



JOINT FAO/WHO FOOD STANDARDS PROGRAMME

CODEX ALIMENTARIUS COMMISSION

40th Session

CICG, Geneva, Switzerland, 17 - 22 July 2017

COMMUNICATION FROM WTO SPS

(Report by the WTO Secretariat¹)

ACTIVITIES OF THE WTO SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN 2016 AND THE FIRST QUARTER OF 2017

This report to the 40th 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 2016 and the first quarter of 2017, 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 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

The SPS Committee held three regular meetings in 2016: on 16-17 March, on 30 June - 1 July and on 27-28 October.² The Committee held its first meeting of 2017 on 22-23 March.³ The two remaining meetings for 2017 are scheduled to take place on 13-14 July and 2-3 November.

Mr Felipe Hees of Brazil served as Chairperson at the March 2016 meeting. At the June-July 2016 meeting, Ms Marcela Otero of Chile was appointed Chairperson for the 2016-2017 period.

1.1 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 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.

A summary of the STCs raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.⁴ Altogether, 421 STCs were raised between 1995 and the first quarter of 2017, of which 32% were related to food safety.

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 and obligations under the WTO.

² The report of the March 2016 meeting is contained in G/SPS/R/82 plus corrigendum, that of the July 2016 meeting in G/SPS/R/83 plus corrigendum, and that of the October 2016 meeting in G/SPS/R/84.

³ The report of the March 2017 meeting is contained in G/SPS/R/86.

⁴ The latest version of this summary can be found in document G/SPS/GEN/204/Rev.17. 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>.

In 2016 and the first quarter of 2017, 18 new specific trade concerns were raised for the first time in the SPS Committee, including the following 8 new food safety issues of relevance to Codex:

- ***Brazil's concerns regarding EU restrictions on exports of pork from the State of Santa Catarina (STC 407)***

In March 2016, Brazil expressed its concerns on restrictions on exports of pork from the State of Santa Catarina. Brazil had been requesting access to the EU market since 2007 and had implemented a ractopamine-free segregated production (RFP) scheme in order to comply with EU regulations.

Brazil also recalled that MRLs for ractopamine were adopted at the 35th Session of the CAC. Brazil questioned the EU's testing methods and results on an audit of the RFP scheme and urged the European Union to lift the restrictions. Brazil highlighted that this issue would continue to be discussed under the Brazil-EU SPS mechanism. The European Union recalled that its policy on ractopamine required countries which had authorized its use in pig meat production to have a split production system in place to ensure that pig meat exported to the European Union is not derived from animals treated with ractopamine at any stage of the production cycle. Audits carried out in 2011 and 2013 in Santa Catarina had concluded that Brazil could not provide adequate guarantees that meat produced in this state would comply with EU regulations. The European Union remained open for further bilateral discussions based on any new information provided by Brazil.

In June 2016, Brazil reiterated its concerns raised in the March 2016 SPS Committee regarding the EU restrictions on pork exports from the State of Santa Catarina. Based on available scientific evidence and the implementation of effective control measures, Brazil had been able to ensure that its pork exports to the European Union were free from ractopamine residues. Brazil urged the European Union to lift its restrictions and to allow Brazilian pork exports under the RFP scheme. The European Union recalled the results of the audits carried out in 2011 and 2013 on the split system for pig production in Santa Catarina. The European Union further informed the Committee of the bilateral exchanges between the European Commission and Brazilian authorities, including a March 2016 written request for Brazil to provide more information on its residue monitoring plan on porcine animals, particularly on any new developments in its split system. The European Commission was currently awaiting a reply to this letter or any additional information on the monitoring plan. The European Union indicated that it had also informed Brazil that an on-site audit of the implementation of the residue monitoring plan would be necessary to re-assess the split system. The European Union remained open for further bilateral discussions on the basis of any new information provided by Brazil.

- ***Brazil's concerns regarding Nigerian restrictions on exports of beef and poultry (STC 408)***

In March 2016, Brazil expressed its concerns over Nigeria's import restrictions on all types of refrigerated or frozen meat and foods containing meat due to deficiencies in the Nigerian cold chain. In June 2010, Brazil had sent Nigeria proposals of international sanitary certificates for meat and Nigeria had responded that meat imports were forbidden in accordance with the 2007 legislation. Brazil also highlighted Nigeria's Trade Policy Reviews in 1998 and 2005 in which Nigeria had agreed to reduce the list of prohibited products to align with WTO rules. Brazil requested an explanation of the reasons for maintaining this legislation and feedback on the international sanitary certificates. Brazil urged Nigeria to lift these requirements. It remained committed to continue bilateral discussions, and expressed its appreciation for Nigeria's availability on the margins of the current Committee meeting.

