



**JOINT FAO/WHO FOOD STANDARDS PROGRAMME**

**CODEX ALIMENTARIUS COMMISSION**

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**REPORT ON THE ACTIVITIES OF THE WTO SPS COMMITTEE AND OTHER RELEVANT  
WTO ACTIVITIES FROM JANUARY 2010 THROUGH MARCH 2011**

Report by the WTO Secretariat<sup>1</sup>

1. This report to the 34<sup>th</sup> session of the Codex Alimentarius Commission has been prepared by the Secretariat of the World Trade Organization ("WTO Secretariat"). The report provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") in 2010 and the first quarter of 2011, and identifies the work of relevance to Codex, including: specific trade concerns; transparency; equivalence; monitoring the use of international standards; technical assistance; and SPS-related private standards. The report also includes relevant information on geographical indications and on dispute settlement cases in the WTO addressing the SPS Agreement. A separate report provides information regarding the Standards and Trade Development Facility (STDF).

**I. WORK OF THE SPS COMMITTEE**

2. The SPS Committee held three regular meetings in 2010: on 17-18 March, 29-30 June and 20-21 October.<sup>2</sup>

3. The first meeting of 2011 took place on 30-31 March, and the second one on 30 June-1 July. One additional meeting is scheduled for 19-20 October 2011.

4. At the June 2010 meeting, Mr Flavio Damico, from Brazil, was appointed as Chairperson for the 2010-2011 period. Mr Deny Kurnia, from Indonesia, took over as Chairperson at the June 2011 meeting.

**A. SPECIFIC TRADE CONCERNS**

5. 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 usually related to the notification of a new or changed measure, or based on the experience of exporters. Often other countries will share the same concerns. At the SPS Committee meetings, Members usually commit themselves to exchange information and hold bilateral consultations to resolve the identified concern.

6. A summary of the STCs raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.<sup>3</sup> Altogether, 312 specific trade concerns were raised in the 16 years between 1995 and the end of 2010, of which 28 per cent were related to food safety.

<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 or obligations under the WTO.

<sup>2</sup> The report of the March meeting is contained in G/SPS/R/58, that of the June meeting in G/SPS/R/59 and Corr.1, and that of the October meeting in G/SPS/R/61.

7. During the three meetings held in 2010 and the one meeting held in March 2011, thirteen new STCs of relevance to Codex were raised for the first time in the SPS Committee:

- United States' concerns regarding European Union's Artificial Colour Warning Labels (STC # 295);
- European Union's concerns regarding China's Notification Practices (STC # 296);
- China's concerns regarding Canada's Registration Requirement for Pet Food Export Enterprises in China (STC # 297);
- China's concerns regarding United States' 2009 Food Safety Enhancement Act (STC # 299);
- United States' concerns regarding Turkey's Restrictions on Products Derived from Biotechnology (STC # 302);
- Ecuador's concerns regarding Canada's Proposed MRL for 1-Methylcyclopropene in Bananas (STC # 304);
- India's concerns regarding European Union's Maximum Residue Levels of Pesticides (STC # 306);
- India's concerns regarding Japan's Prohibition of Certain Food Additives (STC # 307);
- European Union's concerns regarding Brazil's Notification on Labelling of Products of Animal Origin (G/SPS/N/BRA/654) (STC # 309);
- Morocco's concerns regarding Brazil's Measures on Canned Sardines (G/SPS/N/BRA/666) (STC # 310);
- European Union's concerns regarding Import Restrictions due to Dioxin Contamination in Germany (March 2011 meeting);
- United States' concerns regarding Viet Nam's Temporary Import Ban on Offal Products (March 2011 meeting);
- Hong Kong, China's concerns regarding European Union's Restrictions on the Import of Polyamide and Melamine Plastic Kitchenware (March 2011 meeting).

8. Three issues relating to food safety that had been previously raised were discussed again during 2010 and in March 2011:

- United States' concerns regarding Japan's Pesticide Maximum Residue Level (MRL) Enforcement System (STC # 267);
- Brazil's concerns regarding Japan's Pesticide Maximum Residue Levels (MRLs) (STC # 283);
- United States' concerns regarding Chinese Taipei's Maximum Residue Levels for Ractopamine in Pork Products (STC # 275).

