and noted the lack of transparency in the approval process for exports of new plant and fruit commodities to India. The absence of a list of regulated pests in India eliminated the predictability of the conditions under which trading partners might be able to export. The European Union noted India's lack of resources to process the many pending export applications for various export commodities which the European Union had great interest in exporting to India.

India explained that imports of apples, pears and citrus fruit were governed by the existing pest risk analysis guidelines that prescribed specific MRLs for pesticides in line with international standards. All fruit products were therefore free to be imported to India if they met these specific tolerance limits. Argentina clarified that its concern dealt with the phytosanitary requirements for the imports of fruit and not with the prescribed MRLs. It awaited the results of the pest risk analysis in pears and apples, as well as a response to its comments on the pest risk analysis conducted for citrus fruits, in order to know the exact conditions required for imports of fruit. India replied that no trade ban had been imposed on imports of fruit coming from Argentina and that according to its database, Argentina had been exporting fruit to India.

- EU quarantine measures on certain pine trees and other products (STC 348)

In March and June 2013, Russia expressed its concern that Part A of Appendix 3 of EU Council Directive 2000/29 prohibited imports into the European Union of *Pinus*, *Picea* and *Tsuga* plants, as well as seed potatoes, from non-European countries. Russia considered that this restriction was not compliant with Articles 3 and 5 of the SPS Agreement. Furthermore, the European Union had categorized the Russian territory into two areas and had applied the import ban to the so-called "Asian" side of Russia but not to the "European" side, which was discriminatory and not compliant with Article 2 of the SPS Agreement. No justification had been provided by the European Union in support of this measure. This discriminatory treatment had a high cost for Russia's economy, in particular for exporters of *Pinus Sibiricus*, for whom the redirection of their product to other markets had resulted in additional costs and lower product quality. Russia urged the European Union to provide scientific evidence to justify its measure and to remove its restriction.

The European Union noted that under the European plant health legislation there were very few cases where plant imports were prohibited. In such cases, each plant required an individual risk assessment in order to obtain a derogation, demonstrating the absence of plant health concerns. In March 2011, following a request from Russia to export Siberian Pine trees to the European Union, the European Union provided Russia with its justification for the import prohibition with a list of the quarantine pests considered to be relevant in that particular case. If Russia wished to export pine trees to the European Union it had to submit a full dossier explaining how Russia intended to guarantee that the EU requirements for plants of the *Pinus* species were fulfilled. Although the matter was first raised a number of years ago, the European Union had thus far received very limited information from Russia. The European Union highlighted that this matter, amongst others, was to be discussed bilaterally with Russia.

In June 2013, the European Union noted that the request of Russia for a derogation to be able to export potatoes and coniferous plants to the European Union had been intensively discussed in a bilateral setting, and technical discussions with EU member States had started. Nevertheless, to obtain the derogation, a technical dossier was needed. The EU request for information in order to carry out a specific risk assessment on this trade request from Russia was fully legitimate. The European Union repeated its engagement to

find a satisfactory solution and looked forward to receiving the necessary technical information from Russia that would allow it to proceed.

- EU import requirements for orchid tissue culture plantlets in flasks (STC 355)

In June 2013, Chinese Taipei raised its concerns regarding the EU import requirements for orchid tissue culture plantlets in flasks, contained in 2000/29/EC Annex 4, Points 32.1, 32.3, 34, 36.1, 45.1 and 36. These required the inspection and pest-free conditions for up to six pests. However, the risk of pests for tissue culture plantlets in flasks produced under sterile conditions - like those produced in Chinese Taipei - was much lower than the risk associated with plantlets raised in greenhouses. The EU requirements were, therefore, not scientifically justified. Chinese Taipei had asked the European Union to amend its regulations based on scientific evidence. The European Union had responded that the risk assessment of the pest *Bemisia tabaci* was on-going and that relevant rules would be amended upon completion of that assessment. When the final assessment was published in April 2013, however, it made no mention of tissue culture plantlets and no amendments had been made. In April 2013, Chinese Taipei had reiterated that tissue culture plantlets grown under sterile conditions posed a much lower risk, and that, specifically, there was no risk of *Bemisia tabaci* in those plantlets. Chinese Taipei explained that the European Union had countered that this issue was not technical, but rather legislative in nature, and had asked Chinese Taipei for additional information on official controls and certification processes related to tissue culture plantlets in order to facilitate discussion among EU experts. Tissue culture plantlets from Chinese Taipei were exported worldwide and no other Member required additional inspections for insect pests on plants cultivated under sterile conditions. Furthermore, many EU member States produced tissue culture plants for export under similar conditions and the techniques and procedures for these plants were clearly understood. The EU additional requirements placed a heavy burden, both in terms of money and labour, on Chinese Taipei, and were not consistent with Articles 2.2 and 5.2 of the SPS Agreement, as well as Articles VII.2.(a) and (g) of the IPPC. Chinese Taipei urged the European Union to bring its import requirements in line with existing scientific evidence and risk assessments.

