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ACTIVITIES OF THE SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN 2017

REPORT BY THE WTO SECRETARIAT¹

This report to the Thirteenth Session of the Commission on Phytosanitary Measures (CPM-13) provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2017. 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 2017: on 22-23 March, 13-14 July and 2-3 November.²

1.2. The Committee agreed to the following tentative calendar of regular meetings for 2018: 1-2 March, 12-13 July, and 31 October - 1 November.

1.3. Mr Felipe Hees of Brazil served as interim Chairperson at the March 2017 meeting. At the July 2017 meeting, Mr Marcial Espínola of Paraguay was appointed Chairperson for the 2017-2018 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, 434 STCs were raised in the twenty three years between 1995 and the end of 2017, of which 25% were related to plant health.

1.6. Seven of the 17 new specific trade concerns raised for the first time in the SPS Committee in 2017 dealt with phytosanitary issues:

- Viet Nam's suspension of groundnut seed imports (STC 418)

In March 2017, Senegal noted that, as of 11 July 2016, Viet Nam had suspended its imports of groundnut seeds from Senegal following Decision No. 2838/QD-BNN-BVTV, due to the detection of two destructive pests in groundnut seeds exported to Viet Nam. Senegal confirmed that one fumigation company had not respected pre-fumigation procedures and its quarantine authorities had taken corrective measures, including strengthening procedures for issuing quality certificates and establishing a roadmap to further protect plant health. Senegal appealed to Viet Nam, which was a

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

² The report of the March meeting is contained in G/SPS/R/86 plus corrigendum, that of the July meeting in G/SPS/R/87 plus corrigendum, and that of the November meeting in G/SPS/R/88 plus corrigendum.

³ The latest version of this summary can be found in document G/SPS/GEN/204/Rev.18. 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>.

major importer of Senegalese groundnut seeds, to undertake a risk analysis of their measures and further indicated that it remained open to bilateral discussion.

Viet Nam stated that between February and June 2016 it had intercepted 48 containers of groundnut seeds infected with two regulated quarantine pests absent from its territory. Viet Nam noted that despite alerting the Senegalese authorities of the detection of incompliant consignments, Senegal had not tightened its controls sufficiently. Viet Nam's temporary suspension was in compliance with IPPC and domestic regulation and was aimed at preventing the spread of the two pests in its territory. Viet Nam encouraged Senegal to improve cooperation and provide technical reports to assess the situation. Viet Nam welcomed further bilateral discussion to resolve the matter.

In July 2017, Senegal reported that after raising the concern in the March 2017 SPS Committee meeting, Viet Nam had requested a more detailed report of the phytosanitary risk analysis applied to the groundnut industry, which had been provided in June 2017. Viet Nam had acknowledged receipt and requested an official translation into English. Senegal noted that no notification of non-conformity had been issued and expressed appreciation for Viet Nam's collaboration on this issue.

Viet Nam explained that in 2015 it had issued a new list of commodities subject to pest risk analysis before importation. Viet Nam appreciated Senegal's effort to provide information in English and looked forward to deliver a final response to this issue at their next bilateral meeting.

In November 2017, Senegal reiterated its concern regarding Viet Nam's provisional suspension of groundnut imports from Senegal and reported on the provisions taken to ensure compliance with the phytosanitary requirements, including an audit by a Chinese quarantine service mission.

Viet Nam reiterated that there had been detections of groundnuts infested with live insect quarantine pests. Viet Nam reported that Senegal had been notified, and that its temporary suspension was in line with IPPC guidelines. Viet Nam also reported that it was currently reviewing the technical information received from Senegal's National Plant Protection Agency.

- Thailand's import restriction on papaya seeds (STC 421)

In March 2017, Chinese Taipei referred to Thailand's import restrictions on papaya seeds. It observed that although a risk assessment had been conducted 9 years ago, and despite repeated requests, no proper response had been received from Thailand. Prior to 2008, papaya seeds had been exported to Thailand. Chinese Taipei observed that Thailand itself did not attribute the ban on papaya seeds to any pest issue in Chinese Taipei, but was simply the result of a regulatory amendment in 2007. Thailand had requested detailed information for conducting a risk assessment prior to reopening its market. However, Chinese Taipei argued that this approach was inconsistent with IPPC ISPM No.2 Framework for Pest Risk Analysis.