9. Five food safety issues that had been brought to the attention of the SPS Committee were reported to have been resolved in 2010:

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<sup>3</sup> The latest version of this summary can be found in document G/SPS/GEN/204/Rev.11 and addenda. This document is a public document available from <http://docsonline.wto.org>. Specific trade concerns can also be searched through the SPS Information Management System: <http://spsims.wto.org>.

- European Union's concerns regarding Canada's restrictions on the Importation of Cheese (STC # 6);
- European Union's concerns regarding certain Members' Import Restrictions related to Dioxin (STC # 63);
- European Union's concerns regarding Panama's Restrictions on Milk Powder Imports (STC # 83);
- China's concerns regarding the United States' Import Restrictions on Cooked Poultry Products from China (STC # 257);
- European Union's concerns regarding Ukraine's Import Measures on Animals and Animal Products (STC # 288).

10. In the March 2011 meeting, Canada's concerns regarding Greece's Inspection and Testing Procedures for Imported Wheat (STC # 206) were reported to have been resolved.

#### B. TRANSPARENCY

11. The WTO SPS Information Management System (SPS-IMS) allows for an easy management of all WTO SPS-related documentation (<http://spsims.wto.org>).

12. In December 2008, revised recommended procedures for transparency took effect, along with revised notification formats (G/SPS/7/Rev.3). The procedures, *inter alia*, clarify the definition of the comment period, encourage the notification of measures conforming to international standards, and provide links for access to full texts of regulations and their translations.

13. The legal obligation of WTO Members is to notify new or modified SPS measures when these deviate from the relevant international standards, including International Standards for Phytosanitary Measures. The recommendations of the SPS Committee, however, now encourage the notification of all new or modified measures even when these conform to international standards. Although this recommendation does not change the legal obligations of WTO Members, it is expected that it will enhance transparency regarding the application of standards, guidelines, and recommendations adopted by Codex.

14. A total of 1,064 notifications of new or proposed SPS measures were submitted by WTO Members in 2010, with 710 of these identifying food safety as the objective of the measure being taken. Among all of the SPS notifications in 2010, 205 (204 regular and 1 emergency) identified a Codex standard as relevant, by either indicating the application of the standard or a deviation from it.

15. From January 2011 to the end of March 2011, 253 SPS notifications have been submitted to the WTO, with 135 of these identifying food safety as the objective of the measure being taken. Among all SPS notifications during the first quarter of 2011, 43 (42 regular and 1 emergency) identified a Codex standard as relevant, by either indicating the application of the standard or a deviation from it.

16. This year the WTO will activate its new SPS Notification Submission System (NSS) which will allow National Notification Authorities (NNAs) to fill out and submit SPS notifications online. The new system should facilitate Members' task in providing timely and accurate information.

#### C. EQUIVALENCE

17. In July 2004, the SPS Committee completed its work on guidelines on the implementation of Article 4 of the SPS Agreement on equivalence in response to concerns raised by developing countries (G/SPS/19/Rev.2). The Decision on Equivalence adopted by the SPS Committee notes, *inter alia*, the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and requests the further elaboration of specific guidance by these organizations to ensure that such recognition is maintained. Equivalence remains a standing agenda item of the Committee.

18. In 2010, no WTO Member used the SPS Committee to report on equivalence issues related to food safety. At the March 2011 meeting, Chile informed that it was working with the European Union on two issues relating to equivalence as outlined in their Plan of Action Agreement, namely molluscs and exports of EU packaged beef.

#### D. MONITORING THE USE OF INTERNATIONAL STANDARDS

19. The procedure adopted by the SPS Committee to monitor the use of international standards invites countries to identify specific trade problems they have experienced due to the use or non-use of relevant international standards, guidelines or recommendations.<sup>4</sup> These problems, once considered by the SPS Committee, are drawn to the attention of the relevant international standard-setting body.

20. In October 2010, the Committee adopted the Twelfth Annual Report on the Procedure to Monitor the Process of International Harmonization, subsequently circulated as G/SPS/54. This report summarizes recent discussions in the SPS Committee relating to the process of establishing Codex MRLs for ractopamine, and outlines different Members' positions on the subject.

