



**Food and Agriculture
Organization of
the United Nations**



**World Health
Organization**

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**JOINT FAO/WHO FOOD STANDARDS PROGRAMME
CODEX COMMITTEE ON FOOD IMPORT AND EXPORT INSPECTION
AND CERTIFICATION SYSTEMS**

Nineteenth Session

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**ACTIVITIES OF OTHER INTERNATIONAL ORGANIZATIONS RELEVANT TO THE WORK
OF CCFICS**

Report by the WTO Secretariat¹

This report to the 19th Session of the Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2010-2011. It highlights the work that may be of most relevance to CCFICS.

The SPS Committee held three regular meetings in 2010² and has held two regular meetings in 2011.³ The third meeting this year is scheduled for 19-20 October. At the March 2011 meeting, Mr. Deny Kurnia of Indonesia was appointed Chairperson for the 2011-2012 period.

Specific trade concerns

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.

A summary of the STCs raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.⁴ Altogether, 322 specific trade concerns have been raised in the 17 years between 1995 and July 2011, of which 28 per cent were related to food safety.

During the three meetings held in 2010 and the two meetings held in 2011, sixteen new STCs of relevance to Codex were raised for the first time in the SPS Committee:

- United States' concerns regarding European Union's Artificial Colour Warning Labels (STC # 295);
- European Union's concerns regarding China's Notification Practices for SPS notifications on food additives (STC # 296);

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 March 2010 meeting is contained in G/SPS/R/58, that of the June 2010 meeting in G/SPS/R/59 and Corr.1, and that of the October 2010 meeting in G/SPS/R/61.

³ The report of the March 2011 meeting is contained in G/SPS/R/62. The report of the June 2011 meeting will be circulated in September.

⁴ The latest version of this summary can be found in document G/SPS/GEN/204/Rev.11 and addenda. This document is a public document available from <http://docsonline.wto.org>. Specific trade concerns can also be searched through the SPS Information Management System: <http://spsims.wto.org>.

- China's concerns regarding Canada's Registration Requirement for Pet Food Export Enterprises in China (STC # 297);
- China's concerns regarding United States' 2009 Food Safety Enhancement Act (STC # 299);
- United States' concerns regarding Turkey's Restrictions on Products Derived from Biotechnology (STC # 302);
- Ecuador's concerns regarding Canada's Proposed MRL for 1-Methylcyclopropene in Bananas (STC # 304);
- India's concerns regarding European Union's Maximum Residue Levels of Pesticides (STC # 306);
- India's concerns regarding Japan's Prohibition of Certain Food Additives (STC # **307**);
- European Union's concerns regarding Brazil's Notification on Labelling of Products of Animal Origin (STC # 309);
- Morocco's concerns regarding Brazil's Measures on Canned Sardines (STC # 310);
- European Union's concerns regarding Import Restrictions due to Dioxin Contamination in Germany (March 2011 meeting);
- United States' concerns regarding Viet Nam's Temporary Import Ban on Offal Products (March 2011 meeting);
- Hong Kong, China's concerns regarding European Union's Restrictions on the Import of Polyamide and Melamine Plastic Kitchenware (March 2011 meeting);
- Norway concerns on Chinese quarantine and testing procedures for salmon (June 2011 meeting);
- United States' concerns regarding Philippine restrictions on imported fresh meat (June 2011 meeting);
- Paraguay's concerns regarding Japan's MRLs applied to sesame (June 2011 meeting).

Five issues relating to food safety that had been previously raised were discussed again during 2010 and 2011:

- United States' concerns regarding Japan's Pesticide Maximum Residue Level (MRL) Enforcement System (STC # 267);
- Brazil's concerns regarding Japan's Pesticide Maximum Residue Levels (MRLs) (STC # [283](#));
- United States' concerns regarding Chinese Taipei's Maximum Residue Levels for Ractopamine in Pork Products (STC # 275);
- Peru's concerns regarding the application and modification of the EU regulation on novel foods (STC # 238);
- The United States' concerns regarding Chinese Taipei's prohibition on Ractopamine in beef and pork (STC # 275).

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

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

- European Union's concerns regarding Ukraine's Import Measures on Animals and Animal Products (STC # 288).

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

Equivalence

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. 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.

At the March 2011 meeting, Chile informed that it was working with the European Union on two issues relating to equivalence as outlined in their Plan of Action Agreement, namely molluscs and exports of EU packaged beef.