Chinese Taipei had provided detailed historical records of trade, as well as a pest list, in response to Thailand's request in April 2008. Additional data on papaya seed varieties had also been requested in June 2010 and promptly provided. Since then, Chinese Taipei had sought on multiple occasions an update on the progress of the risk assessment, without substantive response. In March 2016, Thailand further requested supplementary information on three kinds of pests with a risk of being spread by the papaya seed trade: *Candidatus phytoplasma solani*, Tobacco ringspot virus and Tomato spotted wilt virus. In response, Chinese Taipei had provided in August 2016 scientific evidence showing that there was no record of these pests being spread through the trade of papaya seed, and that these pests had never been found in papaya seeds in its territory. Discussions had taken place on the margins of the SPS Committee and Chinese Taipei indicated that the dossiers of scientific evidence, requested in October 2017, had now been received and would be reviewed by Chinese Taipei's experts, following which feedback would shortly be provided to Thailand's competent authority. Chinese Taipei also indicated that it looked forward to receiving the import protocols.

Chinese Taipei underscored its efforts to provide the relevant information in a timely manner and urged Thailand to move forward or to provide proper scientific justification, arguing that Thailand's restrictions were inconsistent with Articles 2, 3 and 5 of the SPS Agreement, as well as Article 7.2 of the International Plant Protection Convention. Chinese Taipei encouraged Thailand to comply with its WTO commitments, in particular Articles 5.6 and 5.8 of the SPS Agreement, and to re-open its market to papaya seeds without further undue delay.

In July 2017, Chinese Taipei reiterated its concerns raised in the March 2017 SPS Committee regarding Thailand's import restrictions on papaya seeds. Chinese Taipei also indicated that, after introducing the concern under the agenda item "Other Business" at the March 2017 SPS Committee meeting, Thailand had said that papaya seeds risked the spread of the pests *Candidatus phytoplasma solani* and Tobacco ringspot virus (TRSV). In July 2017, Thailand had indicated that it would remove *Candidatus phytoplasma solani* from its quarantine pest list and that it would further discuss its proposed risk mitigation measures for TRSV. Finally, Chinese Taipei urged Thailand to promulgate the import protocol for its papaya seeds, and insisted that the current import restriction was inconsistent with several provisions of the SPS Agreement and the IPPC.

Thailand drew attention to notification G/SPS/N/THA/158 of 2007, according to which prohibited products could only be imported after the completion of a pest risk analysis, providing an exemption to allow existing commodities' trade to continue until their pest risk analysis was completed. For the exemption to apply, however, the NPPO of the exporting country had to submit an import request with evidence of previous imports, which in the case of Chinese Taipei did not include papaya seeds. Thailand added that it had conducted a pest risk analysis for papaya seeds as a new commodity and had finalized its quarantine pest list, as communicated to Chinese Taipei's Department of Agriculture. Thailand announced that it was in the process of drafting the import protocol for papaya seeds, to be sent for approval by its Quarantine Technical Subcommittee. Thailand finally expressed its willingness to work closely on this matter with Chinese Taipei.

In November 2017, Chinese Taipei reiterated its concern on Thailand's import restriction on papaya seeds imposed since 2008. Chinese Taipei reported that it was currently reviewing Thailand's draft quarantine requirements for its papaya seeds. Chinese Taipei confirmed that the exported papaya seed was free from tobacco ringspot virus (TRSV) and urged Thailand to lift the import restriction and comply with its WTO obligations.

Thailand explained that the reason for the initial ban on the import of papaya seeds from Chinese Taipei was due to a regulatory amendment. An exemption was granted to existing traded commodities, but Chinese Taipei's request to include papaya seeds in the exemption was received only after the time-frame. Therefore, it faced a delay in its market access. Thailand added that the draft import protocol for papaya seeds had been approved by its Quarantine Technical Subcommittee. If it was accepted by Chinese Taipei, it would be submitted to Thailand's Pest Quarantine Committee for final approval to resume imports of papaya seeds from Chinese Taipei.

- Brazil's measures on bananas (STC 423)

In July 2017, Ecuador informed the SPS Committee that Brazil had suspended its imports of bananas from Ecuador since 1997, due to alleged phytosanitary reasons. Ecuador reported on the measures taken to resolve the issue, including visits of experts from Brazil to its banana plantations, the signing of agreements, the provision of technical reports and finally a work plan for the export of Ecuadorian bananas to Brazil, stressing the safety of the product. Ecuador affirmed that Brazil's *de jure* and *de facto* restrictions were inconsistent with several provisions of the SPS Agreement. Ecuador remained positive on the implementation of the bilateral agreements on this issue and Brazil's 2014 Normative Instruction No. 3.

Brazil responded that the Department of Plant Health of the Ministry of Agriculture, Livestock and Food Supply (MAPA) had set up a working group to finalize the risk analysis process regarding diseases that affected bananas originating in Ecuador. Brazil also reported that Ecuador had requested a modification of the applicable Normative Instruction No. 3/2014, upon which Brazil had submitted new text to Ecuador. If this text was agreed upon, Brazil would proceed with the corresponding regulatory process.