21. Most recently, at the March 2011 meeting of the SPS Committee, some Members discussed Chinese Taipei's prohibition on ractopamine in beef and pork (STC # 275, see also Section A, above). In this context, the United States indicated that the delay in Chinese Taipei's notification of the implementation of MRLs consistent with the draft Codex standard had resulted in significant trade barriers to US exports. Canada stated that the scientific work conducted by Codex and JECFA fully supported the adoption of MRLs for ractopamine. Chinese Taipei observed that the use of ractopamine in food-producing animals was forbidden by many Members and that it had suspended the process of establishing MRLs due to criticism including from the scientific community. The European Union and Norway noted that there were no Codex MRLs for ractopamine and that in the absence of international standards, they did not accept imported products treated with ractopamine.

22. At the March 2011 meeting, Members discussed this issue further under agenda item "monitoring the use of international standards". Brazil, supported by Colombia, Costa Rica, Australia, Argentina, Mexico, the United States, Canada, New Zealand and Chile, recalled that the Codex Commission had decided in 2008 to hold the proposals of ractopamine MRLs at Step 8 and that Members would send further data to be analyzed. Brazil recalled that all countries had the right to adopt any sanitary measures as long as they were scientifically justified and requested the immediate adoption of the ractopamine MRLs. The European Union, supported by Norway and Switzerland, stated that JECFA had provided Codex with a risk assessment and discussions had focused on risk-management. They considered that, while science was a key element, risk managers also had to consider other factors that also impacted on consumers' health.

#### E. TECHNICAL ASSISTANCE

23. At each meeting the SPS Committee solicits information from its Members regarding their technical assistance needs and activities. The WTO Secretariat also reports on the activities it provides and the upcoming courses and workshops. In 2010, the Codex Secretariat participated with their expertise in WTO regional training workshops held in Sri Lanka, Uzbekistan, Peru, as well as in an advanced course and a special workshop held in Geneva, Switzerland.

24. In March 2011, the WTO Secretariat presented a report entitled "SPS Technical Assistance and Training Activities" containing detailed information on all SPS-specific technical assistance activities undertaken by the WTO Secretariat from 1 September 1994 to 31 December 2010.<sup>5</sup>

25. The WTO Secretariat circulated a document with information on all the SPS activities planned for 2011, including an advanced course aimed to provide in-depth and hands-on training to government officials.<sup>6</sup> Codex contact points are encouraged to consult this document and submit their application for

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<sup>4</sup> G/SPS/11/Rev.1.

<sup>5</sup> G/SPS/GEN/521/Rev.6.

<sup>6</sup> G/SPS/GEN/997/Rev.1.

activities of interest to them. Four regional workshops on the SPS Agreement will be held in 2011. The first workshop, for the Caribbean, will be held at the end of July in Barbados. The remaining three workshops will be held in November 2011: for Anglophone African countries (Kenya, to be confirmed), for Francophone African countries (Mali, to be confirmed) and for Arab and Middle East countries (Qatar, to be confirmed). Applications for the November workshops must be received by 8 July. 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>.

#### F. REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE SPS AGREEMENT

26. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. The Second Review of the Agreement was completed in July 2005.<sup>7</sup> As agreed by the Committee in its Second Review, the Committee has been considering proposals to facilitate the use of *ad hoc* consultations and negotiations to resolve trade problems. The Committee has been discussing a proposed mechanism specifically for use with regard to the implementation of the SPS Agreement,<sup>8</sup> however, a number of Members have indicated their preference for awaiting the outcome of negotiations on the "Procedures for the Facilitation of Solution to NTBs" under discussion in the Negotiating Group for Non Agricultural Market Access. The Committee is continuing to discuss this issue at both informal and regular meetings.

27. In March 2010, the SPS Committee completed the Third Review of the Operation and Implementation of the SPS Agreement.<sup>9</sup> At the October 2010 informal meeting, Members agreed to prioritize three issues for consideration under the work of the Committee arising from the Third Review: (i) cooperation between the SPS Committee and the Three Sisters; (ii) improving the procedure for monitoring the use of international standards; and (iii) control, inspection and approval procedures (Article 8 and Annex C). Members are invited to submit specific inputs on the identified priority issues.

