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# COMMISSION ON PHYTOSANITARY MEASURES

## Eleventh Session

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**Written reports from international organizations -  
Activities of the SPS Committee and other relevant WTO activities in 2015**

**Agenda item 11.2.4**

**Prepared by WTO Secretariat**

## **ACTIVITIES OF THE SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN 2015**

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

This report to the Eleventh Session of the Commission on Phytosanitary Measures (CPM-11) provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2015. 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 2015: on 26-27 March, 15-16 July and 14-16 October.<sup>2</sup>

1.2. The Committee agreed to the following tentative calendar of regular meetings for 2016: 16-17 March, 6-7 July, and 26-27 October.

1.3. Ms Lillian Bwalya of Zambia served as Chairperson at the March 2015 meeting. At the July 2015 meeting, Mr Felipe Hees of Brazil was appointed Chairperson for the 2015-2016 period.

#### **1.1 Specific Trade Concerns**

1.4. The SPS Committee devotes a large portion of each regular meeting to the consideration of specific trade concerns (STCs). Any WTO Member can raise specific concerns about the food safety, plant or animal health requirements imposed by another WTO Member. Issues raised in this context are often related to the notification of a new or changed measure, or based on the experience of exporters. Often other WTO Members will share the same concerns. At the SPS Committee meetings, WTO Members usually commit to exchange information and hold bilateral consultations to resolve the identified concern.

1.5. A summary of the STCs raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.<sup>3</sup> Altogether, 403 STCs were raised in the twenty one years between 1995 and the end of 2015, of which 25% were related to plant health.

1.6. In 2015, 21 new specific trade concerns were raised for the first time in the SPS Committee, including the following five new phytosanitary issues:

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

<sup>2</sup> The report of the March meeting is contained in G/SPS/R/78, that of the July meeting in G/SPS/R/79 plus corrigendum, and that of the October meeting in G/SPS/R/81.

<sup>3</sup> The latest version of this summary can be found in document G/SPS/GEN/204/Rev.16. 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>.

- Measures on imports of hibiscus flowers (STC 386)

In March 2015, Nigeria expressed concerns on certain verification procedures being used by Mexico on imported hibiscus flowers from Nigeria. Following the Mexican quarantine authorities' request to change the certificate, Nigeria had developed an online platform to generate electronic phytosanitary certificates and had held bilateral discussions with Mexico's quarantine authority. The validation procedures were causing delays for Nigeria's exports of hibiscus flowers and real losses in some cases. Nigeria thanked the Mexican delegate for the efforts made to convene a bilateral meeting on the margins of the Committee meeting, but noted that no timelines had been agreed for the resolution of the issue.

Burkina Faso echoed Nigeria's concern since it was experiencing similar problems with exports to Indonesia. Senegal also shared the concern, noting that Senegal was currently trying to develop its hibiscus flower sector and would consider the possibility of exporting to Mexico.

Mexico explained that 14 shipments of Hibiscus flowers with false SPS certificates had been intercepted during 2014. Mexican authorities had since maintained ongoing communication with Nigeria and had held a meeting in capital and a bilateral meeting on the margins of the Committee meeting with the aim of guaranteeing the authenticity of the certificates produced by the Nigerian authorities. While setting a timeline was not possible due to certain aspects that still needed to be concluded, Mexico confirmed its willingness to find a prompt solution to the problem.

In October 2015, Nigeria restated its concerns on certain verification procedures being used by Mexico on imported hibiscus flowers from Nigeria. Following the Mexican quarantine authorities' request to change the certificate, Nigeria had developed an online platform to generate electronic phytosanitary certificates and had held bilateral discussions with Mexico's quarantine authority. The validation procedures were causing delays for Nigeria's exports of hibiscus flowers and significant losses in some cases. Nigeria also expressed further concern that sesame had now been included in the list of validation requests from Mexico. Nigeria thanked Mexico for the bilateral meeting on the margins of the Committee meeting and for reassurances of Mexico's efforts to resolve this issue as soon as possible. Nigeria stated that it was prepared to utilize the procedures for good offices of the Chairperson as contained in G/SPS/61 should its concerns remain unaddressed by Mexico.

Burkina Faso echoed Nigeria's concern as a producer of hibiscus and in the interest of facilitating trade of this product. Senegal also shared the concern, noting the importance of following guidelines for documentation and certificates to prevent any delays.

Mexico noted that at the outset the issue had been that false SPS certificates had accompanied hibiscus shipments from Nigeria. Both countries had exchanged documentation and had decided to improve communication and coordination at the national level, set up contact points and seek out the best way to address the concerns raised. Mexico also noted that hibiscus trade had not been stopped entirely. Delays had been due to the review and validation of the certificates.

