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Viale delle Terme di Caracalla, 00153 Rome, Italy - Tel: (+39) 06 57051 - Fax: (+39) 06 5705 4593 - E-mail: codex@fao.org - www.codexalimentarius.net

JOINT FAO/WHO FOOD STANDARDS PROGRAMME
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**REPORT ON THE ACTIVITIES OF THE WTO SPS COMMITTEE AND OTHER RELEVANT
WTO ACTIVITIES FROM JANUARY 2009 THROUGH MARCH 2010**

Report by the WTO Secretariat¹

1. This report to the 33rd 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 2009 and the first quarter of 2010, 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 2009: on 25-26 February, 23-24 June and 28-29 October.²

3. The first meeting of 2010 took place on 17-18 March. Two additional meetings are scheduled for 29-30 June and 20-21 October 2010.

4. At the 2009 June meeting, Ms Miriam Chaves, from Argentina, was appointed as Chairperson for the 2009-2010 period. The next Chairperson is expected to be appointed in the 2010 June 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.

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

² The report of the February meeting is contained in G/SPS/R/54, that of the June meeting in G/SPS/R/55, and that of the October meeting in G/SPS/R/56.

6. A summary of the STCs raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.³ Altogether, 294 specific trade concerns were raised in the 15 years between 1995 and March 2010, of which 28 per cent were related to food safety.

7. During the three meetings held in 2009 and the one meeting held in March 2010, three new STCs of relevance to Codex were raised for the first time in the SPS Committee:

- Mexico's concerns regarding China's hygienic standard for distilled spirits and integrated alcoholic beverages (STC # 278);
- Brazil's concerns regarding Japan's pesticide maximum residue levels (STC # 283);
- United States' concerns regarding EU⁴ artificial colour warning labels (STC # not yet defined).

8. Seven issues relating to food safety that had been previously raised were discussed again during 2009 and in March 2010:

- Canada's concerns regarding Greek inspection and testing procedures of grain imports for the presence of GM wheat (STC # 206);
- Colombia's, Ecuador's, and Peru's concerns on the application and modification of the EU regulation on novel foods and its effects on traditional foods (STC # 238);
- China's concerns regarding the United States' import restrictions on cooked poultry products from China (STC # 257);
- US concerns regarding Japan's Pesticide maximum residue level enforcement system (STC # 267);
- European Union's concerns with US import restrictions on EU dairy products (STC # 268);
- US concerns regarding Chinese Taipei's maximum residue levels for ractopamine in pork products (STC # 275);
- Mexico's concerns regarding China's hygienic standard for distilled spirits and integrated alcoholic beverages (STC # 278);

9. In February 2009, the concern of the United States regarding Panama's inspection regime for food processing establishments, which was first raised in 2005, was reported to have been resolved.

B. TRANSPARENCY

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

11. 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.

³ The latest version of this summary can be found in document G/SPS/GEN/204/Rev.10 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>

⁴ On 1 December 2009, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (done at Lisbon, 13 December 2007) entered into force. On 29 November 2009, the WTO received a Verbal Note (WT/L/779) from the Council of the European Union and the Commission of the European Communities stating that, by virtue of the Treaty of Lisbon, as of 1 December 2009, the European Union replaces and succeeds the European Community.

12. 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.

13. A total of 1,018 notifications of new or proposed SPS measures were submitted by WTO Members in 2009 with 482 of these identifying food safety as the objective of the measure being taken. Among all of the SPS notifications in 2009, 144 (142 regular and 2 emergency) identified a Codex standard as relevant, by either indicating the application of the standard or a deviation from it.

14. From January 2010 to the end of March 2010, 296 SPS notifications have been submitted to the WTO with 138 of these identifying food safety as the objective of the measure being taken. Among all SPS notifications during the first quarter of 2010, 50 (49 regular and 1 emergency) identified a Codex standard as relevant, by either indicating the application of the standard or a deviation from it.

C. EQUIVALENCE

15. 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.

16. In 2009, only one WTO Member used the SPS Committee to report on equivalence issues related to food safety:

- Brazil reported that a Memorandum of Understanding entered into force between Brazil and Norway on technical, hygienic and sanitary requirements for the recognition of equivalence of inspection and quality control related to fish and aquaculture products. The representative of Brazil reported that this MOU had been signed in October 2003, taking into account the SPS and TBT Agreement as well as Codex standards.⁵

D. MONITORING THE USE OF INTERNATIONAL STANDARDS

17. 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 (G/SPS/11/Rev.1). These problems, once considered by the SPS Committee, are drawn to the attention of the relevant international standard-setting body.

