



## JOINT FAO/WHO FOOD STANDARDS PROGRAMME

### CODEX ALIMENTARIUS COMMISSION

38<sup>th</sup> Session, CICG

Geneva, Switzerland, 6-11 July 2015

## ACTIVITIES OF THE WTO SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN 2014 AND THE FIRST QUARTER OF 2015

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

This report to the 38<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 2014 and the first quarter of 2015, 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 relevant activities of the WTO Committee on Technical Barriers to Trade, WTO dispute settlement cases addressing the SPS and TBT Agreements, as well as some information about the newly adopted Trade Facilitation Agreement. A separate report provides information regarding the Standards and Trade Development Facility (STDF).

### 1 WORK OF THE SPS COMMITTEE

1.1. The SPS Committee held three regular meetings in 2014: on 25-26 March, on 9-10 July and on 15-16 October.<sup>2</sup> The Committee held its first meeting of 2015 on 26-27 March.<sup>3</sup> The two remaining meetings for 2015 are scheduled to take place on 15-16 July and 14-15 October.

1.2. Ms Maria Albarece of the Philippines served as Chairperson at the March 2014 meeting. At the July 2014 meeting, Ms Lillian Bwalya of Zambia was appointed Chairperson for the 2014-2015 period, while at the March 2015 meeting Mr. Felipe Hees of Brazil was elected as the new Chairperson for the period 2015-2016.

#### 1.1 Specific Trade Concerns

1.3. 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. Frequently, 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.

<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/74 plus corrigendum, that of the July meeting in G/SPS/R/75, and that of the October meeting in G/SPS/R/76.

<sup>3</sup> The report of the March 2015 meeting is contained in G/SPS/R/78.

1.4. A summary of the STCs raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.<sup>4</sup> Altogether, 382 STCs were raised in the nineteen years between 1995 and the end of 2014, of which 31% were related to food safety.

1.5. In 2014 and the first quarter of 2015, 20 new specific trade concerns were raised for the first time in the SPS Committee, including the following food safety issues of relevance to Codex:

- *China's concerns regarding Brazil's regulation on international certificates for fish and fishery products (STC 377)*

1.6. China raised concerns regarding a regulation which standardizes international certificates for fish and fishery products exported to Brazil.<sup>5</sup> The entry into force of the regulation had been notified on 1 January 2014; however, the new version of the certificate was only circulated by Brazil on 21 January 2014. In April 2014, China issued a new certificate for the goods at the Brazilian ports; however, 170 batches of goods bearing the new certificate were retained at the port. China urged Brazil to grant a transitional period for the replacement of its old certificate and to promptly allow the clearance of the batch of detained goods.

1.7. Brazil indicated that it would not be able to provide a detailed response as they had been informed of this trade concern at a short notice. Additional information had been requested from China to assist Brazil in identifying the problem. However, based on initial information received from its authorities, and subject to further verification, the list of 170 detained goods was outdated. Brazil indicated its commitment to resolve the issue and requested China to provide the relevant details, including the number of detained goods and the reasons identified for the detention of the goods.

- *EU concerns regarding Russia's restrictions on imports of fruits and vegetables from Poland (G/SPS/N/RUS/69) (STC 380)*

1.8. The European Union raised its concern regarding Russia's temporary restrictions on imports of certain fruits and vegetables from Poland, taken for phytosanitary and other reasons. These restrictions had been introduced as of 1 August 2014, and notified as G/SPS/N/RUS/69. The European Union questioned the consistency of this trade restriction with international principles, and whether it was supported by a risk assessment. Given the low rate of Polish phytosanitary non-compliance compared to the total number of consignments exported to Russia, the measures taken by Russia were disproportionate and more trade restrictive than necessary for the pests *Frankliniella occidentalis* and *Grapholita molesta*. Moreover, the European Union noted that in many cases the MRLs applied by Russia for nitrates and pesticides were far below those set by Codex Alimentarius. In some cases the findings of Russian laboratories could not be confirmed by Poland, which would be the subject of a meeting between Polish and Russian laboratory experts. The European Union requested Russia to immediately repeal its measures and to align them with international standards and its WTO obligations.

1.9. Russia replied that since 2008 the phytosanitary status of commodities imported from Poland was insufficient, which had led to increasing numbers of interceptions every year. Moreover, there had been several violations of international and Russian phytosanitary requirements of high risk commodities. Certain Polish products imported to Russia had posed a public health threat due to pesticide residues and nitrates levels which neither complied with Russian nor EU standards. Given these systematic violations and failure to prevent the problems, Russia imposed science- and risk-based temporary restrictions on imports of certain regulated Polish commodities. Russia reminded Members that it had harmonized its plant quarantine legislation with the principles of international standards at Russia's accession to the WTO. Accordingly, the Russian Federation requested the European Union to specify the concrete clause, article or section of the SPS Agreement, IPPC, ISPM or other documents violated by Russian measures.

- *US concerns regarding EU revised proposal for categorization of compounds as endocrine disruptors (STC 382)*

1.10. The United States noted that the European Union planned to publish a road map outlining different options and a preliminary impact assessment in its process to assess, classify and regulate endocrine disruptors. The United States urged the European Union to swiftly notify the roadmap, any future proposals and the draft impact assessment to the WTO, and to take into account comments from Members. The United States requested that the European Union explain its endocrine disruptor assessment programme,

<sup>4</sup> The latest version of this summary can be found in document G/SPS/GEN/204/Rev.15. 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>.

<sup>5</sup> Notification G/SPS/N/BRA/901, as well as G/SPS/N/BRA/901/Corr.1, G/SPS/N/BRA/901/Rev.1 and G/SPS/N/BRA/901/Rev.2.

particularly the timing for public consultations, as well as the timeframe for notifications and the manner in which Members' comments would be taken into consideration.

1.11. The European Union highlighted that several segments of its legislation contained provisions on endocrine disruptors; however, scientific criteria for the identification of endocrine disruptor substances were not yet available. The European Union noted that it had planned to propose scientific criteria to identify endocrine disruptors in its biocidal products regulation and plant protection products regulation by December 2013. In light of the potential impacts of a choice of criteria, however, the European Commission decided to carry out a comprehensive impact assessment to analyse the different policy options available to define criteria for the identification of endocrine disruptors, before making a revised proposal. This process was underway and the next step would be the publication of a roadmap, within the coming weeks, outlining the various policy options for the criteria to be assessed. The impact assessment would follow standard EU guidelines; take into account existing scientific studies and reports, relevant international on-going work on this subject, and the impact on international trade. The European Union further clarified that a public consultation would be launched as part of the process in the course of 2014, enabling all stakeholders and trading partners to provide their input.