The Codex representative has provided regular updates to the SPS Committee on Codex work in this regard, and in particular the work of the CCFICS.

Transparency

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 from the 2008 revised recommended procedures for transparency⁵ 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 enhances transparency regarding the application of standards, guidelines, and recommendations adopted by Codex.

At the March 2011 meeting, the Secretariat reported that the new SPS Notification Submission System (SPS NSS) which allows National Notification Authorities to fill out and submit SPS notifications online, had been launched. The SPS NSS allows for more accurate and complete notifications, and a substantial reduction in the time required for the WTO to circulate them. The system was made available to Members on 1 June 2011 on a per request basis. Members are requested to send an e-mail to the Secretariat so that their National Notification Authorities can receive their login names and access passwords. To date, 22 Members have been given access to the system, and nine of these have officially submitted notifications via the SPS NSS.

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

From January 2011 to the end of July 2011, 719 SPS notifications have been submitted to the WTO, with 471 of these identifying food safety as the objective of the measure being taken. Among all SPS notifications during the first half of 2011, 187 (170 regular and 17 emergency) identified a Codex standard as relevant, by either indicating the application of the standard or a deviation from it.

Monitoring the Use of International Standards

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.⁶ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

⁵ G/SPS/7/Rev.3

⁶ G/SPS/11/Rev.1

The Committee has previously adopted twelve annual reports on the monitoring procedure.⁷ These reports summarize several standards-related issues that the Committee has considered and the responses received from the relevant standard-setting organizations. A revision of the draft Thirteenth Annual Report on the procedure to monitor the use of international standards was circulated in July 2011⁸, and will be considered to have been adopted if Members do not raise substantive objections by 2 September 2011.

Since the adoption of the Twelfth Annual Report in 2010, there was further discussion on one issue previously raised under this procedure, the lack of adoption by the Codex Alimentarius Commission (CAC) of a standard relating to ractopamine. At the recent 34th session of the CAC, the adoption of the standard was held at Step 8.

Review of the Operation and Implementation of the SPS Agreement

Article 12.7 of the SPS Agreement indicates that the SPS Committee should review the operation and implementation of the Agreement three years after its entry into force, and thereafter as appropriate. The First Review of the Agreement was completed in March 1999. At the Fourth Session of the Ministerial Conference in 2001, Ministers instructed the Committee to undertake this review at least once every four years.

The Second Review of the Agreement was completed in July 2005.⁹ As agreed by the Committee in its Second Review, the Committee has been considering proposals to facilitate the use of *ad hoc* consultations and negotiations to resolve trade problems. The Committee is currently discussing a proposed *ad hoc* mechanism specifically for use with regard to the implementation of the SPS Agreement at both informal and regular meetings.¹⁰

The SPS Committee completed the Third Review of the Operation and Implementation of the SPS Agreement in March 2010. At the October 2010 informal meeting, Members agreed to prioritize three issues for consideration under the work of the Committee arising from the Third Review: (i) cooperation between the SPS Committee and the Three Sisters; (ii) improving the procedure for monitoring the use of international standards; and (iii) control, inspection and approval procedures (Article 8 and Annex C). Members have submitted inputs on the identified priority issues, and discussions will continue in the upcoming October meeting of the SPS Committee.

Members have been encouraged to discuss their experiences with control, inspection and approval procedures. The European Union has presented its approach to SPS audits and inspections in third countries. Argentina has noted that it is currently reviewing on-site audit procedures at the national level, and that it is considering presenting the results of this work to the SPS Committee when available.

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

Technical Assistance

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.

⁷ These were circulated as G/SPS/13, G/SPS/16, G/SPS/18, G/SPS/21, G/SPS/28, G/SPS/31, G/SPS/37, G/SPS/42, G/SPS/45, G/SPS/49, G/SPS/51 and G/SPS/54.

⁸ The draft Thirteenth Annual Report (G/SPS/W/260) was considered by the SPS Committee at its meeting of 30 June - 1 July 2011. The Committee agreed to adopt the report subject to a revision to include information arising from discussions under the relevant agenda item at that meeting. The revision G/SPS/W/260/Rev.1 includes this information.

⁹ G/SPS/36.

¹⁰ G/SPS/W/243/Rev.3.