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

In July 2015, Mexico raised concerns regarding the emergency measure taken by Costa Rica's phytosanitary service in April 2015 through resolution DSFE 03-2015, notified to the WTO under G/SPS/N/CRI/160 and G/SPS/N/CRI/160/Add.1. Costa Rica had temporarily suspended the issuing of import certificates for avocados of various origins because of the supposed presence of the sunblotch viroid in imported avocados. Costa Rica had affirmed that the nature of the problem was urgent, but according to Mexico there was no international regulatory basis for this view. Indeed, the fact that Costa Rica had declared that its territory was free of a pest could not be a basis for the implementation of the emergency phytosanitary measure. The consequence was a complete interruption of trade, and Mexico did not believe that the measure was legitimate. Mexico requested a demonstration of the absence of the pest in line with ISPM 04, Requirements for the Establishment of Pest Free Areas. The interruption of trade meant that Costa Rica's measure was not proportional to the risk, especially because there has been no notification of the pest in Mexico for 21 years. Mexico noted that the measure contravened the SPS Agreement and the SPS Chapter of the Free Trade Agreement between Mexico and Latin America. Mexico finally requested several

documents from Costa Rica showing that Costa Rica was actually free of the pest, and information on shipments of avocados from Mexico that had shown positive results for the pest.

Guatemala, South Africa and the United States shared Mexico's concern. Guatemala also requested information about Costa Rica's pest free status. The United States worried that this suspension of the issuance of import permits for avocados from eight countries and Florida was part of a larger attempt to use SPS measures to protect sensitive domestic industries. In the US view, the measure raised concerns regarding its consistency with international standards and guidelines, its scientific justification and its level of trade restrictiveness. South Africa was concerned that it appeared on the list of countries affected by the suspension despite the fact that it was not exporting avocados to Costa Rica. South Africa requested to be removed from the list.

Costa Rica reaffirmed its commitment to transparency and to the multilateral system. It referred to measures taken to protect the country from the virus and repeated that this pest could cause considerable damage to the phytosanitary status of its crop. Studies carried out in 2014-2015 by its SPS authorities had established that Costa Rica was free from the virus. As a result, the country had taken SPS measures against Peru and California to avoid the introduction of the pest. Costa Rica indicated that Mexico was its main provider of avocados and had reported the presence of the pest, which demonstrated the presence of an imminent risk. The current measure was temporary, and a risk assessment was under way. Costa Rica indicated that its authorities were in close contact with Mexico.

In October 2015, Mexico again raised concerns regarding the emergency measure taken by Costa Rica's phytosanitary service in April 2015 through resolution DSFE 03-2015, notified to the WTO under G/SPS/N/CRI/160, G/SPS/N/CRI/160/Add.1 and G/SPS/N/CRI/162. Mexico reiterated the explanation that it had provided in July 2015. In Mexico's view the measure was in breach of the SPS Agreement and the SPS Chapter of the Free Trade Agreement between Mexico and Latin America. Mexico requested that Costa Rica immediately remove the ban and respond in writing to questions it had submitted. Mexico viewed the measures imposed by Costa Rica as a negative precedent for the application of SPS measures without adherence to international standards.

The United States shared this concern and worried that this suspension on issuing import permits for avocados from eight countries and Florida was part of a larger attempt to use SPS measures to protect sensitive domestic industries. In the US view, the measure also raised concerns regarding its consistency with international standards and guidelines, its scientific justification and its level of trade restrictiveness.

Costa Rica reaffirmed its commitment to transparency and to the multilateral system and restated the observations presented during the July 2015 meeting. The current measure was temporary, and a risk assessment was under way. Costa Rica remained open to dialogue regarding the implementation of its SPS measures.

- Viet Nam's restrictions on fruit due to fruit flies (STC 398)

In October 2015, Chile expressed concerns about Viet Nam's restrictions on its horticultural products due to fruit fly. In August 2015, Viet Nam had informed Chile of its suspension of fruit imports, as Chile was not recognized as free of fruit flies and would not regain its status until Viet Nam was able to carry out a PRA. Chile explained that since 1980, it had operated a fruit fly programme administered by the National Plant Protection Organization (NPPO), through which Chile maintained the National Fruit Fly Detection System (SNDMF). SNDMF ensured that Chile was free from the Mediterranean fruit fly and from other exotic fruit flies of economic significance, based on the IPPC guidelines. Chile had eradicated fruit flies from each of the outbreak areas for three biological life cycles of the insects. Currently, there were two Mediterranean fruit fly outbreaks in Chile, for which a timely corrective action plan had been initiated to achieve eradication. Chile indicated that since it had taken action to eradicate the pest, there had been no exports of fruit from the pest-infected areas and all fruit exports were inspected prior to shipping. As such, Chile considered Viet Nam's measure to be disproportionate and without scientific basis, and urged Viet Nam to comply with the SPS Agreement, in particular with Articles 2.2, 2.3, 3, 5.4, 5.5, 5.6 and 6. Finally, Chile thanked Viet Nam for the bilateral discussions held and expressed its willingness to continue to address the issue in a positive manner.

Viet Nam replied that the temporary suspension of issuing import permits, due to Mediterranean fruit flies, was aimed at protecting Viet Nam's plant health from risks arising from pests. Chile had experienced outbreaks of Mediterranean fruit flies from March to May 2015. In October 2014, Viet Nam's Ministry of Agriculture and Rural Development had published the list of pests, where fruit flies had been assigned to quarantine pest group 1. This group listed high risk pests that had never been previously introduced into Viet Nam. The Circular had been notified to the WTO (G/SPS/N/VNM/63 and G/SPS/N/VNM/63/Add.1) and Viet Nam further noted that the temporary suspension was aligned with ISPM 11. Although Viet Nam had sent official letters to Chile requesting more information on the outbreaks in order to carry out a PRA and other regulatory quarantine procedures, Viet Nam had not yet received adequate information to start the process. Viet Nam requested that Chile work closely with the competent authorities in Viet Nam to resume the discussions.