- *EU concerns regarding general import restrictions due to highly pathogenic avian influenza (STC 385)*

1.12. The European Union expressed concerns about Members maintaining country-wide bans on EU poultry products. The European Union remarked that the early detection, control and eradication measures for avian influenza that were legally binding in EU member States had proved to be effective. The European Union was disappointed that some Members had put temporary bans in place that had never been lifted or justified, while other Members had not informed the European Union about the steps or time required to recognize regionalization. The European Union made reference to the Committee's Guidelines to Further the Practical Implementation of Article 6 of the SPS Agreement (G/SPS/48) and invited all Members to allow trade of all safe products, especially from non-affected zones.

- *Japan's concerns regarding Chinese Taipei's strengthened import restrictions on food with regard to radionuclides (STC 387)*

1.13. Japan expressed its concerns over the import ban imposed by Chinese Taipei on food exports from five Japanese prefectures after the accident at TEPCO's Fukushima Daiichi Nuclear Power Station, as well as over the draft strengthened import regulations that required a pre-test certificate issued by the Japanese Government for almost all Japanese foods from all remaining prefectures. Japan had repeatedly provided Chinese Taipei with comprehensive monitoring results to demonstrate that Japanese food was safe for human consumption. Four years had passed since the nuclear accident in 2011. In the meantime 13 Members such as Australia and Viet Nam had lifted their import restrictions. Many other Members, including the European Union, the United States and Singapore had eased their import restrictions based on sound scientific data. Japan believed that the measures maintained by Chinese Taipei were not based on relevant international standards and were more trade-restrictive than required. Japan therefore requested that Chinese Taipei lift the import ban on the five prefectures and withdraw the draft strengthened import regulations notified to the SPS Committee last November.

1.14. Chinese Taipei noted that, although all the inspected batches proceeding from Japan were in compliance with Chinese Taipei's regulation, consumer protection groups and the public were still concerned about the safety of food imported from Japan. The notified draft control measure requiring that food products imported from Japan be accompanied by pre-export radiation test certificates and certificates of origin was developed as a consequence of the radioactive contaminated water leak accident from Fukushima nuclear power plant in 2013. Chinese Taipei expressed its willingness to continue bilateral talks and looked forward to finding a mutual satisfactory solution on this matter.

1.15. Five issues relating to food safety that had been previously raised in the SPS Committee were discussed again during 2014 and the first quarter of 2015. These included:

- Colombia, Ecuador and Peru's concerns regarding the application and modification of the EU regulation on novel foods (STC 238);
- China's concerns regarding US measures on catfish (STC 289);
- China, New Zealand, US and EU concerns regarding Indonesia's port closure (STC 330);
- Ecuador's concerns regarding Brazil's measures on shrimp (STC 344);
- Japan's concerns regarding China's import restrictions in response to the Japanese nuclear power plant accident (STC 354); and

- Japan's concerns regarding Korea's import restrictions in response to the Japanese nuclear power plant accident (STC 359).

## 1.2 Members' information related to food safety

1.16. WTO Members used the opportunity of the SPS Committee meetings during 2014 and the first quarter of 2015<sup>6</sup> to provide other information relating to food safety, including:

- The United States reported on the progress of the US Food and Drug Administration's (FDA) implementation of the Food Safety Modernization Act (FSMA) as had been notified in documents G/SPS/N/USA/2593, G/SPS/N/USA/2610 and G/SPS/N/USA/2631;
- Japan reported updates on the response to TEPCO's Fukushima Daiichi nuclear power station accident and on restrictions on Japanese food regarding radioactive nuclides;
- Russia informed Members of its preparations to conduct scientific research on polychlorinated biphenyls (PCB). Russia underscored the need for further research in this area, as maximum allowable levels, while recommended by the WHO, were officially determined and monitored by certain WTO Members only for dioxin-like biphenyls. General maximum allowable levels for simple biphenyls had not been defined. Russia invited other Members to participate in this research;
- The European Union noted that the 2014/63/EU Directive published on 3 June 2014 amended the 2001/110/EC Directive relating to honey;
- Canada updated its new regulatory framework as implemented by the Canadian Food Inspection Agency (CFIA) as it would replace 13 separate federal food inspection regulations with one set of regulations;
- Peru informed Members that Peru's national Codex committee had co-sponsored the meeting of the Codex Committee on Food Hygiene in November 2014 in cooperation with the United States (G/SPS/GEN/1362 and G/SPS/GEN/1396);
- Russia provided information on current efforts to amend the common sanitary requirements of its Customs Union, with a focus on pesticide residue levels in food products. So far, 20 maximum residue levels (MRLs) for twelve active ingredients in pesticides had been harmonized with international standards and had undergone public consultations as an amendment to Annex 15.1 of Chapter II of the common sanitary requirements;
- The Russian Federation announced a regional workshop on food standards for members of the FAO/WHO Coordinating Committee for Europe (CCEURO), to be held in Saint Petersburg on 17-18 September 2015;
- The United States announced that USDA's Food Safety and Inspection Service (FSIS) had recently made available to all WTO Members a new web-based equivalence self-reporting tool (SRT), notified to the WTO through document G/SPS/N/USA/2511/Add.1; and
- Belize reported on a national Codex workshop held in Belize on 28-29 January 2015, in collaboration with several national entities, the Codex contact point of Costa Rica, and IICA.

## 1.3 Transparency

1.17. The SPS information management system (SPS-IMS) allows easy access and management of all WTO SPS-related documentation.<sup>7</sup>

1.18. The legal obligation of WTO Members is to notify new or modified SPS measures when these deviate from the relevant international standards, including Codex standards. The recommendations of the SPS Committee, however, now encourage the notification of all new or modified measures even when these conform to international standards.<sup>8</sup> Although this recommendation does not change the legal obligations of WTO Members, it may enhance transparency regarding the application of Codex standards.

1.19. A total of 1,174 notifications, regarding 1,062 proposed new or revised regular SPS measures and 112 emergency ones, were submitted to the WTO during 2014. Among these, 753 regular notifications and 35 emergency notifications identified food safety as the objective of the measure. Of these, 302 of the regular and ten of the emergency notifications identified a Codex standard as relevant, either indicating the application of the Codex standard or a deviation from it.