In November 2017, Ecuador reiterated its concern over the import suspension of Ecuadorian bananas to Brazil. Ecuador urged Brazil to comply with its Normative Instruction No. 3 of 21 March 2014, which laid down sanitary and phytosanitary standards for bananas, based on which Ecuador submitted a working plan to Brazil. Ecuador regretted that the import ban had already lasted for more than 20 years.

Brazil emphasized its bilateral engagement with Ecuador, noting that Ecuador's concern on the ban on shrimps had been resolved. Regarding bananas, Brazil explained that its Ministry of Agriculture was reviewing Ecuador's working plan. Brazil aimed to streamline its standards with its normative instruction on technical standards for banana imports. Brazil also referred to its working meeting

with Ecuadorian plant safety authorities and remained positive about swift progress in resolving Ecuador's concern.

- India's fumigation requirements for cashew nuts (STC 427)

In July 2017, Senegal reported that since January 2017, India had mandated the use of methyl bromide fumigation. However, Senegal noted that methyl bromide use had been discontinued by several countries because of its high toxicity and its negative effects on the ozone layer, as reflected in the Montreal Protocol. Senegal explained that it had abandoned the use of methyl bromide in 2002 and stressed that no cases of non-conformity with sanitary requirements had been detected. Senegal noted that in practice the restriction was not being enforced on products from Senegal, and thanked India for its cooperation, but underlined that the measure was still in force and its need for certainty for future shipments.

Burkina Faso, Kenya, Madagascar, Nigeria and Togo reported that they were also affected by the measure. Togo further indicated that India had also notified the required use of the fumigant for its timber exports. These Members invited India to apply the principle of equivalence and stressed the negative effects of the use of methyl bromide. The Russian Federation also expressed its interest in this concern and in the implementation of the measure.

India replied that relaxation of the measure had been extended up to 31 December 2017 to allow fumigation on arrival. India also directed Members to additional information available on the website: <http://www.agricoop.nic.in/>. India requested Senegal to provide bio efficacy data to NPPO India regarding the effectiveness of alternative fumigants.

In November 2017, Senegal reiterated its concern over India's methyl bromide fumigation requirements for cashew nuts. Senegal noted that methyl bromide use had been discontinued by several countries due to its high toxicity and negative effects on the ozone layer. Senegal reported on the exchange of documents with India and scientific publications regarding the effectiveness of aluminium phosphide as an alternative fumigant, and urged India to accept its use.

The United States associated itself with the concern expressed by Senegal on the fumigation of imported products with methyl bromide, particularly as it affected peas and pulses. The United States expressed its commitment to continue to find alternatives to methyl bromide fumigation as a pest mitigation measure, and encouraged India to consider that methyl bromide was not necessary in cases of negligible pest risk.

Burkina Faso, Colombia, Madagascar, Mozambique, Nigeria, Togo, and Ukraine shared Senegal's concern. Madagascar reported that it had held bilateral discussions with India on the fumigation requirement for agricultural products. Burkina Faso referred to its cashew nuts exports, urging India to accept the principle of equivalence in order to facilitate trade of agricultural products. Ukraine shared the concern as it prohibited the use of methyl bromide for fumigation and had therefore submitted alternatives to India. Togo urged India to accept aluminium phosphide as an alternative fumigant. Colombia supported the systemic concern on India's fumigation requirement and its environmental and trade implications.

India responded that its phytosanitary requirements were consistent with its WTO obligations. India reiterated that until 31 December 2017, agricultural imports from countries whose products could not be fumigated with methyl bromide at the port of export could be fumigated upon arrival in India. Finally, India had also made a formal request to Senegal for information in order to consider its request for alternative fumigants.

The United States commented that India had only responded to Senegal without providing a response to the concerns raised by other Members, and requested that India circulate a document with the fumigation requirement applicable to other Members, in particular to the United States.

India reiterated that its phytosanitary requirements were consistent with its WTO obligations and that the information was available on its official website: <http://www.agricoopnic.in>.

- United Arab Emirates measures on plant protection products (STC 429)

In November 2017, Turkey raised a concern regarding the United Arab Emirates Ministerial Decree No. 799 of 2005 as amended by Ministerial Decree No. 2364 of 2014, which required, for the registration of a pesticide, a certificate of registration from the country of origin, a certificate of registration in an OECD member State, and a trading certificate of the pesticide from an OECD member State. Turkey asked for the scientific reasons behind these requirements, highlighting that fulfilling these conditions was not always possible and created unjustifiable discrimination between WTO Members. Turkey reported that bilateral meetings with the United Arab Emirates had not led to progress.

The Chairperson noted that the United Arab Emirates was not present at the meeting.