- Viet Nam's restrictions on plant products (STC 399)

In October 2015, Chile raised a concern on Viet Nam's restrictions on the entry of kiwis, apples, cherries and grapes. Chile explained that it had a history of exporting fruits to Viet Nam and that during that time it had never received notifications of detected pests in its exported products. Since 2011, Chile had been submitting phytosanitary information on these fruits in order for Viet Nam to develop pest risk analyses (PRAs). Two regulations, among others, had been subsequently notified by Viet Nam in 2014 (G/SPS/N/VNM/53 and G/SPS/N/VNM/56), which outlined new regulations for PRAs. In February 2015, Viet Nam shared the PRA for Chilean fruit products but Chile noted several inaccuracies in the document, related to the listed pests. Chile subsequently requested that Viet Nam provide responses to its comments, as well as confirmation that exports of the four fruits could continue while the respective PRAs and a bilateral agreement for conditions of exports were being completed. Inspectors from Viet Nam were subsequently invited to perform a verification of the production and export systems of Chilean fruit products. However, in the same month, Chile received Viet Nam's response to its comments with a 60-day deadline to respond. In particular, Chile was concerned about the new measures which required radiation treatment of fruit, as this had never been required in the history of its trade with Viet Nam or by any other Member. Chile asked Viet Nam to consider its commitments under the SPS Agreement and expressed its willingness to continue bilateral discussions in order to agree on new measures that would provide appropriate phytosanitary security without affecting normal trade.

Viet Nam responded that it was revising its regulations in order to comply with international practices. It had circulated G/SPS/N/VNM/53 and G/SPS/N/VNM/53/Add.1 in order to notify Members about the Circular from Viet Nam's Ministry of Agriculture and Rural Development regarding the list of regulated articles and regulated articles subject to PRA, prior to importation into Viet Nam. Viet Nam noted that import permits would continue to be issued for commodities that had historic trade to Viet Nam and that Chilean export of vegetables for human consumption had been authorized, and were not impacted by this regulation. Viet Nam highlighted that the PRA had already been completed and that it was awaiting Chile's response. Viet Nam further indicated its willingness to discuss and resolve any issue arising from implementation of the new regulation.

- Undue delays in the start of Australia's risk analysis for avocados (STC 400)

In October 2015, Chile raised concerns in relation to delays in gaining market access to Australia for its avocado exports. Chile explained that in 2006, it had requested market entry requirements for avocados into Australia, which resulted in Australia placing it on List B for pest risk assessment (PRA), which is of lower priority. In 2011, Australia informed Chile that it had begun the process of developing a PRA for Chilean avocados, and an inspection visit took place the following year. However, in 2013 Australia reported that the PRA had not started due to a lack of resources. Chile further noted that it had communicated its interest in starting the PRA on several occasions, with no progress made. Chile affirmed that it was free from major pests of economic importance for plant products and urged Australia to begin its PRA in conformity with the SPS Agreement, in particular with Articles 2.2, 5.4 and Annex C (1a).

Australia responded that it had identified over 30 pests and diseases of quarantine concern to Australia, associated with avocados from Chile. Due to the large number of pests and diseases and the complexity of the import risk analysis (IRA) work and progress, Australia could not start the formal IRA until sufficient resources were available.

1.7. Five issues relating to plant health that had been previously raised were discussed again during 2015:

- Import restrictions on plant and plant products (STC 294)

In March 2010, Brazil expressed concerns related to Malaysia's import restrictions on plants and plants products due to a regulation on South American leaf blight disease. Brazil considered that the regulation did not have a scientific justification. Malaysia's import restrictions were apparently based on a provision in the constitutive of the Asia and Pacific Plant Protection Commission (APPPC) on South American leaf blight disease. However, other parties to the APPPC did not apply this provision to Brazil. A representative of FAO conducted a pest risk analysis to verify whether the South American leaf blight disease represented a risk to Malaysia, but no risks had been identified. Therefore, Brazil requested that Malaysia allow the importation of plants and plants products from Brazil. Japan shared Brazil's concerns, while recognizing the efforts of the APPPC to amend its regulation so as to be consistent with the SPS Agreement.

Malaysia indicated that it had not received any information from Brazil in advance of the meeting and, thus, could not consult with his technical officials. Malaysia invited Brazil to send its concern in writing so a response could be provided.

In October 2015, Brazil raised again this concern. Since 2010, when the issue had been raised for the first time, the measure had remained unchanged on the basis that it was consistent with Asia and Pacific Plant Protection Commission (APPPC) phytosanitary standards. Brazil recalled that the regulation had no scientific justification and increased exporting costs through unnecessary laboratory analysis. In 2009, FAO had completed a pest risk analysis and no risks to Malaysia had been identified. A bilateral meeting had been held in the margins of the Committee meeting and would be followed by another one in Kuala Lumpur.