<sup>6</sup> G/SPS/R/74, G/SPS/R/75, G/SPS/R/76 and G/SPS/R/78.

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

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

1.20. The SPS information management system (SPS-IMS) allows easy access and management of all WTO SPS-related documentation.<sup>9</sup> Moreover, SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). 65% of notifications submitted during 2014 were submitted online.

#### 1.4 Equivalence

1.21. The guidelines on the implementation of Article 4 of the SPS Agreement on equivalence note, *inter alia*, the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and encourage the further elaboration of specific guidance by these organizations. No contributions were made by any of the standard-setting organizations in 2013 and the first quarter of 2014 under this agenda item.

#### 1.5 Monitoring the use of international standards

1.22. The procedure adopted by the SPS Committee to monitor the use of international standards invites WTO Members to identify specific trade problems they have experienced due to the use or non-use of relevant international standards, guidelines or recommendations.<sup>10</sup> These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

1.23. 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 Sixteenth Annual Report was circulated to Members on 12 June 2014.<sup>11</sup> The report highlighted Argentina's and Chile's reiterated suggestions for the revision of the monitoring procedure (G/SPS/W/268 of July 2012). Chile reaffirmed the need to address the problems of developing countries that find it difficult to attend the Three Sisters' meetings and therefore lack information on the extent to which international standards are being applied. Argentina suggested including this procedure in a new catalogue of SPS-related tools proposed by Canada and Kenya.

#### 1.6 Technical assistance

1.24. 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 Codex.

1.25. On 13 and 14 October 2014, the WTO Secretariat held a Workshop on risk analysis. This was the second workshop being held on risk analysis since 2000, and formed part of the activities under the Fourth Review of the SPS Agreement. The workshop focused on Members' experiences in various areas of the risk analysis process, such as undertaking risk assessments, making risk management decisions and conveying risk communication messages. Focus was also placed on leveraging resources for risk assessments. Presentations were made by Members from developed and developing countries, as well as by several organizations such as Codex, IPPC, OIE, IICA and the International Livestock Research Institute (ILRI). The OIE presented its guidelines for performing risk analysis and discussed efforts to strengthen guidelines, address gaps, and ensure these guidelines are understood and followed by Members. In general, there were rich discussions throughout the workshop. A summary of the workshop as well as presentations and relevant documents are available through [http://www.wto.org/english/tratop\\_e/sps\\_e/wkshop\\_oct14\\_e/wkshop\\_oct14\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/wkshop_oct14_e/wkshop_oct14_e.htm). As a follow-up to this workshop, the SPS Committee has agreed to hold a thematic session on risk communication in conjunction with its meeting in July 2015.

1.26. For the March 2015 SPS Committee meeting, the WTO Secretariat prepared 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 1994 to the end of 2014.<sup>12</sup>

1.27. Document G/SPS/GEN/997/Rev.5, also circulated before the March 2015 meeting of the SPS Committee, provides information on all WTO SPS-related technical assistance activities planned for 2015, including the Geneva-based SPS Advanced Course, which provides in-depth and hands-on training to government officials. Three regional workshops on the SPS Agreement are scheduled for 2015. National

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<sup>9</sup> See <http://spsims.wto.org>.

<sup>10</sup> G/SPS/11/Rev.1.

<sup>11</sup> G/SPS/GEN/1332.

<sup>12</sup> G/SPS/GEN/521/Rev.10.

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>.

1.28. In 2014, the Codex secretariat participated as resource persons in a number of WTO regional or sub regional workshops held in Asia and the Pacific (Samoa), in Central and Eastern Europe, Central Asia and the Caucasus (Austria), in Latin America and the Caribbean (Uruguay) as well as in the Advanced Course on the SPS Agreement held in Geneva, with 24 participants. In May 2015, the Codex secretariat participated by video-link in a subregional workshop on the SPS and TBT Agreement held in Kenya for member states of the Intergovernmental Authority on Development (IGAD). As always, these contributions were highly appreciated.

### **1.7 Review of the operation and implementation of the SPS Agreement**

1.29. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. As agreed in its Second Review<sup>13</sup>, the Committee developed a procedure to facilitate the use of ad hoc consultations and negotiations to resolve trade problems, which was adopted in July 2014.<sup>14</sup> The procedure lays out how two or more WTO Members can use the good offices of the SPS chairperson or another facilitator to help find a solution to their concerns.

1.30. In 2014, the Committee undertook the Fourth Review of the Operation and Implementation of the Agreement. Several WTO Members submitted issues for consideration as part of this Review. Two of these proposals were further discussed in 2014: (i) the joint submission by Canada and Kenya on a catalogue of instruments available to WTO Members to manage SPS issues; and (ii) the joint submission by Chile, the European Union, Morocco and Norway on transparency. Proposals from the United States and South Africa resulted in the Workshop on Risk Analysis held in October 2014. A questionnaire on transparency was circulated in February 2015, to inform further Committee discussions on this subject, as well as a Transparency Workshop planned for October 2015.

1.31. The SPS Committee discussed a draft Review Report at the July 2014 meeting. The report was subsequently revised twice based on Members' comments and suggestions received after the July 2014 and October 2014 meetings. At the March 2015 meeting consensus on the report could not be reached. Members will try to resolve the remaining differences during an informal meeting in July 2015, with a view to adopting the report at the July 2015 regular meeting.

### **1.8 Private and commercial standards**

1.32. Since June 2005, the SPS Committee has discussed the issue of private and commercial standards on a number of occasions. Informal information sessions have been held in the margins of the SPS Committee meetings and a number of international organizations, as well as private standardization groups, have provided information regarding commercial and private standards. WTO Members have raised a number of concerns regarding the trade, development and legal implications of private standards. In March 2011, the Committee adopted five actions to address some of the identified concerns.<sup>15</sup> These actions relate to defining the scope of the discussions on these private standards and promoting information exchange among various actors in this area, including the SPS Committee, the relevant international standard-setting organizations, WTO Members, entities involved in SPS-related private standards, and the WTO Secretariat.

