

codex alimentarius commission



FOOD AND AGRICULTURE
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JOINT FAO/WHO FOOD STANDARD PROGRAMME

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ACTIVITIES OF THE SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES FROM 2006 TO THE PRESENT*

Report by the WTO Secretariat¹

1. This report to the Thirtieth Session of the Codex Alimentarius Commission provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") from January 2006 through April 2007. It identifies the work of relevance to the Codex Alimentarius Commission, including: specific trade concerns; equivalence; monitoring the use of international standards; the review of the operation of the SPS Agreement; and technical assistance. The report also includes relevant information on geographical indications under the TRIPS Agreement, dispute settlement, and on the Standards and Trade Development Facility.

Work of the SPS Committee

2. The SPS Committee held four regular meetings in 2006: a meeting commenced on 24 October 2005 was concluded on 1-2 February; a meeting on 29-30 March held in conjunction with

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

* Document prepared by and under the responsibility of WTO

a special workshop on implementation on 31 March, and meetings on 27-28 June and 11-13 October.² The Committee also held its first meeting of 2007 on 28 February - 1 March.

3. For 2007, the Committee has tentatively agreed that regular meetings will be held on 27-28 June and 17-18 October. A workshop on transparency will be held in conjunction with the October meeting.

4. Mr. Juan Antonio Dorantes Sánchez (Mexico) acted as Chairperson for the period 2006/2007 and was replaced as Chairperson by Mr. Marinus Huige (Netherlands) as of the end of the meeting in March 2007.

Specific trade concerns

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

6. A summary of the specific trade concerns raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.³ Altogether, 245 specific trade concerns were raised in the twelve years between 1995 and the end of 2006, of which 27 per cent were related to food safety.

7. A total of 28 specific trade concerns were brought to the attention of the SPS Committee during 2006, of which ten were new issues. Overall, six issues (21 per cent) related to food safety, ten issues (56 per cent) to plant health, and 11 issues (39 per cent) to animal health and zoonoses, which includes issues such as transmissible spongiform encephalopathy (TSEs) that are also relevant for food safety. TSEs account for 27 per cent of animal health concerns raised in 2006, while issues related to foot and mouth disease and avian influenza each account for 18 per cent. The remaining 37 per cent concern other animal health issues, including recognition of pest- or disease-free areas.

8. The following food safety issues were raised for the first time in 2006:

- Concerns of Colombia, Ecuador, and Peru regarding the application and modification of the EC regulation on novel foods
- US concerns regarding EC restrictions on US poultry exports
- US concerns regarding India's biotech labelling and import approval process regulations
- US concerns regarding Romania's restrictions on US pork and poultry imports

9. In March 2007, one new food safety-related issue was raised:

- EC concerns regarding China's import restrictions on products of animal origin due to dioxin

10. Two issues relating to food safety that had been previously raised were discussed again in 2006 and/or February/March 2007, including:

² The report of the February meeting is contained in G/SPS/R/39 and corrigenda 1 and 2; that of the March meeting in G/SPS/R/40 and corrigendum; that of the June meeting in G/SPS/R/42 and that of the October meeting as G/SPS/R/43. A report of the implementation workshop held on 31 March is contained in G/SPS/R/41. The report of the meeting held in February/March 2007 will have the symbol G/SPS/R/44.

³ The latest version of this summary can be found in document G/SPS/GEN/204/Rev.7 and addenda. This document is a public document available from <http://docsonline.wto.org>.

- Sri Lanka's concerns regarding EC restrictions on cinnamon (reported as resolved)
- Concerns of China and the United States regarding Japan's positive list system for pesticides, veterinary drugs and feed additives

Equivalence

11. In July 2004, the SPS Committee completed its work on guidelines on the implementation of Article 4 of the SPS Agreement on equivalence in response to concerns raised by developing countries.⁴ The Decision on Equivalence adopted by the SPS Committee notes, *inter alia*, the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and requests the further elaboration of specific guidance by these organizations to ensure that such recognition is maintained. Equivalence remains a standing agenda item of the Committee. The Codex Secretariat provided an update on equivalence at the SPS Committee meeting in February/March 2007.