Malaysia reported that it was reviewing import conditions on South American leaf blight disease and welcomed its bilateral discussions with Brazil on this matter.

- Indonesia's port closures (STC 330)

This trade concern had already been raised at each of the six SPS Committee meetings held in 2012 and 2013, as well as in July 2014, by one or several of the following WTO Members: China, the European Union, New Zealand 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.

In March 2015, Chile recalled its concern regarding the loss of access for its fruit exports through the Jakarta port, due to resolutions No. 42 and 43 issued by Indonesia's Ministry of Agriculture in June 2012. Chile had provided Indonesia with all the necessary documentation establishing its fruit fly-free status, and had invited Indonesian authorities to conduct a technical visit to Chile, which had not yet occurred. To date, Chile had not been recognized as free of fruit flies by Indonesia, although Chile had fulfilled the international standards set by IPPC. Chile noted that Indonesia's measure was not in line with the objectives of the SPS Agreement and further urged Indonesia to announce a solution at the next Committee meeting.

Chinese Taipei shared Chile's concerns with regard to Indonesia's import licensing regime for agricultural products. Chinese Taipei noted that the regime was complex, burdensome and time consuming, and was not in line with the national treatment obligation. Chinese Taipei requested that Indonesia bring its import procedures into conformity with all relevant WTO agreements.

Indonesia explained that the measures had been taken to effectively control pest outbreaks and not to ban the importation of fruits and vegetables through Tanjung Priok port. Indonesia clarified that resolutions No. 42 and 43 issued by its Ministry of Agriculture were in accordance with

Article 6 of the SPS Agreement. Indonesia confirmed the receipt of additional documents provided by Chile and informed Chile that the documents were currently being reviewed by the relevant authority.

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

This issue was raised for the first time in the SPS Committee in June 2013, when 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.<sup>4</sup>

In July 2015, South Africa reiterated its concerns on EU restrictive import requirements regarding citrus fruit. EU measures on citrus black spot (CBS) implemented since 2014, were significantly more stringent than previous ones, lacked a scientific basis, implied additional costs and had severe negative influence on South Africa's citrus industry. South Africa recalled that it had asked the IPPC secretariat to establish an expert committee in line with Article XIII of the IPPC to provide an independent science-based opinion. South Africa urged the IPPC to expedite the process.

The European Union stressed that the measures were in place to prevent the entry of CBS to EU territory. The strengthening of the requirements was the result of the risk assessment conducted by EFSA in February 2014 and the recurring number of interceptions. The European Union noted that there had been 28 interceptions in 2014 and four in 2015. Given the circumstances, the European Union was maintaining its import requirements and would consider taking further measures. The European Union acknowledged South Africa's efforts to remedy the situation, however the efforts has not yet resulted in a reduction of imports interceptions. The European Union welcomed bilateral discussion between the technical bodies of both countries to resolve the matter. With regard to the work in IPPC, the European Union indicated that it would provide its comments on the draft terms of reference proposed by the IPPC secretariat.

The IPPC noted that this was the first formal dispute under the IPPC, and would serve as a learning experience. The IPPC reiterated was facing significant difficulties in finding neutral scientific experts on CBS. The IPPC had expanded its search by including experts in the area of risk assessment as it is related to CBS. The IPPC encouraged Members to come forward with names of experts, and explained that the terms of reference of the panel were subject to the negotiation between the parties.

In October 2015, South Africa reiterated its concerns regarding restrictive EU import requirements on citrus fruit. South Africa restated the observations presented during the July 2015 meeting.

Brazil and Zambia shared South Africa's concern, and Brazil offered support to help expedite the IPPC process so that it could be concluded with the necessary urgency.

The European Union stressed that the measures were in place to prevent the entry of CBS to EU territory. The strengthening of the requirements was the result of the risk assessment conducted by EFSA in February 2014 and the recurring number of interceptions. The European Union noted that there had been 28 interceptions in 2014 and nine in 2015. Given the circumstances, the European Union was maintaining its import requirements and would consider taking further measures. The European Union acknowledged South Africa's efforts to remedy the situation, however the efforts had not yet resulted in a sufficient reduction of interceptions. The European Union welcomed bilateral discussion between the technical bodies to resolve the matter. With regard to the work in IPPC, the European Union highlighted the importance of the terms of reference in this first ever IPPC procedure, so as to lay down a solid and legally sound foundation not only for the current dispute but also for the IPPC Dispute Settlement Procedure in general. Furthermore, the European Union signalled its being fully committed to supporting the IPPC process and that it would provide its comments on the draft terms of reference.

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<sup>4</sup> For discussions held in 2013 and 2014, see WTO Reports to CPM9 and CPM10 circulated in documents CPM 2014/INF/03 and CPM 2015/INF/07 respectively.

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

This issue was raised for the first time in the SPS Committee in July 2014, when India raised its concerns on the high cost of certification for mango exports to the United States. The issue was raised again in October 2014.<sup>5</sup>

In March 2015, India reiterated its concern regarding the high cost of certification for mango exports to the United States. In previous meetings, the United States had offered the possibility of irradiation upon arrival. This solution had been discussed in a bilateral meeting held on 3 to 4 March 2015. India requested that the United States circulate a draft work plan for the irradiation upon arrival requirement.