In March 2011, the WTO Secretariat presented a report entitled "SPS Technical Assistance and Training Activities" containing detailed information on all SPS-specific technical assistance activities undertaken by the WTO Secretariat from 1 September 1994 to 31 December 2010.¹¹

The WTO Secretariat circulated a document with information on all the SPS activities for 2011, including the Geneva-based advanced course which aims to provide in-depth and hands-on training to government officials.¹² Four regional workshops on the SPS Agreement are scheduled for 2011. The first workshop, for the Caribbean, was held at the end of July in Barbados. The remaining three workshops will be held in November 2011: for Anglophone African countries (Kenya), for Francophone African countries (Mali, to be confirmed) and for Arab and Middle East countries (Qatar). National seminars are provided upon request by WTO Members and acceding governments. Further information on SPS activities is available through <http://www.wto.org/sps/ta>.

Private standards

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

On several occasions, and most recently in June 2011, informal information sessions have been 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 a number of private standardizing groups, including GlobalGAP, 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 October 2008 the SPS Committee decided to request an ad hoc working group to undertake a three-step study and present a report proposing concrete actions for consideration by the Committee at the end of this process.¹³

The ad hoc working group on SPS-related private standards completed its work on identifying "Possible Actions for the SPS Committee Regarding SPS-Related Private Standards", and presented its report to the SPS Committee.¹⁴ At its meeting of 30-31 March 2011, the Committee adopted five of the six actions put forward by the working group for endorsement¹⁵

Dispute Settlement

The WTO dispute settlement procedures

Any WTO Member may invoke the formal dispute resolution procedures of the WTO if it considers that a measure imposed by another WTO Member violates any of the WTO Agreements, including the SPS Agreement. If formal consultations on the problem are unsuccessful, a WTO Member may request that a panel be established to consider the complaint.¹⁶ A panel of three or five individuals considers written and oral arguments submitted by the parties to the dispute and issues its legal findings and recommendations in a written report. 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 which it may uphold, modify or reverse. As with a panel report, the Appellate Body report is adopted automatically unless there is a consensus against adoption.

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, with one exception, in all SPS-related disputes. The experts are usually selected from lists provided by the

¹¹ G/SPS/GEN/521/Rev.6.

¹² G/SPS/GEN/997/Rev.1.

¹³ See paras. 4-7 of G/SPS/W/230 and paras. 122-137 of G/SPS/R/53.

¹⁴ The report of the working group is contained in document G/SPS/W/256.

¹⁵ G/SPS/55

¹⁶ 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).

standard-setting organizations referenced in the SPS Agreement: the OIE, IPPC and Codex. The parties to the dispute are consulted in the selection of experts and on the information solicited from them.

SPS Disputes

There have been 37 formal complaints under the WTO dispute settlement procedures alleging violations of the SPS Agreement. Fifteen panels have been established to consider SPS-related issues.¹⁷

Three panel reports have concerned food safety regulations: (i) the EC ban on imports of meat treated with growth-promoting hormones, challenged by the United States and by Canada (*EC-Hormones*)¹⁸; (ii) EC measures affecting the approval and marketing of biotech products, brought by the United States, Canada and Argentina (*EC – Approval and Marketing of Biotech Products*);¹⁹ and (iii) US measures affecting imports of poultry from China (*US – Poultry*).²⁰

The recent dispute *US - Poultry* (China) was the first to address the question of equivalence (Article 4 of the SPS Agreement). In this case, China challenged the US legislation which restricted the ability of the US Food Safety and Inspection Service (FSIS) to complete equivalence determinations on China's poultry inspection system; and without such determination no poultry products could be imported into the country. China challenged the US measure under various provisions of the SPS Agreement, while the US argued that as the measure was equivalence-based, it was only subject to Article 4 of the SPS Agreement. The panel concluded that Article 4 (equivalence) of the SPS Agreement was not the only provision regulating the operation of equivalence regimes, and found the measure to be inconsistent with several provisions of the SPS Agreement. The panel report was not appealed, and it was adopted by the Dispute Settlement Body in October 2010.

Recent developments

The following main developments have taken place in disputes involving the SPS Agreement in 2011:

- Canada and the European Union concluded a Memorandum of Understanding (MoU) in relation to the dispute *EC - Hormones* (WT/DS48). The MoU provides for increased, duty-free access to the EU market for Canadian beef produced without certain growth promoting hormones and maintains increased duties on a reduced list of EU products. Following completion of the steps identified in the MoU, the parties envisage notifying it as a mutually agreed solution to the DSB.
- The panel (established in 2009) in the dispute *Korea - Beef* (WT/DS391) suspended its proceedings.