- Turkey's restrictions on rough rice imports (STC 433)

In November 2017, the United States raised concerns over Turkey's continued restrictions on rough rice imports due to *Aphelenchoides besseyi*, a nematode that was widespread in Turkey. The United States referred to IPPC standard ISPM No. 5, according to which a plant disease or pest could not be considered a quarantine pest if it was widespread within a given territory and not under official control, and to Article 2.3 of the Agreement on the Application of Sanitary and Phytosanitary Measures. The United States highlighted its efforts to receive market access for rough rice under the same conditions that Turkey applied to its domestic industry. The United States regretted that Turkey had failed to provide scientific justification for the restrictions and requested that Turkey ensure that its rough rice import standards were consistent with its WTO obligations and aligned with international standards.

Turkey noted that the relevant regulation had been notified as G/SPS/N/TUR/203 and argued that it was in line with Article 7 of the IPPC, which granted countries the right to regulate in order to prevent the introduction and spread of pests in their territories. Turkey stressed its domestic quarantine measures and the limited existence of the organism in Turkey.

- India's fumigation requirements for teak tree wood (STC 434)

In November 2017, Colombia raised a concern over India's requirement that teakwood be fumigated with methyl bromide at the port of export, as notified in G/SPS/N/IND/149, with a transition period ending on 31 December 2017. Colombia noted that, as other WTO Members, it did not approve the use of the substance, following the Montreal Protocol to the Vienna Convention for the Protection of the Ozone Layer recommendation to gradually eliminate this substance. Colombia elaborated that it had requested that India accept the use of alternatives such as phosphine for teakwood treatment, as it had accepted it for teakwood exports from other trading partners. Colombia argued this would meet the appropriate level of phytosanitary protection, while also complying with the aforementioned international convention.

Belize, Costa Rica and Liberia shared the concern. Costa Rica mentioned other possible alternatives to methyl bromide fumigation, including the use of sunlight to increase the temperature, crop rotation, the use of other herbicides, and using microorganisms to control weeds and other pests.

India noted that it had relaxed methyl bromide fumigation requirements until 31 December 2017 and agricultural imports from countries whose products could not be fumigated with methyl bromide at the port of export could be fumigated upon arrival in India. The Montreal Protocol allowed for the use of methyl bromide for quarantine purposes. Additional information was available on the website of India's Department of Agriculture Cooperation and Farmers Welfare, <http://www.agricoop.nic.in>. India also reported that its NPPO had formally requested Colombia to provide information in order to consider its request to use an alternative fumigant.

1.7. WTO Members also used the opportunity of the SPS Committee meetings during 2017 to provide other information relating to plant protection measures, including:

- Burkina Faso provided an update on the fall armyworm situation, which had spread to almost every African country, and affected more than 900,000 hectares of cultivated land, threatening almost 200 million people due to its attack on a variety of crops, particularly grains, the staple crops of most African countries. In Burkina Faso, in particular, all regions had been affected. Burkina Faso highlighted the research efforts to develop an effective monitoring system of outbreaks and informed that its farmers had received high quality pesticides and treatment

devices, and benefitted from research, anti-pest squads and coordinated actions. Burkina Faso called upon FAO and IPPC to continue their coordinating role in combatting pests, in particular the fall armyworm. Additionally, Burkina Faso thanked the African Union, Japan, SADN, ECOWAS, the European Union and STDF. The United States also highlighted that the fall armyworm was spreading rapidly since its first detection in 2016 and that an integrated management approach was needed to address pest challenges including physical, chemical and biological tools. Other pest management approaches such as genetically engineered corn, bt-maize could also be used. The regional management plan for fall armyworm in Africa, drafted by FAO and partner organizations, included biotechnology options. Access to these technologies required regulatory frameworks conducive to commercial release. The United States was providing funding for: (i) regulatory capacity building across Sub-Saharan Africa; (ii) research and development of genetically engineered varieties; and (iii) confined field trials.