Senegal expressed its surprise at the suggestion of a pest risk in plantlets produced under sterile conditions, and asked the European Union if pests had been found in such plantlets which could justify its measures.

The European Union explained that this issue had been the subject of intensive bilateral discussions, the most recent of which occurred one week prior to the 57th SPS Committee meeting. The EU policies and procedures had been in place since 2002 and no trade problems had been experienced during that time, excluding the present trade concern. The recently published assessment of the European Food Safety Authority regarding *Bemisia tabaci*, a known vector of certain plant disease, would be discussed with EU member States in the coming days. The European Union had requested that Chinese Taipei provide a technical dossier outlining the cultivation of orchids in sterile plantlets and additional information regarding official controls and the certification process, and understood that this dossier was forthcoming. Upon its receipt, the European Union would be able to fully consider the issue and work bilaterally with Chinese Taipei to develop a successful conclusion to this trade concern.

- EU's phytosanitary measures on citrus black spot (STC 356)

In June 2013, South Africa raised concerns regarding the EU restrictive import measures on South African citrus exports infected with citrus black spot. This issue had been on-going since 1992. During the July 1997 SPS Committee meeting, South Africa had circulated a statement⁴ in regard to the EU notifications of modifications of phytosanitary measures on citrus black spot.⁵ At that time, South Africa contended that the EU measures were not scientifically justified and lacked a technical basis, as infected fruit did not pose a significant pest risk. Unfortunately the issue remained unresolved. The EU measures not

⁴ G/SPS/GEN/26

⁵ G/SPS/N/EEC/46 and G/SPS/N/EEC/47.

only lacked scientific basis, but had also had an excessively negative effect on trade and, as such, were in contravention of the SPS Agreement. As previously noted in the SPS Committee, this issue had been raised in the context of the IPPC dispute settlement procedure, and bilateral talks were set to continue on this matter. South Africa was still waiting for the results of an EU pest-risk analysis regarding *Guignardia citicarpa* that was supposed to have been completed in 2011. South Africa urged the European Union to finish its pest risk analysis and to implement measures that had a scientific basis.

Argentina supported South Africa's position, as it was also a large exporter of citrus to the European Union. Argentina urged the European Union to complete its risk analysis swiftly and to put in place measures that were scientifically-based and not unduly restrictive of trade.

The European Union confirmed that this matter was the subject of the IPPC's first dispute settlement procedure and noted that its territory was free from citrus black spot; hence the restrictions in place reflected the EU desire to maintain this freedom. Detections of citrus black spot on South African fruit sent to the European Union had been on the rise, therefore the European Union decided that after a certain number of interceptions action may be taken. The European Union ensured South Africa of close cooperation before any such decision were made. The European Union underlined that the European Food Safety Authority was assessing whether citrus fruit itself could transmit citrus black spot disease. The draft pest-risk analysis should be available in July 2013, and would be open to public consultation. The European Union hoped that the discussions, both bilaterally and at the IPPC, and the expected forthcoming scientific information, would result in a solution that was agreeable to all involved.

- Japan's quarantine requirement for blueberries (STC 366)

In October 2013, Argentina raised concerns regarding the interruption of its fresh blueberry exports to Japan in November 2010, when the Japanese Ministry of Agriculture had imposed the requirement of a negotiated quarantine treatment for fruit flies. Argentina had submitted technical information in April 2011, and in October 2012 it had proposed methyl bromide as a quarantine treatment for fruit fly. In January 2013, Japan had indicated that it would carry out a pest risk analysis on the basis of the information provided and would evaluate the proposal of methyl bromide quarantine treatment for fruit fly and inform Argentina of its results. In June 2013, Argentina requested to know the state of progress of the evaluation of said quarantine treatment. Noting the importance of blueberry farming in domestic employment, income and value of Argentine fruit exports, Argentina asked Japan to give priority to the proposed quarantine treatment.