1.33. Discussions in 2013 and 2014 continued to focus on the development of a working definition of "SPS-related private standards. In 2013 an electronic working group to develop a working definition of SPS-related private standards was established, with China and New Zealand as "co-stewards". Two reports on the work of the e-WG were circulated by the co-stewards, at the March and October 2014 meetings, but no consensus could be reached. A compromise working definition was then put forward by the co-stewards, on their own responsibility, with a view to successfully conclude the discussion on a working definition at the March 2015 Committee meeting. At the March 2015 meeting the Committee was not able to reach consensus on a working definition. It was therefore agreed that all e-WG Members would take a cooling off period to reflect further on the issue.

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<sup>13</sup> G/SPS/36.

<sup>14</sup> G/SPS/61.

<sup>15</sup> G/SPS/55.

## 2 WORK OF THE TBT COMMITTEE

2.1. The TBT Committee held three regular meetings in 2014: on 19-20 March, on 18-19 June and on 5-6 November. The Committee also met on 18-19 March 2015, and will hold two additional regular meetings during 2015: 17-18 June and 4-5 November 2015.

### 2.1 Specific Trade Concerns

2.2. During the three meetings held in 2014, 47 new specific trade concerns were raised for the first time in the TBT Committee, as well as 38 old ones.<sup>16</sup> In addition, 8 new specific trade concerns and 47 old ones were raised at the first meeting of 2015. Codex standards were mentioned in nine of the specific concerns raised over this period:

- *European Union et al.*<sup>17</sup> concerns regarding Ecuador's Resolution No. 116 of the Foreign Trade Committee of Ecuador of 19 November 2013 and Technical Regulation of the Ecuadorian Standardization Institute RTE INEN 022 on the labelling of processed and packaged food products (IMS ID 411)<sup>18</sup>

2.3. The European Union raised concerns over Ecuador's decree which imposed nutrition food labelling obligations such as "high in" warnings and a color-coded warning system. The European Union questioned the effectiveness of this decree and asked Ecuador if it had considered less restrictive alternatives that would assist consumers to make an informed choice.

2.4. Recalling the CODEX Guidelines on Nutrition Labelling (CAC/GL 2-1985 CODEX), the European Union pointed out that no nutrient thresholds had been established by CODEX for the nutrients targeted by the Ecuadorian legislation. While recognising that for certain nutrients there was evidence of an association between their excessive intake and the risk of developing a disease or disorder, the European Union asserted that there was no scientific evidence suggesting an identifiable threshold above which the risk existed, and that risk increased rather continuously when the nutrient intake increased above recommended levels. The European Union said that "high in" warnings, such as those proposed by the Ecuadorian legislation, were not foreseen by the applicable CODEX guidelines on nutrition labelling and thus risked stigmatizing some foods which, when consumed in moderation, could, in fact, be part of a healthy diet. The European Union recalled that, according to CODEX guidelines, only factual information was to be provided in nutrition labelling, such as the energy value and the amounts of protein, fats, sodium and total sugars. Recalling Article 2.4 of the TBT Agreement, the European Union stated that Ecuador's departure from these internationally recognised practices would have a significant impact on foreign manufacturers, who would need to adapt their packaging for the Ecuadorian market only.

2.5. Brazil, Costa Rica, Mexico and the United States shared the concerns raised by the European Union about consistency with CODEX guidelines.

2.6. The United States also expressed concern over the Ecuadorian technical regulation RTE INEN 022 as it pertains to the mandatory requirement to label food and beverage products with the statements "contains transgenics". They argued that for foods derived from genetically modified organisms that had been found to be substantially equivalent to conventional counterparts, mandating the use of such statements in labels could create the erroneous impression that the product was less safe than conventional products. Genetically engineered products that had been evaluated through risk-based safety assessments in accordance with international guidelines, such as through the Codex Alimentarius Commission, should not be required to use different labelling. In addition to confusing consumers, such labelling would likely also increase costs to industry, consumers, and government authorities. The United States believed that rather than a mandatory labelling requirement, a voluntary approach to the labelling of such products would allow for consumer choice. The US reiterated its concerns in the TBT Committee meeting held in June.

2.7. While Ecuador addressed some of the trade concerns WTO Members expressed concerning the measure, it did not speak to the European Union's comments concerning the absence of CODEX nutrient thresholds for the nutrients targeted by the decree or the contravention of the CODEX guidelines on nutrition labelling.

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<sup>16</sup> G/TBT/36

<sup>17</sup> Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Mexico, Peru, Switzerland, the United States, and the European Union.

<sup>18</sup> STC raised on 19 March 2014, see G/TBT/M/62, paras. 2.32 – 2.37; and 18 June 2014 see G/TBT/M/63, paras.3.111 – 3.119. For more information on any STC, please search for the ID number in the TBT Information Management System: <http://tbtimsadmin.wto.org/web/pages/search/stc/Search.aspx>

2.8. European Union, the United States, Costa Rica and Brazil reiterated their concerns during the TBT Committee meeting held in June and added that the Codex Guidelines on Nutrition Labelling (CAC/GL 2-1985 CODEX) stated that the information contained in the nutrient declaration "should not lead consumers to believe that there is exact quantitative knowledge of what individuals should eat in order to maintain health, but rather convey an understanding of the quantity of nutrients contained in the product".

2.9. Switzerland's was of a similar view as the other WTO Members and noted during the June TBT Committee meeting that the colour coded "traffic light" warning system foreseen under the project would unfairly discriminate against certain products without conveying sound information to consumers. According to the relevant Codex standard, the information contained in the nutrient declaration should not lead consumers to believe that there was exact quantitative knowledge of what individuals should eat in order to maintain health, but rather convey an understanding of the quantity of nutrients contained in the product.

- *United States et al.*<sup>19</sup> *concerns over Chile's proposed amendment to the Food Health Regulations, Supreme Decree No. 977/96 (IMS ID 370)*<sup>20</sup>

2.10. The United States was concerned about Chile's approach to nutrition labelling in its law on nutrition and composition of food and its advertising when it adopted a labelling approach that negatively targeted certain foods and food categories. By narrowing the scope of food categories, Chile created concerns about the scientific basis for food categorization, and how domestic foods were considered as opposed to imported pre-packaged foods. In this regard the United States considered that Chile should consider alternative approaches that could convey similar information to consumers. For example, the use of voluntary health and diet claims such as "low" or "non-addition claims", which were based on science and which had been considered by Codex. Over the last six years the Codex Committee on Food Labelling had devoted its resources to evaluating such claims and establishing nutrient thresholds for them, as a way to assist countries in implementing the recommendations of the 2004 WHO Global Strategy on Diet, Physical Activity and Health and the 2008 WHO Strategy on Non-Communicable Diseases.