- Burkina Faso informed the Committee that it had received technical assistance to combat fruit flies, under a regional project funded by several organizations, including the European Union and ECOWAS. This assistance was aimed at building capacity in order to reduce the negative effects of fruit flies and gain market access to the European Union, e.g. training of phytosanitary inspectors on official controls.
- Burkina Faso also expressed appreciation to the United States, particularly USAID and APHIS, for facilitating its participation in a workshop held in October 2017 on practical tools for phytosanitary inspection, which had assisted in the identification of crop harming pests, and allowed the drafting of a manual for best practices to deal with these issues.
- Chile provided an update on its international cooperation activities in the Central American and CARICOM regions, particularly in the area of phytosanitary certification, border control, e-certification and agricultural policy. These activities were aimed at boosting triangular cooperation in the region and were mainly financed by the United States, as well as the European Union.
- The European Union provided an overview of its new Plant Health Law which entered into force on 13 December 2016 as Regulation (EU) No 2016/2031 and had been notified as G/SPS/N/EU/44/Add.2. The regulation constituted a new legal framework for plant health, providing comprehensive and clear rules for the prevention of entry into, and spread within, the EU territory of pests injurious to plant health, which would apply from 13 December 2019. Additional information on the new Plant Health Law was available on the European Commission website and in G/SPS/GEN/1541.
- The European Union drew attention to notification G/SPS/N/EU/196 regarding a revision in the European Union legal framework on protective measures against the introduction of organisms harmful to plants and plant products, based on new scientific information. The latest revision to Directive 2009/29/EC containing this legal framework had been adopted in July 2017, as Commission Implementing Directive (EU) 2017/1279. On that basis, the European Union invited its trading partners to provide information on freedom from certain harmful organisms in their respective territories before 1 January 2018, without which imports of certain commodities into the European Union could be affected.
- The European Union drew attention to document G/SPS/GEN/1551, which provides an overview of the new Regulation (EU) No. 2017/625 on official controls and other activities performed to ensure the application of the Food and Feed Law and the rules on animal health and welfare, plant health and plant protection products ("Official Controls Regulation"). The regulation had been adopted in April 2017, to apply from December 2019. The European Union explained that the regulation was part of a broader package of regulations for safer food, that the scope of the regulation was extended to include plant health and animal by-products and that the risk-based approach was maintained and reinforced. The European Union further explained that implementing measures of the regulation would be completed by the end of 2019, and would be notified as relevant. The European Union invited Members to visit the website of the European Commission for further details: http://ec.europa.eu/food/safety/official_controls/legislation_en.
- Kenya also referred to the issue of the fall army worm, requesting Members to consider it a pan-African pest. Over 80 species of Kenyan crops had been affected by the pest, leading to food insecurity for over one fifth of the African population food, with close to a million devastated

hectares. Kenya requested help from institutions like IPPC to build their capacity to detect, manage, control, and eradicate pests.

- Madagascar reported on the technical assistance received through various partners and initiatives, such as: a SADC project funded by Africa's Solidarity Trust Fund; FAO technical assistance to update its phytosanitary law, in line with IPPC standards; and FAO technical assistance for drafting national prevention strategies and a contingency plan for three cross border diseases. The IPPC had also provided technical support to the NPPO in the use of the PCE tool, which had led to the drafting of a phytosanitary strategic plan. Madagascar further requested technical assistance in implementing measures to prevent and fight against the main emerging cross border diseases and pests, e.g. fall armyworm, avian influenza, FMD.
- Senegal acknowledged the technical assistance received from the Enhanced Integrated Framework (EIF) in the mango sector, as well as the support provided by ECOWAS regional projects in dealing with the fruit fly issue. Considerable results had been achieved under these projects, such as capacity building to support stakeholders in this sector and the development of a quality control plan for companies. Senegal further indicated its appreciation for the support provided by the STDF, the European Union, the African Union, as well as the SPS Secretariat.
- Senegal welcomed the efforts made by USAID, USDA and ECOWAS to assist with emerging SPS issues through a regional approach to tackling pests. Senegal reported that during the workshop held in Accra, Ghana in June 2017 they dealt with issues related to the infestations of the fall army worm in some countries in West Africa. Senegal also expressed appreciation for the activities underway in its country in the context of the project initiative for Trade Africa of the United States.
- Senegal drew Members' attention to the fall armyworm threat in African countries, noting that this pest had been detected in Senegal in August 2017. Senegal indicated that it had increased its surveillance and phytosanitary controls; however, given the speed with which the pest was spreading, there was need for joint support and a regional approach to undertake research and control methods to fight this pest. Senegal recognized the support of partners, such as USAID, and further highlighted the need for extra assistance in undertaking risk assessments, and improving technical facilities and surveillance structures for monitoring products. Senegal further expressed concern about the impact this pest would have on important export products which were at risk, such as sweet corn.
- Senegal shared information on the development of its cooperative efforts with Malaysia for the trade of agricultural products, such as mango, rice, peanuts and cattle cake. Senegal explained that with respect to peanuts, it had already finalized and submitted its request for market access to the Malaysian market. Senegal further indicated that it had recently received an invitation from the Malaysian government to visit Malaysia, with a view to concluding a co-operation protocol. Senegal thanked Malaysia for the interest shown in trading agricultural products with Senegal. Malaysia acknowledged the market access request submitted by Senegal for several agricultural products, and indicated that the Malaysian Department of Agriculture had requested Senegal to provide technical documents for the pest risk analysis. Malaysia expressed its appreciation for Senegal's interest in exporting to Malaysia, and indicated its willingness to continue bilateral discussions with Senegal.
- Togo informed the Committee that the fall army worm had been detected in Togo in 2016, and that despite efforts to fight the pest using chemicals, the problem still persisted. As such, Togo echoed the calls made by Senegal to have greater regional support in order to fight this pest in a coordinated manner.
- Zambia noted the serious problem with the fall army worm, which had infested all of its ten provinces. It further informed that it had carried out surveillance, training of farmers and integrated pest control management. Zambia emphasized the need for more research and called upon other partners to support capacity building, research and development.