Japan explained that it had imposed an import ban on blueberries based on a pest risk analysis, and that its competent authorities were in the process of examining Argentina's proposed quarantine treatment. Japan had 138 outstanding requests with regard to plant quarantine, and sought understanding for its current situation.

1.7. One issue relating to plant health that had been previously raised was discussed again during 2013:

- Indonesia's port closures (STC 330)

This trade concern was raised at each of the six SPS Committee meetings held in 2012 and 2013, by one or several of the following WTO Members: China, New Zealand, the European Union and the United States of America. Additionally, Argentina, Australia, Canada, Chile, Japan, the Republic of Korea, South Africa, Chinese Taipei, Thailand and Uruguay supported the concern. They all expressed concerns about Indonesia's closure of several entry ports for imports of fruit and vegetables, including the main port of Jakarta (Tanjung Priok), which entered into force in June 2012. The concern was that the port closures would threaten fresh fruit and vegetable exports to Indonesia. Indonesia was requested to provide scientific evidence for the measure and to notify its draft measures to the WTO, allowing sufficient time for formal comments from trading partners.

Indonesia recognized that the publication of its regulations⁶ had raised concerns among some WTO Members. Indonesia explained that it was seeking to prevent the spread of plant diseases and pests through effective management and regulation. Its largest sea port, Tanjung Priok, did not have appropriate facilities to implement quarantine measures and imports had been re-routed to other ports which had the requisite infrastructure. Indonesia was taking measures to improve the quarantine installation facility of that port, and the first stage of this improvement programme was due to be finished by the end of 2013. These steps were deemed necessary based on the results of a 2010-2011 assessment carried out by plant quarantine officials, which identified 15 exotic plant diseases that never previously existed in Indonesia. Indonesia remained concerned about the increasing number of interceptions that posed a serious threat to its plant and consumer protection.

In March 2013, the European Union pointed out that it had not received any clarification that would justify these trade restrictive measures or explain the discriminatory preferential access to the port of Jakarta for only a few countries. Indonesia flagged that its government was still in the process of developing port infrastructure in Jakarta, including inspection facilities for quarantine and custom agencies. The new inspection system should be finalized by the end of 2013 and in the meantime trading partners should use the other specified ports after fulfilling the required food safety investigation and certification procedures.

In June 2013, Indonesia noted that this issue was in the process of being resolved bilaterally with China. A meeting with the Ministry of Agriculture of Indonesia had taken place on 22 May 2013 and the two countries had agreed to complete an extendable protocol of import and export inspection and quarantine requirements for agricultural and food products.

In October 2013, China informed that it had proposed a mutual recognition agreement on the inspection and quarantine of fruits and vegetables to Indonesia on 25 April 2013, and urged Indonesia to study it as soon as possible.

1.8. Ten phytosanitary issues were reported in 2013 as being resolved. A table listing these concerns has been included in Annex 1 to this document.

1.9. WTO Members also used the opportunity of the SPS Committee meetings during 2013 to provide other information relating to plant protection measures, including:

- Australia recalled that it had previously advised Members of its intention to retire the use of the Australian Quarantine and Inspection Service or "AQIS" brand. The Department of Agriculture, Fisheries and Forestry would continue to have responsibility for the government work related to biosecurity, agriculture, fisheries, forestry, food production and food safety. The same government staff that previously provided inspection and certification functions under the AQIS brand would continue to provide these services as part of the Department of Agriculture, Fisheries and Forestry. The transition would not prompt any changes to the requirements related to imported agricultural, food, plant or animal products. All import permits would continue to be issued by the Australian Government and, during the transition period, any permit carrying the AQIS brand would be valid for the duration of the permit. All AQIS e-mail addresses were retired on 15 May 2013, and replaced with the DAFF format [name.surname@daff.gov.au]. Trading partners had been notified of the changes made to the paper used for electronic certificates, which include the new use of an Australian Government watermark in place of the AQIS watermark. The change would not alter the legal basis or competent authority under which audits, inspections and certifications are undertaken, nor would it prompt any changes related to imports.
- Australia also provided an update on its reforms to the Australian biosecurity system. The Biosecurity and Inspector-General of Biosecurity Bills were introduced to the Australian Parliament on 28 November 2012 and remained within the Parliamentary process. Draft regulations related to the Biosecurity Import Risk Analyses and the Inspector-General of Biosecurity were released for discussion in May 2013 and notified to the WTO on 28 May

⁶ Ministry of Agriculture Regulation No 42/2012 and 43/2012.