2.11. Mexico, Canada, Switzerland, Costa Rica, Brazil and the European Union shared the concerns expressed by the United States.

2.12. Chile did not address the alternative approach to its measure as suggested by the United States, but did however say that it is open to receiving any additional comments and looked forward to collaborating with Members on any remaining issues.

2.13. During the June TBT Committee meeting Members reiterated their concerns over Chile's measure. Mexico recalled that the Codex Alimentarius discouraged the use of any label or labelling – such as "high in calories" or "high in salt" which employed words, pictures or other devices that may lead the consumer to fear consuming a food product.

2.14. In that meeting Chile replied that it had created a multidisciplinary committee to revise the current regulations and the drafting of the new regulatory proposals.

2.15. During the TBT Committee meeting held in November 2014 Members recalled their previous concerns that, *inter alia*, Chile's proposed amendments were not based on the General Guidelines on Claims of the CODEX Alimentarius (CAC/GL 1 1979, Article 3.5). Furthermore, Members were concerned with the use of the warning messages, which in the form of a "stop sign" would bear the inscription "excess of" sugar, saturated fats, sodium or calories and that this practice may not be in line with CODEX General Guidelines on Claims (CAC/GL 1-1979). The United States asked Chile to explain the basis for the limits for sodium and energy in solid foods as Chile's initial nutrient limit, for example, sodium appeared to be based on 20% of the CODEX Nutrient Reference Values – Non-communicable Disease (NRV-NCD) of 2000 mg/day. Chile was proposing to reduce the sodium limit by 5% per year. The United States also suggested the used of serving sizes based on the type of food that is allowed by CODEX rather than an across-the-board serving size of 100 grams or 100 millilitres.

2.16. Chile replied that it has received numerous comments and intended to take all reasonable measures available to meet its obligation under the TBT Agreement, and to respond to all queries and provide information to trading partners and WTO Members.

<sup>19</sup> Argentina, Australia, Brazil, Canada, Colombia, Costa Rica, Guatemala, Mexico, Peru, Switzerland, United States and the European Union

<sup>20</sup> STC raised on 6 March 2013, see G/TBT/M/59; 17 June 2013, see G/TBT/M/60, paras. 3.143 -3.154; 30 October 2013, see G/TBT/M/61, paras. 2.122 – 2.131; 19 March 2014, see G/TBT/M/62, paras. 2.148 – 2.156; 18 June 2014, see G/TBT/M/63, paras. 3.124 -3.131; 5 November 2014, see G/TBT/M/64, paras. 2.126 – 2.143; and 18 March 2015, see G/TBT/M/65, paras. 2.92 – 2.100

- *Australia et al.*<sup>21</sup> concerns regarding Indonesia's Ministry of Health Regulation 30/2013 on the inclusion of sugar, salt and fat content information, as well as health messages on the label of processed foods (IMS ID 389)<sup>22</sup>

2.17. The Indonesian regulation requires, *inter alia*, mandatory nutrition labelling and that a health warning message be included on the label of all processed food products. The European Union asked whether Indonesia's consumer health objectives could not be achieved with less trade restrictive means, such as, for example, promoting healthy lifestyle and eating habits, rather than through a warning message applicable to all pre-packaged products. In this regard, the European Union stated that the notified text was not in line with the Codex Alimentarius Standard Guidelines on nutrition labelling – CAG/GL 2-1985 – which applied to pre-packed foods only.

2.18. The United States also enquired whether Indonesia considered using the Codex Nutrient Reference Values for labelling purposes.

2.19. Canada, Switzerland and Australia shared the concerns raised by the European Union and the United States.

2.20. Indonesia informed Members that the text of the label and health message were based on the Balance Nutrition Guidelines and related 2008 WHO recommendation.

2.21. During the June and November TBT Committee meetings Members repeated their concern that the measure deviated from the Codex Guidelines on Nutrition, whereby labelling should not lead consumers to believe that there was an exact quantitative knowledge of what individuals should eat to maintain good health, but rather convey an understanding of the quantity of nutrients contained in the products. The United States inquired whether Indonesia could not consider using the Codex Nutrient Reference Values for labelling purposes for sodium and saturated fat, which provided another means for consumers to identify foods "low" and "high" in nutrients of concern and the Codex "low" claims, "no added sugars" claims, and other conditions for health claims.

2.22. Indonesia underlined that the labelling requirements involved health messages, not health warnings. Further, the regulation did refer to the Codex Standard for Labelling.

- *Canada et al.*<sup>23</sup> concerns over Peru's Act to Promote Healthy Eating Among Children and Adolescents (IMS ID 383)<sup>24</sup>

2.23. Canada had concerns that Peru's measure may deviate from international standards and be more trade restrictive than necessary to achieve its objective. Canada asked Peru to clarify whether the proposed regulations were based on international standards and sound science and asked whether Peru had considered less trade-restrictive alternatives. Canada suggested, for instance, that the Codex guidelines on health claims and nutritional labelling could be used as the basis for alternative approaches that could provide similar information to consumers without the cost of mandatory product relabelling.

- *Australia and Canada's concerns regarding India's Labelling Regulations for Canola Oil (IMS ID 413)*<sup>25</sup>

2.24. Canada reported that Canola oil had to be labelled and marketed in India as: "imported refined rapeseed oil - low erucic acid" and that canola oil may only be used as an additional trade name. Previously, canola oil products had been labelled as canola oil and had entered India for several years without incident. Canada expressed concern that the Indian labelling requirements for canola oil did not conform to the relevant international guidelines recommended by the Codex Alimentarius Commission, as Codex standards deemed canola oil and low erucic acid rapeseed as synonyms. India's labelling requirements appeared to discriminate against the legitimate term canola oil. Since India's regulation differed from this relevant international standard from the Codex, Canada was of the view that India's regulation also violated Article 2.4 of the TBT Agreement.