Nigeria thanked Brazil for the constructive bilateral meeting held on the margins of the current SPS Committee meeting. Nigeria clarified that the import list was currently under review and the restrictions on meat were being applied on an MFN basis. The measures were applied to protect health and life due to a lack of importers' capacity to cope with safety requirements. Nigeria hoped that the measures could be relaxed upon the provision of technical assistance. Nigeria confirmed its commitment to review its trade and SPS policies and to continue working with Brazil to resolve this issue.

- ***EU concerns regarding Russian Federation import restrictions on certain animal products from Germany (STC 411)***

In June 2016, the European Union stated that since February 2013, the Russian Federation had introduced a complete ban on imports of fresh and chilled pig meat, beef and poultry meat from the entire territory of Germany, followed by a ban on imports of finished meat and milk products from three German federal states: Bavaria, Lower Saxony and North Rhine Westphalia. These import restrictions had been implemented due to claims by the Russian Federation that German veterinary services had not undertaken proper controls on the exports of such products. The European Union noted that the restrictions were not based on scientific evidence or a risk assessment and were inconsistent with several provisions of the SPS Agreement. The European Union further indicated that in 2013 it had communicated its concerns with respect to these restrictions in its officially submitted comments on the notified Russian Federation measure, as well as in document G/SPS/GEN/1216. Continuous efforts had been made by German authorities to address the issue, including conducting supervisory controls of the official veterinarians responsible for establishments listed for Russian export, and establishing an export coordination unit as a contact point for the Russian authorities and the private sector. Inspection visits had also been carried out by Russian authorities. Despite all efforts, the restrictions still remained in place. The European Union argued that there was no justification for the restrictions and requested the Russian Federation to promptly repeal these measures. The European Union indicated its willingness to engage in discussions with the Russian authorities.

The Russian Federation stated that more than 600 German processing plants producing animal products were authorized to export to the Russian Federation under the guarantees of the German competent authorities. However, more than 90% had never been inspected by Russian authorities. The Russian Federation observed that due to several factors, such as unfavourable laboratory monitoring results, border control violations, and errors in the certification of animal products, the Russian authorities had arranged several audits of the processing plants and elements of the system, in order to ensure the safety of animal products exported from Germany. Inspections had been carried out between 2012 and 2015, during which time several restrictions were imposed on imports to the Russian market from individual firms and some regions due to non-compliance with Russian SPS requirements. The Russian Federation noted that it subsequently implemented a ban, following the failure of all German states to meet its SPS requirements. The Russian Federation indicated that although it had informed the German authorities of the recorded violations and requested appropriate measures be taken to prevent export of unsafe products to the Russian market, no proper response had been received from the German veterinarian authorities. The Russian Federation further expressed concerns with the reliability of the guarantees of the German authorities, based on subsequent Russian inspections. Cooperation efforts between the Russian Federation and Germany had resulted in an update of the list of German exporting establishments, delisting more than 300 non-compliant plants. In parallel, measures had been taken to resume imports from establishments which had addressed identified deficiencies and from plants previously subject to restrictions due to laboratory monitoring results. The Rospotrebnadzor had been involved in the drafting of guidelines concerning inspection of German plants, in order to facilitate compliance with the Russian requirements. The Russian Federation further noted that consideration of the removal of the ban would be dependent on the implementation of the guidelines by the German Veterinary Services, submission of a document confirming the removal of deficiencies, and re-inspection by officials from the Rospotrebnadzor, taking into account other ongoing inspections. The Russian Federation emphasized that the upcoming work would heavily rely on collaboration between German and Russian authorities.

In October 2016, the European Union reiterated its concerns raised in the June 2016 SPS Committee concerning the Russian Federation's import restrictions on certain animal products from Germany. The European Union noted that the German and Russian authorities were working on the issue, and expressed hope that their discussion would result in positive developments. The European Union argued that there was no justification for the restrictions and requested the Russian Federation to promptly repeal these measures. The European Union reaffirmed its willingness to engage in discussions with the Russian authorities.