Monitoring the Use of International Standards

12. 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.⁵ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

13. One of the three issues raised in 2006 relates to food safety. In March 2006, Sri Lanka raised its concerns regarding the need for a Codex standard for a maximum residue level for sulphur dioxide in cinnamon, an issue previously raised as a specific trade concern. Subsequently, the Chairman of the SPS Committee wrote a letter to the Chairman of the Codex Alimentarius Commission to draw its attention to this matter. At the SPS Committee meeting in June, the Codex representative reported that following the request from the Chairman of the SPS Committee, CCFAC had forwarded a recommendation for the establishment of a maximum level of use of 150 mg/kg for sulphites (including sulphur dioxide) in Food Category 12.2.1 "Herbs and Spices" for adoption by the 29th Session of the Codex Alimentarius Commission. In July 2006, the Chairman of the SPS Committee also received a letter from the Chairman of the Codex Alimentarius Commission indicating that this standard had been adopted at the 29th session. In October 2006, the representative of Sri Lanka informed the SPS Committee that this issue, which they had also raised under the agenda item for specific trade concerns, had been resolved.

14. In June 2006, the Committee adopted the Eighth Annual Report on the procedure to monitor the use of international standards.⁶ No new issues have been raised by Members since then.

15. In October 2006, the representative of the Codex Alimentarius Secretariat reminded the Committee of the decision by the Codex Alimentarius Commission to abolish the procedure regarding the notification of acceptance by Members on the use of Codex standards. He also provided an update on discussions in the Codex as to which new procedure or instruments could be introduced to monitor the use of Codex standards.⁷

Review of the operation of the SPS Agreement

16. Article 12.4 of the SPS Agreement indicates that the Committee should review the operation and implementation of the Agreement three years after its entry into force, and thereafter as appropriate. At the Doha Ministerial Conference in 2001, it was decided that the Agreement should be reviewed every four years. In 2004 the SPS Committee began its second review of the Agreement.

⁴ G/SPS/19/Rev.2.

⁵ G/SPS/11/Rev.1.

⁶ G/SPS/42 and Corr.1.

⁷ G/SPS/R/43

The Committee adopted the Report on the Review of the Operation of the SPS Agreement in June 2005.⁸

17. The second review report covers a wide number of areas related to implementation of the Agreement. For example, it recommends that the relevant international organizations keep the Committee informed of any work they undertake with regard to the recognition of equivalence, as well as their activities relevant to the recognition of pest- or disease-free areas or areas of low pest or disease prevalence. The report recommends that the Committee continue to monitor the use of international standards at each of its regular meetings.

18. Since the adoption of the report of the review, several Members have submitted papers and proposals for further work on several issues.⁹ At its meeting in February/March 2007, the SPS Committee agreed to prioritize its work in this area on two of the issues identified: use of ad hoc consultations to resolve trade concerns, including through the good offices of the Chairperson of the SPS Committee; and on the relationship of the SPS Committee with the Codex, the OIE and the IPPC.

Technical Assistance

19. At each of its meetings, the SPS Committee has solicited information from Members and observer organizations regarding their technical assistance needs and activities. The representative of Codex has provided regular updates to the Committee on relevant activities of the FAO and the WHO and on the operation of the FAO/WHO Trust Fund.¹⁰

20. In February 2007, the WTO Secretariat issued a Note regarding technical assistance and training activities undertaken by the Secretariat from 1 September 1994 to 31 December 2006.¹¹ Altogether 144 activities have been undertaken over this period. SPS technical assistance activities are organized in close collaboration with Members, the three international standard-setting organizations referenced in the SPS Agreement, as well as regional organizations, when appropriate. Codex representatives have participated in 60 of these activities since 1994.