<sup>21</sup> Australia, Brazil, Canada, Switzerland, United States and the European Union

<sup>22</sup> STC raised on 17 June 2013, see G/TBT/M/60, paras. 2.113 – 2.120; 30 October 2013, see G/TBT/M/61, paras. 2.161 – 2.164; 19 March 2014, see G/TBT/M/62, paras. 2.198 – 2.202; 18 June 2014, see G/TBT/M/63, paras. 3.136 -3.141; 5 November 2014, see G/TBT/M/64, paras. 2.157 – 2.164; and 18 March 2015, see G/TBT/M/65, paras. 2.116 – 2.120

<sup>23</sup> Argentina, Brazil, Canada, Colombia, Costa Rica, Guatemala, Mexico, Switzerland, United States and the European Union

<sup>24</sup> STC raised on 17 June 2013, see G/TBT/M/60, 30 October 2013, see G/TBT/M/61, paras. 2.154 – 2.160; 19 March 2014, see G/TBT/M/62, paras. 2.188 – 2.193; 18 June 2014, see G/TBT/M/63, paras. 3.132 -3.135; 5 November 2014, see G/TBT/M/64, paras. 2.152 – 2.156; and 18 March 2015, see G/TBT/M/65, paras. 2.110 – 2.115

<sup>25</sup> STC raised on 19 March 2014, see G/TBT/M/62, paras. 2.19 – 2.20; 18 June 2014, see G/TBT/M/63, paras. 3.170 -3.171; 5 November 2014, see G/TBT/M/64, paras. 2.203 – 2.206; and 18 March 2015, see G/TBT/M/65, paras. 2.160 – 2.162

2.25. India explained that Canola oil is a given trade name. In the Codex standard, however, the product is listed as "rapeseed oil, low erucic acid". The appropriate marking for imports into India was "imported rape rapeseed low e-acid oil (canola oil)" or "imported refined rapeseed low e-acid (canola oil)" – with "imported" as a prefix. The labelling regulations were in India's view therefore consistent with the product description listed in the Codex standard and were imposed with the objective to ensure that consumers could make an informed choice.

2.26. Australia pointed out during the March 2015 TBT Committee meeting that they remained concerned with the requirements that the use of the term "canola oil" was only permitted as a secondary term. Australia believed that this regulation contradicted the Codex Alimentarius Standard for named vegetable oils, which permitted the use of synonym descriptors for "rapeseed oil", including "canola oil" (Codex Standard 210 - 1999, section 2.1.16). This was an unnecessary labelling burden for Australian exporters of refined "canola oil" to India and the term "canola oil" was often used to describe domestic products that were available for local sale in India. Australia understood that India's Plant Quarantine Order 2003, which outlined India's import quarantine requirements for plants and plant products, allowed the use of the alternative terms "rape and canola". Australia supported FSSAI's initiative of harmonising India's food standards with Codex that commenced in early 2013.

- *Turkey's concern over Egypt – Bottled water (IMS ID 421)*<sup>26</sup>

2.27. Turkey was concerned that its exporters of bottled water had not received the necessary import permission from Egyptian authorities. The reasons given by the Egyptian authorities were: (i) that bottled water could not be imported into Egypt as periodic control of its source could not be maintained based on Egyptian Standard No. 2007/1589; and (ii) that bottled water could only be imported from producers based in European Union member states that had applied the HACCP system. Turkey indicated that it is awaiting further clarification on the importation of bottled water from Egyptian authorities whom indicated that it was in the process of revising the mandatory Egyptian food product standards in line with 'Codex Standard 227-2001' and 'WHO Guideline for Drinking Water Quality, 2011'. Turkey expressed its opinion that the current treatment of imported bottled water was not in compliance with Article 2.1 and Article 2.2 of the TBT Agreement while emphasizing that the situation constituted a genuine hindrance to market access into Egypt.

2.28. Turkey reiterated its concerns during the June TBT Committee Meeting and recalled that although Egypt had explained that the mandatory Egyptian food product standards were being revised in accordance with "Codex Standard 227-2001" and "WHO Guidelines for Drinking Water Quality, 2011", no further explanations had been provided thereafter.

2.29. Egypt replied that the standard was publically available and that the standard was in conformity with the relevant CODEX standards and WHO guidelines. Egypt also reported that several bilateral meetings had been held with Turkey on this issue. Egypt emphasized that equal treatment was accorded to both national and foreign companies under the standard, and that the standard was vital to protect human health and safety.

- *Mexico et al.*<sup>27</sup> *concern over Thailand's Draft Notification of the Alcoholic Beverages Control, Re: Rules, Procedure and condition for Labels of Alcoholic Beverages, issued under B.E. (IMS Item no. 427)*<sup>28</sup>

2.30. The European Union noted that the definitions of "label" and "container" set out in Article 1 of the proposed rules were not in line with the CODEX STAN 1 1985 and asked Thailand to clarify the reasons for such deviation. Mexico echoed the views expressed by the European Union.

2.31. Thailand thanked Members for their comments and assured they would be forwarded to the relevant Government Department.

2.32. Members reiterated their concerns regarding the draft on Alcoholic Beverages Control during the November TBT Committee meeting.

<sup>26</sup> STC raised on 19 March 2014, see G/TBT/M/62, paras 2.70 – 2.71; 18 June 2014, see G/TBT/M/63, paras. 3.172 – 3.173; 5 November 2014, see G/TBT/M/64, paras. 2.193 – 2.198; and 19 March 2015, see G/TBT/M/65, paras. 2.163 – 2.166

<sup>27</sup> Australia, Canada, Mexico, New Zealand, South Africa, United States and the European Union

<sup>28</sup> STC first raised on 18 June 2014, see G/TBT/M/63, paras. 3.9 – 3.13

- *Japan et. al<sup>29</sup> concerns over India's Food Safety and Standards Regulation for Food labelling requirements (IMS ID 298)<sup>30</sup>*

2.33. During the June TBT Committee Meeting the European Union reiterated concerns regarding India's food labelling requirements as they related to India specific information. Some of the required information are "not rectifiable", which means that they cannot be provided by means of stickers and instead have to be printed on the food packages. According to the European Union, labelling products by means of stickers was a very important trade facilitating practice that, while duly protecting the consumer, allowed producers to serve different regions with different language requirements without having separate production lines. The Codex Standard for the labelling of pre-packaged foods (CODEX STAN 1- 1985) stated that "[i]f the language on the original label is not acceptable to the consumer for whom it is intended, a supplementary label containing the mandatory information in the required language may be used instead of relabeling". This standard also stated that "in the case of either relabeling or a supplementary label, the mandatory information provided shall be fully and accurately reflect that in the original label." The European Union was therefore of the opinion that the October 2011 Guidelines, were too burdensome and not in compliance with Articles 2.2 and 2.4 of the TBT Agreement. In this context, the European Union recommended India to bring its implementing Guidelines in line with Codex and allow all types of labelling information to be provided by stickers (for example at customs bonded warehouses). This was a sound alternative to labelling in the country of origin that would allow India to fulfil its legitimate objectives in a non-trade restrictive way.