2013.⁷ Australia invited Members to review and comment upon the draft regulations. Once the primary legislation had passed through Parliament, the draft regulations would be open to comment and review for a proposed 60-day consultation period, during which Members could provide additional comments. Australia would notify trading partners via SPS notification of this period. The anticipated repeal of the Quarantine Act of 1908 would not affect the validity of existing Import Risk Analyses, nor would it require a Biosecurity Impact Risk Analysis to be completed where an Import Risk Analysis already exists. Import permits issued under the Quarantine Act would remain valid for the duration of the permit.

- The European Union provided information on four legislative proposals, the so-called "Smarter rules for safer food" package which was issued on 6 May 2013. The proposed draft legislation consolidated close to 70 pieces of legislation into four clear, basic, science and risk-based rules that had been notified under the SPS Agreement.⁸ Proposals on plant reproductive material and official controls were also notified under the TBT Agreement.⁹ More details were provided in a communication.¹⁰ Due to the detailed nature of the proposals, the European Union had doubled the standard comment period to 120 days and invited Members to submit comments for review.
- Indonesia encouraged Members to eliminate the use of non-eco-friendly methyl bromide in phytosanitary treatments¹¹, referring to a Memorandum of Understanding on the use of methyl bromide concluded by the parties to the Montreal Protocol on Substances that Deplete the Ozone Layer in 2011, and to a recommendation by the Commission on Phytosanitary Measures (CPM) in 2008 on the replacement or reduction in the use of methyl bromide as a phytosanitary treatment. The European Union echoed Indonesia's concerns regarding the negative environmental effects of methyl bromide, and also noted that the requirement to use this substance blocked trade in several of its plant products.
- Korea provided updates on its reshuffling of government agencies overseeing SPS-related issues.¹² The changes expanded the roles of the Ministry of Agriculture, Food, and Rural Affairs in the animal health and phytosanitary sectors; the Ministry of Food and Drug Safety in food safety; and the Ministry of Oceans and Fisheries in aquatic health. The acronyms of the above ministries had also been changed and these would be phased-in over time.

1.2 Transparency

1.10. The SPS information management system (SPS-IMS) allows easy access and management of all WTO SPS-related documentation.¹³

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.¹⁴ Although this recommendation does not change the legal obligations of WTO Members, it may enhance transparency regarding the application of IPPC's ISPMs.

1.12. A total of 946 notifications of new or proposed SPS measures were submitted to the WTO in 2013. Among these, 146 regular notifications and 16 emergency notifications identified plant protection as the objective of the measure. Of these, 108 of the regular and 16 of the emergency notifications identified an IPPC standard as relevant, with 100% in each case indicating conformity to an IPPC standard.

⁷ G/SPS/N/AUS/319.

⁸ G/SPS/N/EU/43, G/SPS/N/EU/44, G/SPS/N/EU/45 and G/SPS/N/EU/46.

⁹ G/TBT/N/EU/116 and G/TBT/N/EU/117.

¹⁰ G/SPS/GEN/1252.

¹¹ G/SPS/GEN/1271.

¹² G/SPS/GEN/1242.

¹³ See <http://spsims.wto.org>.

¹⁴ G/SPS/7/Rev.3.

1.13. SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). 54% of notifications submitted during 2013 were submitted online.

1.3 Equivalence

1.14. The guidelines on the implementation of Article 4 of the SPS Agreement on equivalence¹⁵ 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 2013 under this agenda item.

1.4 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 regionalization¹⁶ 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 2012 and the first quarter of 2013, based on information provided by WTO Members through notification and at SPS Committee meetings.¹⁷ 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

1.17. 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.¹⁸ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

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 Fifteenth Annual Report was adopted by the Committee on 28 June 2013.¹⁹

1.19. In March and June 2013, Brazil highlighted the 50th anniversary of the Codex Alimentarius Commission, the importance of Codex standards and the need to ensure that these remained based on scientific evidence²⁰. Argentina, Australia, Belize, Burkina Faso, Canada, Chile, China, Cuba, the Dominican Republic, the European Union, New Zealand, Norway, Pakistan, Russia, Senegal, South Africa, Switzerland, and the United States also stressed the importance of Codex and other international standards. Some Members called for Codex to harmonize private standards, which are not always based on science. Several Members also noted the particular relevance of standards for developing countries, and the contribution of the Codex Trust Fund in promoting the participation of developing countries in the body's work.