1.2 Transparency

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

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

1.10. A total of 1,108 notifications, that is 923 proposed new or revised SPS measures and 185 emergency ones, were submitted to the WTO in 2017. Among these, 168 regular notifications and 22 emergency notifications identified plant protection as the objective of the measure. Of these, 132 of the regular and 16 of the emergency notifications identified an IPPC standard as relevant, with 99% and 100% respectively indicating conformity to an IPPC standard.

1.11. SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). 63% of notifications submitted during 2017 were submitted online.

1.3 Equivalence

1.12. The guidelines on the implementation of Article 4 of the SPS Agreement on equivalence⁶ notes, *inter alia*, the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and encourages the further elaboration of specific guidance by these organizations. No contributions were made by any of the standard-setting organizations in 2017 under this agenda item.

1.13. In the March 2017 SPS Committee meeting, Madagascar announced that the South African Plant Protection Organization had recognized in December 2016 all phytosanitary measures taken by the Madagascar Plant Protection Organization as being equivalent. Madagascar acknowledged that the effort to bring its measures into conformity had improved the access of Malagasy fresh lychees to the South African market. Madagascar explained that it had used a monitoring device for the fruit flies *Bactrocera dorsalis* and *Ceratitidis malgasa*. That initiative had been supported by the COMESA Secretariat in the context of the programme for the development of the tripartite market between COMESA, SADC and the EAC. Madagascar expressed its appreciation to all the bodies that had supported its process, particularly the Secretariat of COMESA and other bodies that had provided information as well as the WTO Secretariat for the technical assistance granted to Madagascar in 2016 which had provided another opportunity to foster collaboration with the private sector.

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 regionalization⁷ adopted by the SPS Committee identify the type of information normally needed for the recognition of pest- or disease-free areas or areas of low pest or disease prevalence, as well as typical administrative steps in the recognition process. The Committee agreed to monitor the implementation of Article 6, on the basis of information provided by WTO Members.

1.15. The WTO Secretariat prepared a report on the implementation of Article 6, covering the period from 1 April 2016 until 31 March 2017, based on information provided by WTO Members through notification and at SPS Committee meetings.⁸ The report summarized (i) requests for recognition of pest- or disease-free areas or areas of low pest or disease prevalence; (ii) determinations on recognition of regionalization; and (iii) Members' experiences in the implementation of Article 6 and

⁴ See <http://spsims.wto.org>.

⁵ G/SPS/7/Rev.3.

⁶ G/SPS/19/Rev.2.

⁷ G/SPS/48.

⁸ G/SPS/GEN/1552.

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.⁹ 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 Nineteenth Annual Report was circulated to Members on 8 June 2017.¹⁰

1.18. During the March 2017 Committee meeting, The United States reiterated its concerns, previously raised in the March and July 2016 Committee meetings, regarding Members' use of phytosanitary certificate requirements for processed products, as set out in ISPM 32 on 'Categorization of Commodities according to their Pest Risk'. The United States recalled that it had outlined the key provisions of the standard and highlighted the category of commodities defined as having been processed to the point where they did not remain capable of being infested with quarantine pests. The United States explained that in such cases, no phytosanitary measures should be required, and that such a commodity should not be deemed to require phytosanitary certification. The United States noted an increasing trend, where Members continued to require phytosanitary certifications for products sufficiently processed to mitigate any pest risk (e.g. dehydrated potatoes, frozen blueberries). The United States urged Members to follow the international standards, as set out in ISPM 32, in order to facilitate safe trade in plant products.

1.19. Canada shared the concerns of the United States and encouraged Members to use international standards when establishing phytosanitary measures, and to support the principles as set out in ISPM 32. Canada highlighted that this standard encouraged Members to take into account several factors, such as the method and the level of processing of the products prior to export, and the intended use of the commodity in establishing phytosanitary requirements.

1.20. Chile supported the concerns of the United States, noting that certifications were sometimes required in bilateral trade which went beyond the necessary authorizations, creating additional burdens and infringing international standards. Australia and Mexico similarly echoed the concerns raised and encouraged Members to refer to IPPC ISPM 32 for guidance on the processed products that did not require phytosanitary certificates in trade.