The United States reported that the bilateral discussion in March 2015 had been productive. Two options had been discussed: (i) expansion of the current irradiation programme for mangoes (and pomegranates) in India through the approval of two additional irradiation facilities in India; and (ii) irradiation of Indian-origin mangoes (and pomegranates) upon arrival in the United States. The United States welcomed further engagement with India on this issue.

In July 2015, India restated its concerns about the high cost of certification for mango exports to the United States. Since April 2007, India had been granted access to export mangoes to the United States on the basis that its mangoes would first be irradiated, under the supervision of US inspectors. India noted the high cost of certification that it had to bear, which amounted to approximately 12% of the FOB costs per metric ton of mangoes exported to the United States. India recalled that in a bilateral meeting held in March 2015, the United States had offered the possibility of irradiation upon arrival, and India had requested circulation of the corresponding draft work plan.

Brazil and the Dominican Republic shared India's concern. Brazil noted that during the 2015 mango exports season, Brazil had spent half a million US dollars for the on-the-spot inspection carried by the US inspectors. Brazil noted that the procedures were costly and duplicative, and urged the United States to ease its requirements. The Dominican Republic requested further information from the United States on the costs of import procedures.

The United States confirmed that India had exported mangoes every year since the market was opened in 2007, and the value of those exports had risen to reach nearly 2 million US dollars in 2014. The United States recalled the two options that had been discussed in March 2015: (i) expansion of the current irradiation programme by resolving substantial deficiencies of new irradiation facilities in Vashi and Innova; and (ii) irradiation upon arrival in the United States. Additional information on the second option had been sent to India in June 2015. The United States welcomed further engagement with India to resolve these concerns and would plan a second visit when India's facilities were ready for certification. The United States noted that only the irradiation facility at Nasik was currently certified. The United States also welcomed bilateral consultations with Brazil and the Dominican Republic.

In October 2015, India reiterated the explanation that it had provided in July 2015.

The Dominican Republic shared India's concern and considered the best option for a solution was to require treatment of the mangoes upon entry into the United States. Brazil also shared India's concern and noted that US inspections had nearly double the cost of those conducted by Brazilian inspectors. Brazil stated that India's options presented a good basis to begin discussions on a potential solution.

The United States reiterated the explanation that it had provided in July 2015. The United States looked forward to continue discussions on this issue with India and any other interested trading partners.

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<sup>5</sup> For discussions held in 2014, see WTO Report to CPM10 circulated in document CPM 2015/INF/07.



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

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

In March 2015, India recalled its previously-raised concern regarding the EU ban on exports of mangoes and four types of vegetables. India reported that the ban on mangoes had been lifted in February 2015; however the ban on four types of vegetables remained. India had informed the European Union on various measures to improve its packaging, quarantine and inspection system. India also recalled the Commission's Food and Veterinary Office (FVO) visit to India in September 2014, which had reported overall improvement in the control system. India requested that the European Union recognize this improvement and lift the remaining ban.

Nigeria shared India's concern and noted that such measures could be an impediment to Nigeria's export diversification efforts.

The European Union explained that the ban was temporary, to prevent the introduction into and spread within the European Union of harmful organisms with regard to bitter melon, taro, eggplant and snake gourds originating from India. The European Union confirmed that the audit mentioned by India had shown significant improvements in India's phytosanitary export certification system; nevertheless, interceptions of harmful organism in consignments of non-prohibited commodities from India were still occurring regularly. The European Union indicated that further analysis was needed and that a further review would take place in 2015 on the basis of the evolution of import interceptions.

In July 2015, India recalled its concern regarding the EU ban on exports of mangoes and four types of vegetables, on the grounds of the increasing number of interceptions of harmful pests and organisms since May 2014. The ban on mangoes had been lifted in February 2015; however the ban on vegetables continued. India had shared information with the European Union on various control measures including the strengthening of plant quarantine systems and the increasing of sampling intensity. India also recalled the Commission's Food and Veterinary Office (FVO) visit to India in September 2014, which had reported overall improvement in the control system.

The Dominican Republic shared India's concerns, noting that it was currently facing a similar situation.

The European Union confirmed that its measures had been introduced on 24 April 2014 to prevent the introduction of harmful organisms. The European Union explained that the ban on mangoes had been lifted in February 2015 based on the positive feedback received after the visit of EU inspectors and the confirmation from the Indian competent authorities that they would apply a specific phytosanitary treatment on mangoes before exportation. Despite the progress made, many interceptions of harmful organisms were still occurring. These repeated interceptions raised EU concerns over the effectiveness of India's phytosanitary export system. The European Union recalled that the measures were temporary and would be reviewed before the end of 2015 on the basis of the evolution of import interceptions and the guarantees provided by the Indian competent authorities.

In October 2015, India recalled its concern regarding the EU ban on exports of mangoes and four types of vegetables, on the grounds of the increasing number of interceptions of harmful pests and organisms since May 2014. The ban on mangoes had been lifted in February 2015; however the ban on vegetables continued. India had shared an action plan in August 2015 with the European Union related to the four remaining vegetables included in the ban but had yet to receive a response. India requested the European Union to review the action plan and the report of the EU audit to facilitate removing the ban as soon as possible.