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

Other Relevant Activities - the Standards and Trade Development Facility

The Standards and Trade Development Facility (STDF) is a global programme in capacity building and technical co-operation established by the FAO, the OIE, the World Bank, the WHO and the WTO. It assists developing countries to comply with food safety, animal and plant health measures in international trade. Other international organizations, donors and developing countries also participate. The WTO administers the STDF and provides the Secretariat.

The STDF aims:

- to act as a vehicle for co-ordination among technical cooperation providers, the mobilization of funds, the exchange of experience and the dissemination of best practice; and
- to assist developing countries in enhancing their capacity to analyse and implement international SPS standards with the ultimate objective of improving the human, animal and plant health situation, and thus gaining and maintaining market access.

¹⁷ For summaries of all disputes that have cited the SPS Agreement please refer to: http://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm?id=A19#selected_agreement

¹⁸ The reports of the panel are contained in documents WT/DS26/R/USA and WT/DS48/R/CAN. The Appellate Body report is contained in document WT/DS/26/AB/R, WT/DS48/AB/R.

¹⁹ The reports of the panel are contained in documents WT/DS291/R, WT/DS292/R, and WT/DS293/R. The panel reports were not appealed.

²⁰ The report of the panel is contained in document WT/DS392/R. The panel report was not appealed.

Increasing emphasis is being placed on the STDF fulfilling its promise as a co-ordination mechanism and centre of good practice. As part of its co-ordination mandate, the STDF has organized a series of thematic events for delegates of the SPS Committee and additional participants from developing countries. This year in Johannesburg on 16 and 17 August, the STDF held a regional workshop on the use of the Multi-Criteria Decision Analysis (MCDA) to inform decisions on the allocation of resources aimed at strengthening SPS capacity in Africa. Future STDF events include a global event on international trade and invasive species in 2012.

At both the March and June meetings of the SPS Committee, the Secretariat of the STDF provided a brief overview of the STDF's main activities.²¹ The STDF Working Group is developing a new medium-term strategy for the STDF, including an agreed vision and mission statement as well as a final strategy document. The October STDF Working Group meeting will be dedicated to revising the STDF operational rules and agreeing on a work plan for 2012.

As a financing mechanism, the STDF provides grant funding to public and private organizations in developing countries seeking to comply with international SPS standards in an effort to gain or maintain market access. Two types of grants are available through the STDF: project preparation grants and project grants.

Project preparation grants (PPGs) are a key mechanism for STDF programme development. PPGs can be up to US\$30 000. They help developing countries overcome the constraints they face in articulating their needs and are a mechanism for ensuring synergies with other ongoing initiatives in the SPS area. A total of 51 PPGs have been approved and funded since STDF's inception. The main criterion when awarding PPGs is the likelihood that the developed project may receive final funding. Final project funding may be provided by the STDF or from another funding source (e.g. bilateral donors). Greater reliance is being placed on the use of PPGs to provide a basis for donor interventions and as a vehicle for mobilizing funds for projects developed by the STDF.

A target has been set in the STDF Operating Plan for 2011 to fund at least six PPGs. Applications for PPGs are actively encouraged and requests for funding from food safety regulatory authorities will be considered.

Project grants typically range from US\$150,000 to US\$600,000 in size and are up to two years in duration. Beneficiaries are required to contribute to the total cost of the project through an in-kind or financial contribution. The STDF funds project which address:

- underlying issues of SPS capacity building in beneficiary countries (in particular in LDCs or OLIEs, or on a regional basis), ideally through innovative, preventative and/or pilot projects which may be replicated by other donors; and
- gaps in SPS information, training materials or which aim to improve co-ordination among SPS technical co-operation providers through collaborative projects.

The STDF has funded 52 projects since its inception and aims to fund a total of six projects in 2011. Applications for project funding are encouraged and requests from food safety authorities will be considered. The STDF Working Group meets three times per year to consider funding requests. Applications for STDF funding can be made at any point in the year but have to be received at least 60 working days in advance of working group meetings in order to be considered. The next deadline for the submission of applications is 2 January 2012 and applicants are strongly encouraged to read the "Guidance Note for Applicants" available on the STDF website.

Further information on the STDF, application forms, eligibility criteria and information on projects approved can be found at the STDF website (www.standardsfacility.org).

²¹ STDF activities reported at the March and June meetings can be found in G/SPS/GEN/1075 and G/SPS/GEN/1089 respectively.