¹⁵ G/SPS/19/Rev.2.

¹⁶ G/SPS/48.

¹⁷ G/SPS/GEN/1245.

¹⁸ G/SPS/11/Rev.1.

¹⁹ G/SPS/60.

²⁰ G/SPS/GEN/1253.

1.20. In June 2013, Argentina and Chile reiterated their proposal that the SPS Committee's monitoring procedure adequately reflect how Codex and other standards are used by Members. Argentina drew the Committee's attention to its proposal on the monitoring procedure²¹ and noted that the topic of monitoring the use of international standards could be addressed in the context of the Fourth Review of the Operation and Implementation of the SPS Agreement.

1.21. The observer from the Lebanese Republic noted the lack of a standard on maximum residue levels of antibiotics and pesticides in honey, and encouraged Codex to develop such a standard.

1.22. At all three 2013 SPS Committee meetings, the IPPC representative reported on the Implementation Review and Support System (IRSS).²²

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 14 October 2013, the WTO Secretariat held a Workshop on SPS-Related Market Access Challenges and Opportunities. The workshop was an interactive activity focussing on the funded participants' and other speakers' experiences in addressing specific SPS-related market access challenges. For this workshop, the WTO Secretariat brought together former participants of the WTO's annual advanced SPS courses from 2005-2012. The workshop provided an opportunity to view the longer term benefits of this course, and to evaluate its impact. The IPPC secretariat presented the IPPC Market Access Manual. A summary of the workshop as well as presentations and relevant documents are available through http://www.wto.org/english/tratop_e/sps_e/wkshop_oct13_e/wkshop_oct13_e.htm.

1.25. For the March 2014 SPS Committee meeting the WTO Secretariat prepared a 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 2013.²³

1.26. Document G/SPS/GEN/997/Rev.4, circulated before the March 2014 meeting of the SPS Committee, provides information on all WTO technical assistance activities in the SPS area planned for 2014, including the Geneva-based advanced course which provides in-depth and hands-on training to government officials. Three regional workshops on the SPS Agreement are scheduled for 2014. 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

1.27. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. As agreed in its Second Review²⁴, the Committee is developing a procedure to facilitate the use of ad hoc consultations and negotiations to resolve trade problems. The results of an electronic Working Group were discussed in March 2013. Subsequent revisions to a draft proposal failed to reach consensus for adoption and a new deadline was set for December 2013 for suggested compromise language.

1.28. The Committee adopted a procedure and time-frame for undertaking the Fourth Review of the Operation and Implementation of the Agreement²⁵, which will take place in 2014. To facilitate this process, the Secretariat circulated a background document

²¹ G/SPS/W/268.

²² G/SPS/GEN/1225, G/SPS/GEN/1259 and G/SPS/GEN/1284.

²³ G/SPS/GEN/521/Rev.9.

²⁴ G/SPS/36.

²⁵ G/SPS/W/270 and Add.1.

summarizing information regarding the implementation of the Agreement, as well as the work of the Committee since the Third Review.²⁶ Several WTO Members have submitted issues for consideration as part of the Fourth Review.²⁷

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.²⁸ 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. Discussions in 2013 continued to focus mainly on the development of a working definition of "SPS-related private standards"²⁹. In light of the lack of consensus on the joint definition tabled by China and New Zealand, the Committee agreed to move the process forward by forming an electronic working group focussed on developing a working definition of an SPS-related private standard, with China and New Zealand as "co-stewards". The e-working group is to submit a proposed working definition of an SPS-related private standard by 28 February 2014 for discussion at the March 2014 meeting of the SPS Committee.

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.³⁰ A panel of three individuals considers written and oral arguments submitted by the parties to the dispute and issues a written report of its legal findings and recommendations. The parties to the dispute may appeal a panel's decision before the WTO's Appellate Body. The Appellate Body examines the legal findings of the panel and may uphold or reverse these. As with a panel report, the Appellate Body report is adopted automatically unless there is a consensus against adoption.

2.2. According to the SPS Agreement, when a dispute involves scientific or technical issues, the panel should seek advice from appropriate scientific and technical experts. Scientific experts have been consulted in all SPS-related disputes. The experts are usually selected from lists provided by the OIE, IPPC and Codex, standard-setting organizations referenced in the SPS Agreement. The parties to the dispute are consulted in the selection of experts and regarding the information solicited from the experts.