The European Union confirmed that its measures had been introduced on 24 April 2014 to prevent the introduction of harmful organisms and reiterated the explanation that it had provided in July 2015.

1.8. WTO Members also used the opportunity of the SPS Committee meetings during 2015 to provide other information relating to plant protection measures, including:

- Morocco recalled that it had established its National Food Safety Office (ONSSA) in 2009, which consisted of two departments, one for veterinarian services and the other for monitoring phytosanitary products. Given that these departments had been undertaking their own risk assessments over the four years of operation, Morocco had found it necessary to ensure that the decisions taken by ONSSA were carried out in a credible and scientific manner. In response, Morocco had created two new departments within ONSSA in order to further monitor SPS actions at the national level, one which focused on SPS risk assessment and the other on SPS measures and market access. Morocco outlined the responsibilities of the risk assessment department, which included the collection of data and documentation necessary for monitoring SPS risks, as well as undertaking surveys and risk assessments in an objective, independent and transparent manner. In addition, Morocco highlighted the various responsibilities of the department for SPS measures and market access, which included coordinating SPS negotiations, monitoring the implementation of SPS Agreements between Morocco and its trading partners, and providing technical requirements necessary for the granting of market access. Morocco underscored the importance of undertaking risk assessments and indicated interest in having access to risk assessment studies conducted by other countries, as well as the data used to carry out these studies. Morocco requested the Committee to find a way to facilitate sharing of these data. Morocco also supported the US proposal<sup>6</sup> to provide assistance in building risk analysis capacity for LDCs and to establish a programme to facilitate the exchange of data, experiences and strategies related to risk analysis.

## 1.2 Transparency

1.9. The SPS Information Management System (SPS IMS) allows easy access and management of all WTO SPS-related documentation.<sup>7</sup>

1.10. The legal obligation of WTO Members is to notify new or modified SPS measures when these deviate from the relevant international standards, including International Standards for Phytosanitary Measures (ISPMs). The recommendations of the SPS Committee, however, now encourage the notification of all new or modified measures even when these conform to international standards.<sup>8</sup> Although this recommendation does not change the legal obligations of WTO Members, it may enhance transparency regarding the application of IPPC's ISPMs.

1.11. A total of 1,280 notifications, that is 1,166 proposed new or revised SPS measures and 114 emergency ones, were submitted to the WTO in 2015. Among these, 173 regular notifications and 21 emergency notifications identified plant protection as the objective of the measure. Of these, 140 of the regular and 21 of the emergency notifications identified an IPPC standard as relevant, with 98% and 95% respectively indicating conformity to an IPPC standard.

1.12. SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). 57% of notifications submitted during 2015 were submitted online.

## 1.3 Equivalence

1.13. The guidelines on the implementation of Article 4 of the SPS Agreement on equivalence<sup>9</sup> notes, *inter alia*, the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and encourages the further elaboration of specific guidance by these organizations. No contributions were made by any of the standard-setting organizations in 2015 under this agenda item.

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<sup>6</sup> G/SPS/GEN/1401.

<sup>7</sup> See <http://spsims.wto.org>.

<sup>8</sup> G/SPS/7/Rev.3.

<sup>9</sup> G/SPS/19/Rev.2.

## 1.4 Regionalization

1.14. Article 6 of the SPS Agreement requires that measures take into account pest- or disease-free areas or areas of low pest or disease prevalence. This concept is frequently referred to as "regionalization". Guidelines on regionalization<sup>10</sup> adopted by the SPS Committee identify the type of information normally needed for the recognition of pest- or disease-free areas or areas of low pest or disease prevalence, as well as typical administrative steps in the recognition process. The Committee agreed to monitor the implementation of Article 6, on the basis of information provided by WTO Members.

1.15. The WTO Secretariat prepared a report on the implementation of Article 6, covering the period from 1 June 2014 until 31 March 2015, based on information provided by WTO Members through notification and at SPS Committee meetings.<sup>11</sup> The report summarized (i) requests for recognition of pest- or disease-free areas or areas of low pest or disease prevalence; (ii) determinations on recognition of regionalization; and (iii) Members' experiences in the implementation of Article 6 and the provision of relevant background information by Members on their decisions to other interested Members.

## 1.5 Monitoring the Use of International Standards

1.16. The procedure adopted by the SPS Committee to monitor the use of international standards invites WTO Members to identify specific trade problems they have experienced due to the use or non-use of relevant international standards, guidelines or recommendations.<sup>12</sup> These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting organization.

1.17. Annual reports on the monitoring procedure summarize the standards-related issues that the Committee has considered and the responses received from the relevant standard-setting organizations. The Seventeenth Annual Report was circulated to Members on 2 June 2015.<sup>13</sup>

1.18. During the March 2015 Committee meeting, the United States reminded Members about the OIE guidelines on imports of live poultry and poultry products (including heat-treated/cooked products) related to avian influenza, including highly pathogenic avian influenza (HPAI). The guidelines made clear that when HPAI was detected only in wild birds, OIE members should not impose bans on trade in poultry commodities. The guidelines also clearly established provisions for the recognition of zones or regions free of the disease. The affected country should define the control zones based on its response efforts, and the remainder of the country outside of those control zones could continue to be considered disease free. Additionally, heat-treated poultry products (meat, liquid eggs, rendered meals, etc.) that had been heat-processed to destroy the HPAI virus in accordance with OIE guidelines were safe to trade irrespective of whether the products came from an area where HPAI had been detected. The United States called upon its trading partners to lift any import restrictions on live poultry and poultry products (including heat-treated products) from the United States that were not consistent with the OIE guidelines.