1.21. During the March 2017 Committee meeting, Senegal raised concerns regarding the provisions contained in ISPM 13 on notifications of non-compliance, noting that non-conformity in relation to emergency actions was not well documented by Members. Senegal observed that in some cases, products that were judged to be in conformity by the relevant authority were then destroyed without the relevant exporting authority being informed. Senegal indicated that this breached the guidelines outlined in ISPM 13, which required the importing party to deliver a range of documentation, in the event of destruction, to the relevant competent authority. Senegal emphasized the importance of providing this information to the exporting country through the official channels, in order to ensure reliable flows of information and to maintain trust between authorities.

1.22. Burkina Faso and Seychelles supported Senegal's concern. In particular, Burkina Faso highlighted its similar experience in receiving late notifications of non-compliance from Enquiry Points and in some cases not being informed.

1.23. During the July 2017 Committee meeting Senegal again referred to the non-notification of non-compliance of products in international markets, contrary to ISPM 13. Senegal welcomed the efforts of some Members, particularly the European Union in notifying non-conformities, allowing Senegal to follow-up and rectify where required.

⁹ G/SPS/11/Rev.1.

¹⁰ G/SPS/GEN/1550.

1.24. Madagascar supported Senegal's request that all Members respect the non-compliance notification principle.

1.25. Burkina Faso associated itself with Madagascar and highlighted that in general such notifications were not sent to public services, but to exporters directly, and therefore competent authorities were unable to react accordingly.

1.26. During the November 2017 Committee meeting, Burkina Faso reiterated its concerns regarding the application of ISPM 13, noting the delays in receiving notifications of SPS non-compliance from Members, including from the European Union. Burkina Faso welcomed the COLEACP information note on monitoring RASFF and EUROPHYT notifications which provided transparency in the management of issues related to non-compliance with SPS measures. This would allow countries, especially those with notifications of non-compliance through official inspection structures, to better monitor SPS problems and propose solutions.

1.27. Canada indicated the importance of the IPPC guidelines with respect to the notification of non-compliance in emergency action, as set out in ISPM 13. Canada highlighted the requirements of the importing party to provide a notification to an exporting party in instances where consignments failed to comply with specified phytosanitary import requirements, and to report an emergency action taken upon the detection of a pest posing a potential threat. Canada underscored that such notifications were intended to help investigate the cause of non-compliance and to facilitate steps to avoid its recurrence, thereby helping exporting countries meet importing country requirements. Canada's approach to issuing and receiving such notices was set out in the Canadian Food Inspection Agency's Plant Health Directive D-01-06. Canada encouraged all Members to follow the international standard in order to prevent the spread of organisms that might pose a potential phytosanitary threat.

1.28. The European Union indicated its willingness to have bilateral discussions with Burkina Faso in order to understand its concerns and find a solution.

1.6 Technical Assistance

1.29. 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.

1.30. On 30 and 31 October 2017, the WTO organized a workshop on Transparency in Geneva. The workshop was open to all Members, Observer governments and organizations with observer status in the SPS Committee. Various funding arrangements made it possible for a large number of developing country and least developed country (LDC) participants to attend the workshop. The objective of the workshop was to bring together officials from Members' SPS National Enquiry Points, National Notification Authorities and other relevant authorities for hands-on training on the improved versions of the SPS Information Management System (SPS IMS) and the SPS Notification Submission System (SPS NSS), and on the ePing SPS/TBT notification alert system. In addition, the workshop provided an open platform for discussion and sharing of national experiences and best practices concerning the implementation of the transparency provisions, in particular, in conducting public consultations when developing SPS regulations. Presentations were made by the WTO Secretariat, the OECD, the World Bank, and developed and developing country Members. A summary of the various sessions of the workshop is provided in the workshop report.¹¹

1.31. The programme¹² and presentations of the workshop are available from the "Events, workshops and training" section under the WTO SPS Gateway (http://www.wto.org/english/tratop_e/sps_e/events_e.htm).

1.32. At the March 2018 SPS Committee meeting, the WTO Secretariat presented 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 2017.¹³

¹¹ G/SPS/R/89.

¹² G/SPS/GEN/1568/Rev.2.

¹³ G/SPS/GEN/521/Rev.13.

1.33. Document G/SPS/GEN/997/Rev.8¹⁴ circulated on 30 January 2018 provides information on all WTO technical assistance activities in the SPS area planned for 2018, including the Geneva-based advanced course which provides in-depth and hands-on training to government officials. The WTO Secretariat will schedule regional SPS workshops in 2018, upon request from regional organizations. National seminars are provided upon request by WTO Members and acceding governments. Further information on SPS activities is available through <http://www.wto.org/sps/ta>.