28. In the light of the recommendations from the Third Review and a proposal submitted by Japan, the Secretariat will organize a special workshop on SPS Coordination at National and Regional Levels, to be held in Geneva, Switzerland, on Monday 17 October 2011. The objective of the workshop is to bring together officials responsible for participation in and implementation of the SPS Agreement, Codex, IPPC and/or OIE for an in-depth discussion, at a technical level, on best practices in coordination at national and regional levels. Representatives of the three Sisters will be invited to share their experiences on coherence of national and regional positions at the standard-setting bodies and the SPS Committee.

#### G. SPS-RELATED PRIVATE STANDARDS

29. Since June 2005, the SPS Committee has discussed the issue of private and commercial standards on a number of occasions. The issue was initially raised by St. Vincent and the Grenadines with regard to EurepGAP (now GlobalGAP) requirements on pesticides used on bananas destined for sale in European markets.

30. An *ad hoc* working group of 30 interested Members was constituted in 2008 to identify possible actions that could be taken by the Committee and/or Members to address concerns regarding the effects of private SPS standards. In March 2011, the working group issued its report, putting forth specific actions to the SPS Committee for endorsement.<sup>10</sup>

31. In March 2011, the SPS Committee agreed on five proposed actions, to define the scope of the discussions on SPS-related private standards and promote information exchange among various entities with a stake in the evolution of SPS-related private standards, within existing resources.<sup>11</sup> The Committee will

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<sup>7</sup> G/SPS/36.

<sup>8</sup> G/SPS/W/243/Rev.3.

<sup>9</sup> G/SPS/53.

<sup>10</sup> G/SPS/W/256.

<sup>11</sup> G/SPS/55.

consider a possible sixth action in June, and will discuss the mechanics of implementing the agreed actions, as well as the further examination of other proposed actions on which there is no consensus.

## II. OTHER RELEVANT WTO ACTIVITIES

### A. GEOGRAPHICAL INDICATIONS

32. The WTO has continued its work, pursuant to the mandate under Article 23.4 of the TRIPS Agreement and paragraph 18 of the Doha Ministerial Declaration, to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits. In paragraph 29 of the Hong Kong Ministerial Declaration of 18 December 2005, Ministers agreed to intensify these negotiations in order to complete them within the overall time-frame for the conclusion of the negotiations. The Chairman's report of 21 April 2011 provides the latest update of the negotiations on the subject, and sets out a Draft Composite Text, the first single text to contain the range of Members' views since talks began.<sup>12</sup>

33. In paragraph 39 of the Hong Kong Ministerial Declaration, Ministers requested the Director-General to intensify his consultative process on all outstanding implementation issues under paragraph 12(b) of the Doha Ministerial Declaration, including on issues related to the extension of the protection of geographical indications provided for in Article 23 of the TRIPS Agreement to products other than wines and spirits. Members' positions remain divided in these consultations, which the Director-General has conducted personally since March 2009. The Director-General issued his latest report on this consultative process in April 2011.<sup>13</sup>

### B. THE WTO DISPUTE SETTLEMENT MECHANISM

34. Any WTO Member may invoke the formal dispute resolution procedures of the WTO if it considers 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>14</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 report, which can be upheld, reversed, or upheld with modifications. As with a panel report, the Appellate Body report is adopted automatically unless there is a consensus against adoption.

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

#### *SPS DISPUTES*

36. As of May 2011, there have been 40 formal complaints under the WTO dispute settlement procedures alleging violations of the SPS Agreement, although in some cases this was not the main focus of the dispute.

37. Fifteen panels have been established to consider SPS-related issues:

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<sup>12</sup> TN/IP/21.

<sup>13</sup> WT/GC/W/633, TN/C/W/61.

<sup>14</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)).