1.19. The European Union shared the US concern and supported the removal of import restrictions with relation to HPAI that were not in line with international standards. Canada noted that the OIE provided effective guidance around the principle of zoning and encouraged all Members to recognize zones established by affected Members, in accordance with this guidance.

## 1.6 Technical Assistance

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

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<sup>10</sup> G/SPS/48.

<sup>11</sup> G/SPS/GEN/1412.

<sup>12</sup> G/SPS/11/Rev.1.

<sup>13</sup> G/SPS/GEN/1411.

1.21. On 12 and 13 October 2015, the WTO organized a workshop on transparency in Geneva.<sup>14</sup> 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 not only attend the workshop but also the subsequent Committee meeting. Approximately 150 participants received hands-on training on how to access and use SPS-related information and how to notify their SPS measures. Participants also shared national experiences and debated how to further improve transparency in this area.

1.22. The programme<sup>15</sup> and presentations of the workshop are available from the "Events, workshops and training" section under the WTO SPS Gateway ([http://www.wto.org/english/tratop\\_e/sps\\_e/events\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/events_e.htm)).

1.23. At the March 2016 SPS Committee meeting, the WTO Secretariat will present its report entitled "SPS Technical Assistance and Training Activities", containing detailed information on all SPS-specific technical assistance activities undertaken by the WTO Secretariat from 1994 to the end of 2015.<sup>16</sup>

1.24. Document G/SPS/GEN/997/Rev.6, circulated on 23 February 2016, provides information on all WTO technical assistance activities in the SPS area planned for 2016, 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 2016, upon request from regional organizations. National seminars are provided upon request by WTO Members and acceding governments. Further information on SPS activities is available through <http://www.wto.org/sps/ta>.

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

1.25. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. As agreed in its Second Review<sup>17</sup>, the Committee developed a procedure to facilitate the use of ad hoc consultations and negotiations to resolve trade problems.<sup>18</sup> The procedure lays out how two or more WTO Members can use the good offices of the SPS chairperson or another facilitator to help find a solution to their concerns. In October 2015, the Secretariat introduced the first annual report on the use of the procedure<sup>19</sup>, which covers the period from the adoption of the procedure in July 2014 until the end of September 2015. During this time-period, no Member had requested consultations under this procedure.

1.26. During 2015, the SPS Committee continued its discussions on the report of the Fourth Review of the Operation and Implementation of the SPS Agreement, started in 2014, including proposals submitted by Members for possible areas of future work. However, the Committee was not able to adopt the report of the Review<sup>20</sup>, or a proposed Catalogue of Instruments available for WTO Members to Manage SPS Issues.<sup>21</sup> A recommendation in the Review Report regarding the Committee's future work on private standards has been a major point of contention. On the proposed Catalogue of Instruments, Members have not reached a consensus to include a disclaimer to clarify the legal status of the document.

1.27. In October 2015, the Chair suggested addressing the Review Report, and more specifically the recommendations on future work regarding SPS-related private standards, together with the working definition of SPS-related private standards and possible future actions. He invited Members to consider a draft text he had distributed at the informal meeting, and noted his intention to convene intersessional informal meetings or consultations to continue the dialogue and prepare the ground for a possible resolution at the March 2016 meeting.

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<sup>14</sup> G/SPS/R/80.

<sup>15</sup> G/SPS/GEN/1446.

<sup>16</sup> G/SPS/GEN/521/Rev.11.

<sup>17</sup> G/SPS/36.

<sup>18</sup> G/SPS/61.

<sup>19</sup> G/SPS/GEN/1457.

<sup>20</sup> G/SPS/W/280/Rev.2.

<sup>21</sup> G/SPS/W/279/Rev.2.

## 1.8 Private and Commercial Standards

1.28. Since June 2005, the SPS Committee has discussed the issue of private and commercial standards, and several information sessions have been held in the margins of the SPS Committee meetings. WTO Members have raised a number of concerns regarding the trade, development and legal implications of private standards. In March 2011, the Committee adopted five actions to address some of the identified concerns.<sup>22</sup> These actions relate to defining the scope of the discussions on these private standards and promoting information exchange among various actors in this area, including the SPS Committee, the relevant international standard-setting organizations, WTO Members, entities involved in SPS-related private standards, and the WTO Secretariat.

1.29. In October 2013, the SPS Committee formed an electronic working group (e-WG) focussed on developing a working definition of an SPS-related private standard, with China and New Zealand as "co-stewards". In 2014, the co-stewards circulated two reports on the work of the e-WG<sup>23</sup>, but no consensus was reached by the Committee on a working definition. In March 2015, the co-stewards presented their latest report on the work of the e-WG.<sup>24</sup> They noted that the e-WG, while very close, had not been able to reach consensus on the working definition and therefore the SPS Committee agreed that the e-WG take a cooling off period.