2.34. Japan shared the European Union's concerns and recalled that Article 2 of the Codex General Standard for the Labelling of Pre-packaged Foods defined "label" as "any tag, brand, mark, pictorial or other descriptive matter, written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food" and that Article 8.2.1 specifically stated that "[i]f the language on the original label is not acceptable to the consumer for whom it is intended, a supplementary label containing the mandatory information in the required language may be used instead of relabeling." In addition, Article 8.1.1 stated that "Labels in pre-packaged foods shall be applied in such a manner that they will not become separated from the container." This well balanced standard reflected the real world practices where many countries, including Japan, allowed food products to be labelled by means of stickers, provided they were accurate and not easily detachable, achieving the goal of consumer protection while avoiding unnecessary trade disruption. Therefore, Japan urged India to review its Guidelines based on the Codex Standard in accordance with 2.4 the TBT Agreement.

2.35. India argued that if stickers with all mandatory information were allowed on packages, this may be misused by unscrupulous traders for manipulating or tampering with the labels of imported food stuff. For instance, once a package was allowed with sticker declaring sensitive information - such as "best before date" - this sticker could be easily replaced with another one with a different "best before date" once the goods entered into domestic market. Therefore, India did not believe that allowing use of stickers to declare all mandatory information would properly serve the policy objective, which was informing consumers of what they were consuming. Nevertheless, India said that all queries raised by Members would be forwarded to the capital and a response would be sent in due course.

2.36. Members, including Switzerland, recalled their previously stated concerns in the TBT Committee meeting held in November and urged India to bring this measure in line with CODEX standards. Australia noted in particular that they previously supported the efforts of India's Food Safety and Standards Authority of India (FSSAI) to harmonize Indian food standards with CODEX standards. Australia asked whether a new review of the regulations have begun and asked about the scope and objective of the review, which elements of the food regulations were targeted, and whether the new review would build on the CODEX harmonization process. And, if not, Australia asked whether the CODEX harmonization process would then be abandoned.

- *Switzerland and the European Union's concerns regarding the Kingdom of Saudi Arabia's Decree of the Saudi Arabian Ministerial Council on the sale and marketing of energy drinks of 4 March 2014 (IMS ID 442)<sup>31</sup>*

2.37. Saudi Arabia's decree on the sale and marketing of energy drinks introduced a specific mandatory statement for energy drinks that warns consumers against the health risks connected to its consumption. Switzerland noted that a negative mandatory statement seemed more restrictive than necessary and that it

<sup>29</sup> Australia, Canada, Japan, New Zealand, Switzerland, United States and the European Union

<sup>30</sup> STC raised on 24 March 2011, see G/TBT/M/53, 15 June 2011, see G/TBT/M/54, paras. 280 – 282; 10 November 2011, see G/TBT/M/55, paras. 158 – 160; 30 October 2013, see G/TBT/M/61, paras. 2.202 – 2.204; 19 March 2014, see G/TBT/M/62, paras. 2.130 – 2.135; 18 June 2014, see G/TBT/M/63, paras. 3.120 -3.123; 5 November 2014, see G/TBT/M/64, paras. 2.118 – 2.125; and 18 March 2015, see G/TBT/M/65, paras. 2.83 – 2.87

<sup>31</sup> STC raised on 5 November 2014, see G/TBT/M/64/Rev.1, paras. 2.34 – 2.38

also seemed to go beyond any relevant international standard. In this latter respect, Switzerland recalled that the CODEX standards on nutrition provided that declarations on products should not lead consumers to believe that there is exact quantitative knowledge of what individuals should eat in order to maintain health, but rather convey an understanding of the quantity of nutrients contained in the product.

2.38. Saudi Arabia thanked Switzerland and the European Union for their comments and expressed Saudi Arabia's wish to discuss this issue bilaterally.

- *Indonesia and the Ukraine's concern over Russia's Draft of the Eurasian Economic Commission Collegium decision on amendments to Common sanitary-epidemiological and hygienic requirements for products, subjected to sanitary-epidemiological supervision (control) (IMS ID 452)*<sup>32</sup>

2.39. Russia had tightened the peroxide content allowed in palm oil to 0.9 millimoles of active oxygen per kilogram, which also applied in other Eurasian member states. Indonesia noted that according to the relevant Codex standard, the good quality of vegetable oil was determined by the colour, smell and taste, not by the contents of peroxide, which was permissible up to a limit of 10 millimoles of active oxygen per kilogram. The measure seems to have the intention of curbing imports of palm oil to Russia.

2.40. Russia replied that the limits of fixed peroxide values was identical, at a maximum level of 10 millimoles of active oxygen per kilogram, and was in full compliance with CODEX STAN 210-1999 as well as Article 2.4 of the TBT Agreement. The draft decision providing a maximum limit for peroxide value of 0.9 millimoles of active oxygen per kilogram was based on scientific findings regarding its impact on human health.

### 3 OTHER RELEVANT WTO ACTIVITIES

#### 3.1 The WTO dispute settlement procedure

3.1. Any WTO Member may invoke the formal dispute resolution procedures of the WTO if they consider that a measure imposed by another WTO Member violates any of the WTO Agreements, including the SPS Agreement. If formal consultations on the problem are unsuccessful, a WTO Member may request that a panel be established to consider the complaint.<sup>33</sup> A panel of three individuals considers written and oral arguments submitted by the parties to the dispute and issues a written report of its legal findings and recommendations. The parties to the dispute may appeal a panel's decision before the WTO's Appellate Body. The Appellate Body examines the legal findings of the panel and may uphold or reverse these. As with a panel report, the Appellate Body report is adopted automatically unless there is a consensus against adoption.

##### 3.1.1 SPS disputes

3.2. Under 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 on an individual basis in SPS-related disputes. The experts are usually selected from lists provided by the Codex, IPPC, and OIE, and other relevant organizations. The parties to the dispute are consulted throughout the expert consultation process. In addition, WTO dispute settlement panels may also seek information from relevant international organizations with regard to their standards, guidelines, recommendations and procedures.

3.3. As of March 2015, more than 490 complaints had formally been raised under the WTO's dispute settlement procedures. Of these, 42 alleged violations of the SPS Agreement, and the SPS Agreement was relevant also in two other disputes. Twenty-one SPS-related complaints, on 16 issues, have been referred to a panel.