The Russian Federation recalled that restrictions had been imposed on certain German export products following the results of inspections carried out between 2012 and 2015, which revealed non-compliance of these products with Russian SPS requirements. The safety guarantee for the importation of these products to the Russian Federation had not yet been confirmed. The Russian Federation recalled that its Rospotrebnadzor had been involved in developing a manual for inspections containing Eurasian Economic Union (EAEU) requirements. The Russian Federation indicated that this manual had been sent to Germany for comments and expected further cooperation with the competent German authorities.

In March 2017, the European Union recalled its previously raised concerns regarding the Russian Federation's import restrictions on certain animal products from three German federal states. These import restrictions had been implemented due to claims by the Russian Federation that German veterinary services had not undertaken proper controls on the exports of these products. The European Union (i) reaffirmed that the restrictions were inconsistent with several provisions of the SPS Agreement; (ii) regretted that, despite the work done by the German authorities, after four years the bans still remained in place; and (iii) urged the Russian Federation to repeal the measures. Finally, the European Union reaffirmed its willingness to cooperate with the Russian authorities.

The Russian Federation recalled that temporary restrictions on supplies of livestock and dairy products from Germany were imposed following results of inspections in 2013 and 2015, which had revealed non-compliance with Russian SPS requirements. The Russian Federation announced that it was developing an instruction on the compliance of inspections with the requirements of the Russian Federation and the Eurasian Economic Union.

The Russian Federation reported that the latest developments had been discussed by the Head of the Russian Rosselkhozdnadzor and the State Secretary of the Federal Ministry of Food and Agriculture of Germany in January 2017 in Berlin, and during the visit of Mr. Helmut Brunner, Minister of Food, Agriculture and Forestry of the Land of Bavaria to Moscow in March 2017. Following those consultations, technical consultations on the issue with representatives of the German Veterinary Services were scheduled for April 2017.

- **India's concerns regarding EU MRLs for bitertanol, tebufenpyrad and chlormequat5 (STC 412)**

In October 2016, India expressed concerns regarding proposed amendments to Regulation (EC) No. 396/2005 to change maximum residue levels (MRLs) for bitertanol, tebufenpyrad and chlormequat in certain products. India had provided detailed comments on the proposed regulation intended to come into effect in February 2017. India highlighted its particular concern with the lowering of MRLs for chlormequat in table grapes from 0.05 mg/kg to 0.01 mg/kg, which would seriously impact Indian grape exports to the European Union, which accounted for almost 25% of India's grape exports. India further noted that according to a European Food Safety Authority (EFSA) study conducted in 2010, residue concentrates of chlormequat in table grapes were safe up to 1.06 mg/kg. Codex had not fixed any acceptable daily intake limits for chlormequat in table grapes, but had recommended an MRL of 0.05 mg/kg. India further highlighted that other countries had set higher MRLs for chlormequat in table grapes, such as Australia and New Zealand at 0.75 mg/kg or Japan at 0.10 mg/kg. The scientific reference included in the EU notification did not provide any specific recommendation on grapes. Thus the proposed lower MRL had no scientific justification, was not based on any relevant international standard and would have negative trade effects.

India further expressed its concern with respect to residue levels for bitertanol in wheat, set at a default level of 0.01 mg/kg from 0.05 mg/kg. India questioned the rationale behind the European Union decision of undertaking a detailed assessment on the Codex limit. India requested the European Union to provide relevant scientific justification in light of Articles 5.4 and 5.8 of the SPS Agreement, and to maintain the current MRLs. India welcomed bilateral discussions.

The European Union recognised Indian producers' and regulatory bodies' efforts to comply with the existing MRL of 0.05 mg/kg for chlormequat. Since 2010 table grapes from India had complied with this MRL. For the time being, the European Union had decided to maintain the current MRL of 0.05 mg/kg in grapes because the manufacturer had submitted new trial data supporting this level, and to review it on the basis of the 2017 JMPR evaluation aimed at establishing a Codex standard. In light of the above, the European Union considered that this concern of India had been addressed. The European Union explained that the default value of 0.01 mg/kg for bitertanol resulted from a recommendation of the EU reference laboratories and not from EFSA's reasoned opinion. EFSA had highlighted that the lack of information on the toxicological relevance of certain impurities prevented the assessment of Codex levels and the inclusion of such levels in the EU legislation. The same issue had been raised in a previous EFSA opinion in 2010. The European Union informed India that it could make a request for an import tolerance under Article 6(4) of Regulation (EC) No. 396/2005 and submit additional data that would support re-establishing an MRL and alleviate any concerns about the metabolites. The European Union finally expressed its openness to bilateral consultations.