1.30. In October 2015, the Chairperson reiterated its statement made under the Fourth Review discussions, that in his view, the three issues (the working definition; the recommendations related to private standards in the Review Report; and the Committee's future work on that issue) were linked and could only be resolved together. Like for the Fourth Review, he invited Members to consider the text he had distributed at the informal meeting and noted his intention to convene intersessional informal meetings or consultations to continue the dialogue and prepare the ground for a possible resolution at the March 2016 meeting.

## 2 OTHER RELEVANT WTO ACTIVITIES

### 2.1 Dispute Settlement

#### *The WTO Dispute Settlement Procedure*

2.1. Any WTO Member may invoke the formal dispute resolution procedures of the WTO if they consider that a measure imposed by another WTO Member violates any of the WTO Agreements, including the SPS Agreement. If formal consultations on the problem are unsuccessful, a WTO Member may request that a panel be established to consider the complaint.<sup>25</sup> A panel of three individuals considers written and oral arguments submitted by the parties to the dispute and issues a written report of its legal findings and recommendations. The parties to the dispute may 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.

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<sup>22</sup> G/SPS/55.

<sup>23</sup> G/SPS/W/276 and G/SPS/W/281.

<sup>24</sup> G/SPS/W/283.

<sup>25</sup> A flow chart of the dispute resolution process can be consulted at [http://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/disp2\\_e.htm](http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp2_e.htm).

## SPS Disputes

2.3. As of February 2016, more than 500 complaints had formally been raised under the WTO's dispute settlement procedures. Of these, 45 alleged violations of the SPS Agreement, and the SPS Agreement was relevant also in two other disputes. Twenty-four SPS-related complaints, on 19 issues, have been referred to a panel.

2.4. Three panel reports have concerned plant pests and quarantine requirements: (i) the United States complaint about Japan's requirement for testing each variety of fruit for efficacy of treatment against codling moth (*Japan-Agricultural Products*)<sup>26</sup>; (ii) the United States' complaint about Japan's set of requirements on apples imported from the United States relating to fire blight (*Japan-Apples*)<sup>27</sup>; and (iii) New Zealand's complaint against Australia's restrictions on apples (*Australia-Apples*).<sup>28</sup>

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

## 2.2 Trade Facilitation

2.6. At the WTO's 9th Ministerial Conference in Bali, Indonesia in December 2013, Members concluded negotiations of the Trade Facilitation (TF) Agreement.<sup>29</sup> Trade facilitation, which in a nutshell could be described as simplification of trade procedures in order to move goods in cross-border trade more efficiently, has been a topic of discussion since the WTO's Singapore Ministerial Conference in December 1996. After several years of exploratory work, WTO Members launched negotiations on trade facilitation in July 2004.

2.7. In line with the decision adopted in Bali, Members undertook a legal review of the text and adopted on 27 November 2014 a Protocol of Amendment<sup>30</sup> to insert the new Agreement into Annex 1A of the WTO Agreement. The TF Agreement will enter into force after two-thirds of WTO Members have completed their domestic ratification process in accordance with Article X:3 of the WTO Agreement.<sup>31</sup> As of February 2016, 70 Members have ratified the Agreement.

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. In order for a WTO Member to take advantage of the implementation flexibilities, it must designate and notify to the WTO the measures that it can implement immediately, and which it can only implement with more time and/or technical assistance.<sup>32</sup>

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

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<sup>26</sup> The report of the panel is contained in document WT/DS76/R. The Appellate Body report is contained in document WT/DS76/AB/R.

<sup>27</sup> The report of the panel is contained in document WT/DS245/R. The Appellate Body report is contained in document WT/DS245/AB/R.

<sup>28</sup> The report of the panel is contained in document WT/DS367/R. The Appellate Body report is contained in document WT/DS367/AB/R.

<sup>29</sup> WT/MIN(13)/36, WT/L/911.

<sup>30</sup> WT/L/940.

<sup>31</sup> WT/MIN(13)/36, WT/L/911, paragraph 2.

<sup>32</sup> Developing and LDC Members are to designate all the substantive provisions in three categories: Category A, which they can implement upon entry into force of the Agreement; Category B, which they can implement only after a transitional period; and Category C, which they can implement only after a transitional period and capacity building.

2.11. The TF Agreement concerns all border agencies – not just customs authorities. Although the negotiators took care to avoid overlap or clash with provisions of the SPS Agreement, they also included language to address possible conflicts. Paragraph 6 of the Final Provisions of the TF Agreement states that "nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures". This language makes it clear that the TF Agreement will not diminish Members' existing right to take science-based measures to protect human, animal or plant life or health within their territories. However, implementation of the TF Agreement can contribute to facilitating trade in goods subject to SPS controls (there is often room for streamlining SPS measures and their application), for example, by making import requirements more accessible through internet publication, by reviewing and reducing formalities, and by allowing advance filing of import documents so that processing can begin before the goods arrive. It would also provide more fairness in border procedures, for example, by requiring authorities to inform the importer when goods are detained, allowing the possibility of a second test, and protecting importers interests in the application of an import alert system.

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