18. In July 2009, the SPS Committee adopted the Eleventh Annual Report on the procedure to monitor the process of international harmonization.⁶ In this report, there was no reference to food safety standards. However, at the October 2009 SPS Committee meeting, several Members discussed issues related to the delays in the establishment of MRLs for ractopamine by Codex. It was noted that extensive discussions had occurred on this matter during the last two sessions of the Codex Alimentarius Commission and that the Commission would revert to this issue at its July 2010 meeting following the consideration of some additional data by JECFA.⁷

⁵ G/SPS/R/54.

⁶ G/SPS/51 and Corr.1.

⁷ For further details on the discussion that took place, please refer to the summary of SPS Committee meeting (G/SPS/R/56, paras. 141-147).

E. TECHNICAL ASSISTANCE

19. 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 2009, the Codex Secretariat participated with their expertise in a number of WTO regional training workshops held in Fiji, Lesotho, Cameroon, Ghana, Laos, and Uzbekistan, as well as in the specialized course held in Geneva, Switzerland.

20. In February 2010, 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 2009.⁸

21. The WTO Secretariat circulated a document⁹ with information on all the SPS activities planned for 2010, including an advanced course (previously called specialized course) aimed to provide in-depth and hands-on training to government officials. Codex contact points are encouraged to consult this document and submit their applications for activities of interest to them. Further information is available through <http://www.wto.org/sps>.

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

22. The Committee is now mandated to review the operation and implementation of the Agreement every four years. The Second Review of the Agreement was completed in July 2005 (G/SPS/36).

23. In March 2010, the SPS Committee completed the Third Review of the Operation and Implementation of the SPS Agreement. The Third Review report covers a wide number of areas related to implementation of the Agreement, and recommends that the relevant international standards-setting organizations keep the Committee informed of any work they undertake with regard to the recognition of equivalence. The report recommends that the Committee continue to monitor the use of international standards at each of its regular meetings (G/SPS/53).

24. A special workshop was held in October 2009 to examine the relationship of the SPS Committee with the three international-standard setting organization (OIE, IPPC, and Codex). The workshop identified ways to enhance the relationship, and clarified the respective roles of each of these organizations. The report of this workshop can be found in the WTO document G/SPS/R/57.

25. Some Members have noted in the past that none of the three sister organizations had effective mechanisms to monitor the application of international standards by Members. With the adoption of the new recommended procedures on transparency, the SPS Committee expects to have more information regarding the use of international standards through Members' SPS notifications.

26. In addition, as agreed by the Committee in its Second Review (G/SPS/36), the Committee has been considering proposals to facilitate the use of ad hoc consultations and negotiations to resolve trade problems. At its October 2009 meeting, the Committee considered a proposal based on a previous joint proposal from Argentina and the United States (G/SPS/W/243/Rev.1), but further revisions were proposed.

G. SPS-RELATED PRIVATE STANDARDS

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

28. In October 2006 and in June 2007, informal information sessions were held in the margins of the SPS Committee meetings. A number of international organizations working on the issue of private standards, including OECD and UNCTAD, as well as private standardizing groups, including GlobalGAP,

⁸ G/SPS/GEN/521/Rev.5

⁹ G/SPS/GEN/997.

provided information regarding commercial and private standards. WTO Members have raised a number of concerns regarding the trade, development, and the legal implications regarding SPS-related private standards.

29. In an effort to bring more structure and concrete examples to its discussion on private standards, the SPS Committee decided in October 2008 to undertake a three-step study on the effects of SPS-related private standards.¹⁰ As the first step of this process, the Secretariat circulated a questionnaire on SPS-related private standards in December 2008.¹¹ As the second step, a compilation of replies summarizing the information contained in the responses received was circulated in June 2009 and further revised in December 2009.¹² In the area of food safety, a common problem related to certain private standards setting maximum residue limits (MRLs) which were significantly lower than national requirements and/or Codex MRLs.

30. As the third step, the Secretariat circulated and subsequently revised a document identifying possible actions by the SPS Committee and/or Members regarding SPS-related private standards, based on inputs and comments from Members.¹³ A group of 30 interested Members has been taking the lead in considering this document since September 2009. Discussions will continue during the June 2010 meeting of the Committee.

II. OTHER RELEVANT WTO ACTIVITIES

A. GEOGRAPHICAL INDICATIONS

31. 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. While differences have continued to remain large, in particular in respect of the legal effects of a registration and participation, the Chairman's report of November 2009 (TN/IP/19) identified some areas of convergence and suggested a number of guiding principles for future work. 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. In these consultations, which the Director-General has conducted personally since March 2009, positions remain divided both on the merits of such extension and its relationship to the Doha Round negotiations.

B. THE WTO DISPUTE SETTLEMENT MECHANISM

32. 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.¹⁴ 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 could 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.

33. 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

¹⁰ G/SPS/R/53, para. 132.