21. To meet demands for more advanced SPS technical assistance and training activities, a two-week SPS Specialized Trade Policy Course has been developed by the WTO Institute for Training and Technical Co-operation in close cooperation with the Agriculture and Commodities Division (AGCD). A first Specialized Trade Policy Course was delivered in 2005 in Spanish, with the cooperation of the Inter-American Institute for Co-operation in Agriculture (IICA). A second course was held in English in 2006, with the collaboration of the World Organization for Animal Health (OIE). A third course will be offered in French in October 2007, with the collaboration of the French Ministry of Agriculture and the Codex Secretariat.

Geographical indications

22. 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. However, differences have continued to remain large, in particular in respect of the legal effects of a registration and participation, and when he last reported to the Trade Negotiations Committee the Chairman of the Special Session of the TRIPS Council noted that it remained difficult to identify where the landing zone might lie. In paragraph 39 of the Hong Kong

⁸ G/SPS/36.

⁹ A compendium of documents related to issues arising from the second review was circulated is contained in document G/SPS/GEN/722

¹⁰ G/SPS/GEN/564, G/SPS/GEN/565, G/SPS/GEN/720

¹¹ G/SPS/GEN/521/Rev.2

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. In these consultations, positions remain divided both on the merits of such extension and its relationship to the Doha Round negotiations.

Dispute Settlement

The WTO dispute settlement procedure

23. 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.¹² 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.

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

SPS Disputes

25. There have been 32 formal complaints under the WTO dispute settlement procedures alleging violations of the SPS Agreement. Eight panels have been established to consider six SPS-related issues.

26. Two dispute cases have concerned food safety regulations. In 1996, two panels (with the same members) were established to consider the European Communities (EC) ban on imports of meat from cattle treated with growth-promoting hormones, challenged by both the United States and by Canada (*EC-Hormones*).¹³ In August 2003, a single panel was established to examine the complaints by the United States, Canada and Argentina regarding the European Communities' measures affecting the approval and marketing of biotech products (*EC – Approval and Marketing of Biotech Products*).¹⁴

27. With respect to *EC-Hormones*, on 13 February 1998, the WTO Dispute Settlement Body 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 European Communities was unable to implement 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.

¹² 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).

¹³ The reports of the panels 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.

¹⁴ The reports of the panels are contained in documents WT/DS291/R, WT/DS292/R, WT/DS/293/R respectively.

28. On 28 October 2003, the European Communities 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 EC complaints against the continued suspension of concessions by the United States and Canada.¹⁵ The hearings for this panel, which took place in September 2005 and September 2006, have been the first to be made public. The panel proceedings are still ongoing.

29. In November 2006, a dispute settlement report was adopted in the case regarding the European Communities' measures affecting the approval and marketing of biotech products. The Panel had been established in 2003.¹⁶ 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 EC 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 European Communities 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, hence, could be presumed to be maintained without sufficient scientific evidence.

Standards and Trade Development Facility

30. The aim of the Standards and Trade Development Facility (STDF) is 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 partner agencies of the STDF are: the Food and Agriculture Organization of the United Nations (FAO), the World Organization for Animal Health (OIE), the World Bank, the World Health Organization (WHO) and the World Trade Organization (WTO). The WTO is the administrator of the STDF and provides the secretariat.

31. The STDF is both a financing and a coordination mechanism. Grant financing is available for private and public organizations in developing countries seeking to comply with international SPS standards and hence gain or maintain market access. The STDF provides funds for two types of grants: project preparation grants and project grants. Project preparation grants up to US\$20,000 are a key mechanism in the STDF programme and aim to act as a bridge between the identification of technical cooperation needs and the development of coherent project proposals. The STDF also funds projects that are innovative, preventative and replicable, address gaps in SPS information and training materials, or aim to improve coordination among technical cooperation providers. The size of grants typically ranges between US\$300,000 and US\$600,000. Applicants must assume some of the financial cost of the projects.