- one panel to examine the United States' and Canada's complaints regarding the EC (now EU)<sup>15</sup> ban on meat treated with growth-promoting hormones (WT/DS26 and WT/DS48);
- two panels to examine complaints by Canada and the United States against Australia's restrictions on imports of fresh, chilled or frozen salmon (WT/DS18 and WT/DS21);
- one at the request of the United States to examine Japan's requirement that each variety of certain fruits be tested with regard to the efficacy of fumigation treatment (WT/DS76);
- one regarding Japan's restrictions on apples due to fire blight requested by the United States (WT/DS245);
- one panel to examine the Philippines complaints against Australia's quarantine procedures (WT/DS270);<sup>16</sup>
- one panel to examine complaints by the European Communities against Australia's quarantine procedures (WT/DS287);
- one panel to examine complaints by the United States, Canada and Argentina concerning EC measures affecting the approval and marketing of biotech products (WT/DS291, WT/DS292 and WT/DS293);
- one panel regarding the complaint of the European Communities against the United States and Canada on their continued suspension of obligations relating to the EC-Hormones dispute (WT/DS320 and WT/DS321);
- one panel to examine New Zealand's complaint against Australia's restrictions on apples (WT/DS367);
- one panel to examine Canada's and Mexico's complaints regarding against the United States on certain country labelling (COOL) requirements (WT/DS384 and WT/DS386);
- one panel to examine Canada's complaint against Korea on measures affecting the importation of bovine meat and meat products from Canada (WT/DS391);
- one panel to examine China's complaint against the United States on certain measures affecting imports of poultry from China (WT/DS392);
- one panel to examine the United States' complaint against the European Communities on certain measures affecting poultry meat and poultry meat products (WT/DS389); and
- one panel to examine Indonesia's complaint against the United States regarding the latter's ban on clove cigarettes (WT/DS406).

38. Three dispute cases have concerned food safety regulations: (i) the EC ban on imports of meat treated with growth-promoting hormones, challenged by the United States and by Canada (*EC-Hormones*);<sup>17</sup> (ii) EC measures affecting the approval and marketing of biotech products, brought by the United States, Canada and Argentina (*EC – Approval and Marketing of Biotech Products*);<sup>18</sup> and (iii) US measures affecting imports of poultry from China (*US – Poultry*).<sup>19</sup>

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<sup>15</sup> Please note that in the WTO, the European Union was officially called the European Communities until 30 November 2009. In this report, reference is made to "the European Communities" or "the EC" regarding dispute developments that took place before this date.

<sup>16</sup> In August 2003, a panel was established to consider a complaint by the Philippines against Australia's restrictions on fresh fruits and vegetables, including bananas. Members of the panel have not been agreed, and no further action has occurred on this case.

<sup>17</sup> The reports of the panel are contained in documents WT/DS26/R/USA and WT/DS48/R/CAN. The Appellate Body report is in document WT/DS/26/AB/R and WT/DS48/AB/R.

<sup>18</sup> The reports of the panel are contained in documents WT/DS291/R, WT/DS292/R, and WT/DS293/R. The panel reports were not appealed.

<sup>19</sup> The report of the panel is contained in document WT/DS392/R. The panel report was not appealed.

*EC- Hormones*

39. On 13 February 1998, the WTO Dispute Settlement Body (DSB) adopted the panel and Appellate Body reports in the *EC – Hormones* case which recommended that the European Communities bring the measures at issue into conformity with WTO obligations. When the EC was unable to implement this recommendation by the 13 May 1999 deadline, the United States and Canada obtained authorisation from the DSB on 26 July 1999 to suspend obligations up to the level of US\$116.8 million and CDN\$11.3 million per year, respectively.

40. On 28 October 2003, the EC announced that its measures were now in compliance with the rulings, and on 17 February 2005 two new panels (with the same members) were established to consider the EC complaints against the continued suspension of concessions by the United States and Canada. The hearings for this panel were the first to be made public. The report of the panel was circulated on 31 March 2008.<sup>20</sup> It concluded that the United States and Canada had failed to follow the correct procedures in this regard, but also concluded that the EC ban was in violation of the SPS Agreement.