¹¹ G/SPS/W/232.

¹² G/SPS/GEN/932/Rev.1

¹³ G/SPS/W/247/Rev.2.

¹⁴ 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.

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

34. As of March 2010, there have been 39 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.

35. Fourteen panels have been established to consider 19 of the 39 complaints:

- one panel to examine the United States' and Canada's complaints regarding the EU ban on meat treated with growth-promoting hormones (WT/DS 26 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)¹⁵;
- one panel to examine complaints by the European Union against Australia's quarantine procedures (WT/DS287);
- one panel to examine complaints by the United States, Canada and Argentina concerning EU measures affecting the approval and marketing of biotech products (WT/DS291, WT/DS292 and WT/DS293);
- one panel regarding the complaint of the European Union against the United States and Canada on their continued suspension of obligations relating to the EU-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 the 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); and
- one panel to examine the United States' complaint against the European Union on certain measures affecting poultry meat and poultry meat products (WT/DS389).

36. Two dispute cases have concerned food safety regulations: (i) the EU ban on imports of meat treated with growth-promoting hormones, challenged by the United States and by Canada (*EU-Hormones*)¹⁶; and

¹⁵ 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.

¹⁶ 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.

(ii) EU measures affecting the approval and marketing of biotech products, brought by the US, Canada and Argentina.¹⁷

37. On 13 February 1998, the WTO Dispute Settlement Body (DSB) adopted the panel and Appellate Body reports in the *EU – Hormones* case which recommended that the European Union bring the measures at issue into conformity with WTO obligations. When the European Union 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.

38. On 28 October 2003, the European Union 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 EU 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 2008.¹⁸ It concluded that the United States and Canada had failed to follow the correct procedures in this regard, but also concluded that the EU ban was in violation of the SPS Agreement.

39. 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 Union with the WTO's rulings and recommendations in the original *EU – Hormones* dispute.¹⁹ The Appellate Body also concluded that because the panel made certain legal errors in its analysis of the scientific basis for the EU amended ban, the question of whether the EU 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 EU products since July 1999. In December 2008, the European Union 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.²⁰

40. Discussions between the United States and the European Union resulted in the conclusion of a Memorandum of Understanding (“Beef MOU”) on 13 May 2009.²¹ The Beef MOU provides for increased, duty-free access to the EU market for beef produced without certain growth promoting hormones and maintains increased duties on a reduced list of 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. The Beef MOU also suspends further litigation in the *EU – Hormones* compliance proceeding until at least February 2011.

41. A single panel was established in 2003 to examine the complaints by the United States, Canada and Argentina regarding the EU 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 Union 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 Union 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 EU approval procedures. With respect to the safeguard measures taken by six EU member states against products authorized in the European Union, the Panel found that the member states (and thus by extension the European Union 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,

¹⁷ The reports of the Panel are contained in documents WT/DS291/R, WT/DS292/R, and WT/DS293/R.

¹⁸ The reports of the Panels are contained in documents WT/DS320/R and WT/DS/321/R.

¹⁹ Appellate Body reports: WT/DS320/AB/R (US); WT/DS321/AB/R (Canada).

²⁰ WT/DS26/23.

²¹ WT/DS26/28.

could be presumed to be maintained without sufficient scientific evidence. The report was adopted without appeal on 21 November 2006.²²

42. Regarding the Canadian and Argentina complaints against the European Union, a mutually agreed solution was notified to the DSB in July 2009 and March 2010, respectively. In January 2008, the US requested authorization from the DSB to suspend EU concessions and other obligations. The EU objected to this request and referred the matter to arbitration under Article 22.6 of the DSU. In accordance with the parties' joint request, the Arbitrator suspended the arbitration proceedings from 18 February 2008 until the United States requests their resumption under the circumstances agreed between the parties under Articles 21 and 22 of the DSU.

RECENT DEVELOPMENTS

43. In 2009, five panels addressing claims involving the SPS Agreement were established in the WTO Dispute Settlement Mechanism: Canada and Mexico's complaints against the United States on certain Country of Origin Labelling (COOL) requirements for some products, including beef and pork (WT/DS384 and WT/DS386); the United States' complaint against the European Union on certain measures affecting poultry meat and poultry meat products (WT/DS389); Canada's complaint against Korea on measures affecting the importation of bovine meat and meat products from Canada due to BSE (WT/DS391); China's complaint against the United States on certain measures affecting imports of poultry from China (WT/DS392). The developments regarding these disputes can be followed on <http://www.wto.org/disputes>.

C. THE STANDARDS AND TRADE DEVELOPMENT FACILITY

44. 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.

²² The reports of the Panel are contained in documents WT/DS291/R, WT/DS292/R, and WT/DS293/R.