32. A new Medium Term Strategy for the STDF was agreed in December 2006. The strategy places greater emphasis on the STDF acting as a vehicle for the co-ordination among technical cooperation providers, the mobilization of funds and the exchange of information and experience. A key part to this work is the identification of good practice with regard to the provision and receipt of SPS-related technical cooperation. This work will be advanced in 2007 and 2008 through the

¹⁵ The requests by the European Communities for the establishment of the panels are found in documents WT/DS320/6 and WT/DS/321/6..

¹⁶ The requests for the establishment of a panel by the US, Canada and Argentina are found in the documents WT/DS291/23, WT/DS292/17, and WT/DS293/17, respectively.

organization of regional consultations in East Africa, Central America and South East Asia based on historic analysis of capacity evaluations, technical cooperation flows and their effectiveness.

33. The STDF has limited resources and new contributions from donors are actively being sought to implement its work programme for 2007 and future years. A new funding strategy is being developed which seeks to raise the profile of the STDF in the wider donor community. Key to this awareness raising is complementing the broader Aid for Trade and Enhanced Integrated Framework (IF) initiatives. Significant efforts will be made to publicize the STDF in these ongoing programmes and their events.

34. A list of approved STDF projects with a food safety component is contained in an Annex to this report. Applications for STDF funding may be made at any moment in the year. The STDF Working Group meets three times per year *inter alia* to consider funding requests, usually in conjunction with meetings of the SPS Committee. The next meeting will be held back to back with the SPS Committee meeting in October. The deadline for funding submissions to be considered at that meeting is 2 September 2007. Further information on the STDF, including the Medium Term Strategy, application forms and information on projects approved can be found on the STDF website (www.standardsfacility.org).

Annex

STDF Projects and Project Preparation Grants with a Food Safety Component

The following projects with a food safety component have been approved for funding by the STDF:

Project Number and Title	Objective	Approval date	US dollars
STDF 173: Strengthening capacity in assessing food control systems in developing APEC Member Economies	To train food safety regulators from developing Asia Pacific Economic Cooperation (APEC) countries in the use of FAO's food safety capacity evaluation tools. Knowledge acquired will then be applied by participants in their home countries.	Mar-07	96,500
STDF 170: Strengthening the capacity of government SPS officials in Nepal	To train government officials on SPS implementation issues.	Mar-07	321,600
STDF 134: Capacity building for improving the fish trade performance of selected African countries	To improve knowledge and awareness of SPS issues in the fisheries sector in five African countries Benin, Mauritania, Senegal, Sierra Leone and The Gambia	Mar-07	469,000
STDF 108: Institutional capacity of countries in the Americas	Peer review of SPS compliance building on the Initiatives of the Americas. The project will build on the IICA Initiative of the America by conducting a peer survey of SPS structures and practice in IICA countries.	Oct-06	585,588
STDF 114: Effective aflatoxin management in Brazil nut production	Research into factors affecting aflatoxin contamination in Brazil nut production and provision of training to meet international standards. Results will be shared with other producers in the region.	Feb-06	619,664
STDF 120: Risk assessment training in India.	Training on risk analysis and risk assessment procedures for key Indian officials.	Feb-06	244,050
STDF 65: Support compliance with official and commercial standards in the fruit and vegetable sector in Guinea	Assisting the public and private sector in Guinea in training to meet official and commercial standards for fruit and vegetable exports.	Sep-05	600,000
STDF 79: Quality information on SPS issues - a pre requisite for capacity building	Improving the sharing of information on official standards (including the supporting scientific evaluations) developed by OIE, IPPC and Codex on the International Portal on Food Safety, Animal and Plant Health (IPFSAPH). The project will improve the sustainability of core resources for IPFSAPH.	Sep-05	470,000
STDF 56: Capacity	Training on implementation of the Codex	Mar-05	150,000