SPS Disputes

2.3. As of March 2014, more than 470 complaints had formally been raised under the WTO's dispute settlement procedures. Of these, 40 alleged violations of the SPS Agreement,

²⁶ G/SPS/W/273.

²⁷ These issues are summarized in document G/SPS/GEN/1307.

²⁸ G/SPS/55.

²⁹ G/SPS/W/265/Rev.2.

³⁰ 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).

and the SPS Agreement was relevant also in two other disputes. Twenty SPS-related complaints, on 15 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*)³¹; (ii) the United States' complaint about Japan's set of requirements on apples imported from the United States relating to fire blight (*Japan-Apples*)³²; and (iii) New Zealand's complaint against Australia's restrictions on apples (*Australia-Apples*).³³

2.5. As noted above, Argentina requested consultations with the United States on 30 August 2012, and the establishment of a panel on 6 December 2012, regarding US measures on fresh lemons from the North West region of Argentina.³⁴ At its meeting on 17 December 2012, the DSB deferred the establishment of a panel.

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

2.2 Trade Facilitation

2.7. At the WTO's 9th Ministerial Conference in Bali, Indonesia in December 2013, Members concluded negotiations of the Trade Facilitation (TF) Agreement.³⁵ 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.

2.8. The TF Agreement will enter into force after a formalistic legal review, notifications from developing and least-developed country Members on the planned implementation of the Agreement, Members accepting a protocol to insert the TF Agreement into Annex 1A of the WTO Agreement alongside the other multilateral trade agreements on goods by 31 July 2015, and ratification by two thirds of WTO Members in accordance with Article X:3 of the WTO Agreement.³⁶

2.9. The TF Agreement consists of two main sections: Section I, which sets out the substantive obligations on facilitating customs and other border procedures in 13 articles; and Section II, which contains special and differential treatment provisions for developing and least-developed country Members. These WTO Members have flexibilities in implementing the Agreement, and are to designate, by 31 July 2014, which commitments they can implement immediately, and which they can only implement with more time and/or technical assistance.³⁷

2.10. The TF Agreement concerns all border agencies – not just customs authorities – and therefore raises interesting questions with regard to its relationship with the SPS Agreement given that many SPS controls are implemented at the border. Possible conflicts between the TF and SPS Agreements are addressed in paragraph 6 of the Final Provisions of the TF Agreement, according to which "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

³¹ The report of the panel is contained in document WT/DS76/R. The Appellate Body report is contained in document WT/DS76/AB/R.

³² The report of the panel is contained in document WT/DS245/R. The Appellate Body report is contained in document WT/DS245/AB/R.

³³ The report of the panel is contained in document WT/DS367/R. The Appellate Body report is contained in document WT/DS367/AB/R.

³⁴ See WT/DS448.

³⁵ WT/MIN(13)/36, WT/L/911.

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

³⁷ 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.

provision would seem to safeguard the areas in which the TF Agreement goes beyond the SPS Agreement and can contribute to facilitating trade in goods subject to SPS controls (there is often room for streamlining SPS measures and their application), without diminishing Members' existing right to take science-based measures to protect human, animal or plant life or health within their territories.

ANNEX 1

Phytosanitary trade concerns reported as resolved in 2013

STC number	Title	Members raising the concern	Members supporting the concern	Members maintaining the measure	First date raised
26	Phytosanitary issues in general	US		Certain Members	01/03/1997
37	Actions taken by local governments	Chile		US	01/10/1997
162	Fumigation standards	US		Japan	01/04/2003
174	Notification on transboundary movement of living modified organisms	Australia	US	Korea	01/06/2003
199	Deviation from international standard for wood packing material	US	Argentina, Canada, Chile, China, Dominican Republic, Jamaica, Mexico, Philippines	Spain, EU	01/10/2004
216	Restrictions on Ya pears imports	China	EU	US	01/03/2005
230	Phytosanitary requirements on fresh oranges	Nicaragua		Costa Rica	01/10/2005
241	Import restrictions on wooden Christmas trees	China		US	01/06/2006
277	NAPPO draft standard for ships and cargoes from areas infested with Asian gypsy moth	China	Indonesia, Japan, Korea	Canada, Mexico, US	08/10/2008
284	Rule on importation of wooden handicrafts from China	China		US	23/06/2009