3.4. Ten complaints addressed food-safety related issues:

- Complaints by the United States and Canada in 1996 regarding the European Communities' ban on meat treated with growth-promoting hormones; *EC – Hormones* (WT/DS26 and WT/DS48, respectively);
- Complaints by the United States, Canada and Argentina in 2006 regarding the European Communities' measures affecting the approval and marketing of biotech products; *EC - Approval and*

<sup>32</sup> STC raised on 5 November 2014, see G/TBT/M/64/Rev.1, paras. 2.61 – 2.63

<sup>33</sup> A flow chart of the dispute resolution process is available 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).

*Marketing of Biotech Products* (also referred to as *EC - GMOs*) (WT/DS291, WT/DS292 and WT/DS293, respectively);

- Complaints by the European Communities in 2008 regarding the United States' and Canada's continued suspension of obligations relating to the EC-Hormones dispute; *US - Continued Suspension and Canada - Continued Suspension* (WT/DS320 and WT/DS321, respectively);
- A complaint by the United States in 2009 regarding European Communities' measures affecting poultry meat and poultry meat products; *EC - Poultry* (WT/DS389);
- A complaint by Canada in 2009 regarding Korea's measures affecting the importation of bovine meat and meat products from Canada; *Korea - Bovine Products* (WT/DS391); and
- A complaint by China in 2009 regarding US measures affecting imports of poultry; *US - Poultry* (WT/DS392).

3.5. Dispute settlement Panel/Appellate Body reports have been adopted with respect to the following food safety issues: (i) the EU ban on imports of meat treated with growth-promoting hormones, challenged by the United States and by Canada (EC-Hormones) and the subsequent EU challenge of compensatory measures imposed by Canada and the United States; (ii) EU measures affecting the approval and marketing of biotech products, brought by the United States, Canada and Argentina (EC - Approval and Marketing of Biotech Products); and (iii) US measures affecting imports of poultry from China (US - Poultry). No Panel has to date been composed to consider the US complaint regarding EU poultry restrictions, and Canada and Korea announced a mutually satisfactory solution in their BSE-related dispute before the panel issued its report.

### 3.1.2 Recent developments on SPS disputes

3.6. Argentina requested the establishment of a panel regarding the United States import prohibition of fresh (chilled and frozen) beef due to FMD concerns.<sup>34</sup> The panel was composed on 8 August 2013 and the final report has been recently circulated to the parties involved in the dispute.

3.7. On 27 June 2014, the European Union requested the establishment of a panel concerning certain measures adopted by Russia affecting the importation of live pigs and their genetic material, pork and pork products due to African swine fever.<sup>35</sup> At its meeting on 22 July 2014, the DSB established a panel and deliberations are on-going. The final report to the parties is expected to be issued by February 2016.

3.8. On 16 October 2014, Brazil requested consultations with Indonesia concerning certain measures imposed by Indonesia on the importation of meat from fowls of the species *Gallus domesticus* and products from fowls of the species *Gallus domesticus*.<sup>36</sup>

3.9. On 21 May 2015, Japan requested consultations with the Republic of Korea concerning Korea's import bans and its additional testing and certification requirements for radionuclides, that both affect the importation of food products from Japan.<sup>37</sup>

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

## 3.2 The Standards and Trade Development Facility

3.11. 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.

## 3.3 Trade facilitation

3.12. At the WTO's 9<sup>th</sup> Ministerial Conference in Bali, Indonesia in December 2013, Members concluded negotiations of the Trade Facilitation (TF) Agreement.<sup>38</sup> Trade facilitation, which in a nutshell could be described as simplification of trade procedures in order to move goods in cross-border trade more efficiently,

<sup>34</sup> WT/DS447.

<sup>35</sup> WT/DS475.

<sup>36</sup> WT/DS484.

<sup>37</sup> WT/DS495.

<sup>38</sup> WT/MIN(13)/36, WT/L/911.

has been a topic of discussion since the WTO's Singapore Ministerial Conference in December 1996. After several years of exploratory work, WTO Members launched negotiations on trade facilitation in July 2004.

3.13. In line with the decision adopted in Bali, Members undertook a legal review of the text and on 27 November 2014 adopted a Protocol of Amendment<sup>39</sup> to insert the new Agreement into Annex 1A of the WTO Agreement. The TF Agreement will enter into force after two-thirds of WTO Members have completed their domestic ratification process in accordance with Article X:3 of the WTO Agreement.<sup>40</sup>

3.14. The TF Agreement consists of two main sections. Section I sets out the substantive obligations on facilitating customs and other border procedures in 13 articles. Section II contains special and differential treatment provisions for developing and least-developed country Members. These WTO Members have flexibilities in implementing the Agreement, and are to designate, by 31 July 2014, which commitments they can implement immediately, and which they can only implement with more time and/or technical assistance.<sup>41</sup>

3.15. In July 2014, the WTO announced the launch of the Trade Facilitation Agreement Facility, which will assist developing and least-developed countries in implementing the WTO's TF Agreement. The Facility became operational with the adoption of the Trade Facilitation Protocol. More information on this Facility is available at <http://www.tfafacility.org/>.

3.16. The TF Agreement concerns all border agencies – not just customs authorities – and therefore raises interesting questions with regard to its relationship with the SPS and TBT Agreements given that many SPS and TBT controls are implemented at the border. Possible conflicts between the TF and SPS/TBT Agreements are addressed in paragraph 6 of the Final Provisions of the TF Agreement, according to which "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 provision would seem to safeguard the areas in which SPS and TBT provisions differ from those in the TF Agreement. On the other hand, there are a few provisions where the TF Agreement goes beyond the SPS and TBT Agreements and can contribute to facilitating trade in goods subject to SPS and TBT controls (there is often room for streamlining SPS and TBT measures and their application), without diminishing Members' existing right to take science-based measures to protect human, animal or plant life or health within their territories, or to pursue other legitimate objectives.

More information on trade facilitation is available at <http://www.wto.org/tradefacilitation>.

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<sup>39</sup> WT/L/940.

<sup>40</sup> WT/MIN(13)/36, WT/L/911, paragraph 2.

<sup>41</sup> Developing and LDC Members are to designate all the substantive provisions in three categories: Category A, which they can implement upon entry into force of the Agreement; Category B, which they can implement only after a transitional period; and Category C, which they can implement only after a transitional period and capacity building.