41. All three parties appealed parts of the panel's findings in this case. The Appellate Body issued its report on 16 October 2008. The Appellate Body reversed the panel's findings and concluded that the United States and Canada did not violate WTO dispute settlement rules in maintaining the duties that were intended to restore the balance of trade concessions under the WTO and to induce compliance by the European Communities with the WTO's rulings and recommendations in the original *EC – Hormones* dispute.<sup>21</sup> The Appellate Body also concluded that because the panel made certain legal errors in its analysis of the scientific basis for the EC amended ban, the question of whether the EC amended ban is WTO-consistent remains open. In light of the final report, as modified by the Appellate Body, there is no obligation on the United States or Canada to remove the duties they have applied to EC products since July 1999. In December 2008, the European Communities formally requested consultations with the United States and Canada, as the first step of eventually requesting the establishment of a panel to examine its claim of implementation of the rulings in the initial hormones dispute case.<sup>22</sup>

42. Discussions between the United States and the European Communities resulted in the conclusion of a Memorandum of Understanding ("Beef MOU") on 13 May 2009.<sup>23</sup> The Beef MOU provides for increased, duty-free access to the EC (now EU) market for beef produced without certain growth promoting hormones and maintains increased duties on a reduced list of EC (now EU) products. Under the terms of the Beef MOU, after three years, duty-free access to the EU market for beef produced without certain growth promoting hormones may increase and the application of all remaining increased duties imposed on EU products may be suspended.

*EC - Biotech*

43. A single panel was established in 2003 to examine the complaints by the United States, Canada and Argentina regarding the EC measures affecting the approval and marketing of biotech products. The volume of submissions from the parties, the need to consult scientific advice and requests for time extensions meant that the panel circulated its report on 29 September 2006. In its report, the panel concluded that the European Communities had applied a general *de facto* moratorium on the approval of biotech products between June 1999 and August 2003, as well as a moratorium on 24 specific product applications. As such, the European Communities had acted inconsistently with its obligations under Annex C(1)(a), first clause, and Article 8 of the SPS Agreement. In short, there had been undue delays in the completion of EC approval procedures. With respect to the safeguard measures taken by six EC member states against products authorized in the European Communities, the panel found that the member states (and thus by extension the EC itself) had violated Articles 5.1 and 2.2 of the SPS Agreement. More specifically, those national safeguard measures were not based on risk assessments satisfying the definition of the SPS Agreement and,

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<sup>20</sup> The reports of the panel are contained in documents WT/DS320/R and WT/DS/321/R.

<sup>21</sup> The Appellate Body reports are contained in documents WT/DS320/AB/R (US); WT/DS321/AB/R (Canada).

<sup>22</sup> WT/DS26/23.

<sup>23</sup> WT/DS26/28.

hence, could be presumed to be maintained without sufficient scientific evidence. The report was adopted without appeal on 21 November 2006.<sup>24</sup>

44. Regarding the Canadian and Argentine complaints, a mutually agreed solution was notified to the WTO in July 2009 and March 2010, respectively. The United States and the European Union are continuing to discuss a solution to this issue.

#### *US - Poultry*

45. A panel was established in 2009 to examine China's complaint on certain measures taken by the United States affecting the import of cooked poultry products from China. The measure primarily at issue was Section 727 of the Omnibus Appropriations Act of 2009, which effectively prohibited the establishment or implementation of measures that would allow Chinese poultry to be imported into the United States because it denied the use of any funding by USDA for this purpose. The panel held that the US measure was an SPS measure and that it was inconsistent with various provisions of the SPS Agreement, but it did not make recommendations because the measure had expired. The panel report was not appealed, and it was formally adopted by WTO Members in October 2010.

#### *RECENT DEVELOPMENTS*

46. In 2010, one panel addressing claims involving the SPS Agreement was established in the WTO Dispute Settlement Mechanism: Indonesia's complaints against the United States on the latter's ban of clove cigarettes (WT/DS406). The panel (as modified) and Appellate Body reports were adopted in the dispute *Australia – Measures Affecting the Importation of Apples from New Zealand* (WT/DS367). As mentioned above, the panel report was adopted in the dispute *United States – Certain Measures Affecting Imports of Poultry from China* (WT/DS392), and Argentina and the European Union reached a mutually agreed solution in the dispute *European Communities – Measures Affecting the Approval and Marketing of Biotech Products* (WT/DS293). The developments of these and other disputes can be followed at <http://www.wto.org/disputes>.

#### C. THE STANDARDS AND TRADE DEVELOPMENT FACILITY

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

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<sup>24</sup> The reports of the panel are contained in documents WT/DS291/R, WT/DS292/R, and WT/DS293/R.