Project Number and Title	Objective	Approval date	US dollars
building for implementation of the Codex Code of Practice for Good Animal Feeding	Code of Good Practice on Animal Feeding through a series of regional workshops in Africa, Latin America and Asia.		
STDF 19: Model arrangements for SPS stakeholder involvement at the national level	Examination of national arrangements for the circulation of SPS information at national level among relevant stakeholders and to make recommendations of general applicability on how this co-ordination may be improved. Fieldwork in Paraguay and Sri Lanka.	Sep-04	291,218
STDF 9: Model Programme for Developing Food Standards within a Risk Analysis Framework	Food safety risk analysis training for policy makers in the Asia Pacific region.	Nov-03	70,848
STDF 10: International Portal on Food Safety, Animal and Plant Health project	Establishment of national windows to the International Portal on Food Safety, Animal and Plant Health. Fieldwork undertaken in Turkey and Uganda.	Sep-03	59,400
STDF 20: Country-based plans for SPS-related development	Baseline studies of SPS capacity and apply cost-benefit analysis to examine the returns on investment in terms of foreign trade and an improved SPS situation. Fieldwork in Uganda and Peru.	Sep-03	170,862

The following project preparation grants have a food safety component and have been approved for funding by the STDF:

Project Number and Title	Objective	Approval date	US dollars
STDF 172: Expanding Nigeria's Food Exports through Enhanced SPS Capacity	To enhance Nigeria's capacity in the SPS area and improve the country's ability to export high value food products	Mar-07	20,000
STDF 46: Implementation of Codex standards (WHO Africa)	To assist WHO Africa to develop a project proposal assisting selected African countries to implement Codex standards.	Feb-06	20,000
STDF 113: Survey of food safety needs in Burundi	Application of the joint WHO/FAO evaluation tool of official control services to survey the food safety situation and recommendation of a trade-related project.	Feb-06	20,000
STDF 100: PPG to strengthen food control	Fieldwork focused on applying the FAO/WHO developed "Guidelines to Assess	Sep-05	20,000

Project Number and Title	Objective	Approval date	US dollars
systems in Cape Verde – particularly in the fisheries sector	Capacity Building Needs in Official Food Control Systems" and designing a project on the basis of findings.		
STDF 88: Nepal SPS training project preparation grant	Evaluation of the training needs of Nepal's SPS control authorities.	Sep-05	20,000
STDF 52: PPG on post-harvest contamination in Malawi and Zambia	Terms of Reference developed with FAO to design project to address post-harvest contamination problems in the paprika and groundnut sectors in Malawi and Zambia.	Mar-05	30,000
STDF 101: Eritrea project preparation grant	Fieldwork focused on applying the FAO/WHO developed "Guidelines to Assess Capacity Building Needs in Official Food Control Systems" and designing a project on the basis of findings.	Mar-05	20,000
STDF 63: Project preparation grant in Benin	Fieldwork concentrated on application of FAO/WHO developed "Guidelines to Assess Capacity Building Needs in Official Food Control Systems".	Mar-05	20,000
STDF 69 Project preparation grant in Yemen	Survey of SPS issues in the fisheries sector and project design.	Mar-05	20,000
STDF 65: Project preparation grant in Guinea	Consultant contracted to build on UNCTAD evaluation of tropical fruit sector and design project application.	Mar-05	20,000
STDF 66: Project preparation grant in Mozambique	Consultant contracted to build on UNCTAD evaluation of costs of compliance in the tropical fruit sector and design project application.	Mar-05	20,000
STDF 38: Agricultural Health and Food Safety Laboratory Needs Assessment for CARICOM Countries	Survey of laboratory capacity in CARICOM with a view to developing a project to assist guiding a regional strategy on laboratory infrastructure	Sep-04	20,000
STDF 62: Project preparation grant in Cameroon	Fieldwork concentrated on application of FAO/WHO developed "Guidelines to Assess Capacity Building Needs in Official Food Control Systems".	Sep-04	20,000