1.7 Review of the Operation and Implementation of the SPS Agreement

1.34. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years, including proposals submitted by Members for possible areas of future work. In accordance with the procedures for the Fourth Review, the Committee considered the revised report of the Review¹⁵ for adoption at its October 2014 meeting. The report was further revised¹⁶ based on Members' comments and suggestions at the October 2014 meeting, and Members were invited to submit comments in writing by the end of 2014, with a view to its adoption during the March 2015 regular meeting. Members accepted the inclusion of the first two suggestions contained in document G/SPS/W/282. However, the Committee did not reach consensus on the report's adoption and Members continued discussions during 2015 and 2016 to bridge differences particularly on a recommendation under section 14 on SPS-related private standards.

1.35. At its July 2017 regular meeting, the Committee agreed on the inclusion of new language in section 14, circulated in document RD/SPS/15 and adopted the report on the Fourth Review of the Operation and Implementation of the SPS Agreement.¹⁷

1.36. In the November 2017 Committee meeting, Members requested the Secretariat to prepare a draft process for the Fifth Review of the Operation and Implementation of the SPS Agreement.¹⁸ Members discussed this draft process in the March 2018 Committee meeting and adopted it with a few modifications, thereby launching the Fifth Review.¹⁹

1.8 Private and Commercial Standards

1.37. 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.²⁰ 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.

1.38. 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-WG²¹, 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.²² 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.

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

¹⁴ G/SPS/GEN/997/Rev.8/Add.1 was subsequently circulated on 16 March 2018.

¹⁵ G/SPS/W/280/Rev.1.

¹⁶ G/SPS/W/280/Rev.2.

¹⁷ G/SPS/62.

¹⁸ G/SPS/W/296.

¹⁹ G/SPS/W/296/Rev.1.

²⁰ G/SPS/55.

²¹ G/SPS/W/276 and G/SPS/W/281.

²² G/SPS/W/283.

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

2 OTHER RELEVANT WTO ACTIVITIES

2.1 Dispute Settlement

The WTO Dispute Settlement Procedure

2.1. Any WTO Member may invoke the formal dispute resolution procedures of the WTO if they consider that a measure imposed by another WTO Member violates any of the WTO Agreements, including the SPS Agreement. If formal consultations on the problem are unsuccessful, a WTO Member may request that a panel be established to consider the complaint.²³ 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.

SPS Disputes

2.3. As of February 2018, more than 540 complaints had formally been raised under the WTO's dispute settlement procedures. Of these, 47 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*)²⁴; (ii) the United States' complaint about Japan's set of requirements on apples imported from the United States relating to fire blight (*Japan-Apples*)²⁵; and (iii) New Zealand's complaint against Australia's restrictions on apples (*Australia-Apples*).²⁶

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.²⁷ 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

²³ 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.

²⁴ The report of the panel is contained in document WT/DS76/R. The Appellate Body report is contained in document WT/DS76/AB/R.

²⁵ The report of the panel is contained in document WT/DS245/R. The Appellate Body report is contained in document WT/DS245/AB/R.

²⁶ The report of the panel is contained in document WT/DS367/R. The Appellate Body report is contained in document WT/DS367/AB/R.

²⁷ WT/MIN(13)/36, WT/L/911.

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 Amendment²⁸ to insert the new Agreement into Annex 1A of the WTO Agreement. The TF Agreement has entered into force on 22 February 2017, after two-thirds of WTO Members completed their domestic ratification process in accordance with Article X:3 of the WTO Agreement.²⁹ The TF Agreement is the first multilateral trade deal delivered by the WTO since its creation and represents a major breakthrough in the history of the organization.

2.8. The TF Agreement consists of three main sections: Section I, which sets out the substantive obligations on facilitating customs and other border procedures in 12 articles; Section II, which contains special and differential treatment provisions that provide implementation flexibilities for developing and least-developed country Members; and Section III, which contains provisions that establish a permanent committee on trade facilitation at the WTO, require Members to have a national committee to facilitate domestic coordination and implementation of the provisions of the Agreement and sets out a few final provisions.

2.9. The first meeting of the Trade Facilitation Committee was held in May 2017, followed by two subsequent meetings in July and November 2017.³⁰

2.10. In order for a WTO Member to take advantage of the implementation flexibilities, it must designate and notify to the WTO the measures that it can implement immediately, and which it can only implement with more time and/or technical assistance.³¹

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

2.12. 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.

²⁸ WT/L/940.

²⁹ WT/MIN(13)/36, WT/L/911, paragraph 2.

³⁰ More information can be found on the Trade Facilitation gateway page: https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm.

³¹ 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.