⁵ The rules were notified in G/SPS/N/EU/168.

- ***Mexico's concerns regarding Guatemala's restrictions on egg products (STC 413)***

In October 2016, Mexico expressed its concern on Guatemala's restrictions on egg products. Mexico considered the measure to be in violation of fundamental principles of technical and scientific justification based on international standards and principles enshrined in the SPS Agreement and the free trade agreement between Mexico and Central America. Mexico noted its preference to promote dialogue; however, these efforts had not been successful. Guatemala continued to impose import restrictions on Mexican egg products even though its legislation allowed imports of heat treated avian products. Mexico indicated that its exports of egg products were significantly affected by the restrictions and requested that Guatemala withdraw its measure in order to resume trade of egg products between the two countries.

Guatemala replied that in October, it had informed Mexico that it was currently conducting a risk assessment and would contact Mexico upon the conclusion of the analysis.

- ***Philippines' concerns regarding Indonesia's food safety measures affecting horticultural products and animal products (STC 414)***

In October 2016, the Philippines expressed its concern regarding Indonesia's food safety measures affecting horticultural products and animal products, and in particular with Ministry of Agriculture (MoA) Regulations No. 88/2011, No. 42/2012 and No. 04/2015. The Philippines regretted that no progress had been made through all bilateral avenues tried so far. The Philippines considered the regulations to be in violation, among others, of Articles 2.2, 4, 5.4 and 5.6 of the SPS Agreement, as well as the national treatment principle under Article III of GATT 1994. The measures had no scientific justification and were more trade restrictive than necessary to achieve Indonesia's appropriate level of protection (ALOP). Exports of horticultural exports had been growing until 2011, when the measures were first imposed, without posing any serious health or safety risks. Furthermore, Indonesia's closure of its main entry port in Jakarta in 2012 heavily impacted Philippine exports of bananas and shallots. Indonesia had unduly delayed the processing of the Philippines' applications for recognition of its food safety control system for horticultural products, laboratory accreditation and accreditation for animal products, despite follow-up in writing and bilateral discussions on numerous occasions. Indonesia's latest measures under MOA Regulation No. 04/2015 further overshadowed efforts to recognise the Philippines' food safety control system. The Philippines recognized that some measures, currently being reviewed by dispute settlement panels, might not be covered by the SPS Agreement, but noted that the combined effect of both SPS and non-SPS measures made Indonesia's system more potently trade restrictive. The Philippines expressed its appreciation for Indonesia's availability on the margins of the current Committee meeting and remained committed to continue bilateral discussions to resolve this issue.

Indonesia indicated that some regulations at issue were no longer in force. A revision of MoA Regulation No. 88/2011 had been notified⁶ and implemented in February 2016. The regulation set out food safety control systems recognition and laboratory registration requirements to export fresh foods of plant origin to Indonesia. Since 2012, the Philippines had submitted applications for food safety recognition systems for bananas, shallots and pineapples and had applied for registration of its food safety testing laboratory in June 2016. However, Indonesia was still waiting for additional data necessary for conducting the risk assessment. The requirements applied to all WTO Members and, so far, 26 countries had been granted access to the Indonesian market. Indonesia thanked the Philippines for the explanations received during their bilateral talks in the margins of the Committee, and expressed its willingness to continue bilateral discussions towards finding a solution.

- ***Indonesia's concerns regarding China's import ban on fresh mangosteen (STC 416)***

In October 2016, Indonesia expressed its concern regarding China's import ban on fresh mangosteen fruit since February 2013. Indonesia recognized China's right to adopt measures to protect human, animal and plant health, but considered the measures to be more trade restrictive than necessary and discriminatory. Indonesia reported that it had taken actions to resolve the alleged pest and heavy metal contamination detected on its mangosteen fruits. Such actions included field and laboratories verification, as well as negotiations with China on its proposed export protocol. Indonesia further expressed its appreciation to China for a field verification visit held in August 2014, and hoped to receive the report soon. Indonesia requested that China comply with Articles 2.3, 5.6, 7, 8 and Annex C (1a) of the SPS Agreement in order to resume mangosteen trade between the two countries, and expressed its willingness to continue bilateral engagement. China stated that in 2013 it had detected quarantine pests and measured levels of cadmium above the level specified in its standard in Indonesian's mangosteen exports. China said that despite several bilateral consultations, the two sides had not been able to agree on the protocol issues yet. China urged Indonesia to continue to work closely with the competent authority of China with a view to finding a mutually satisfactory solution to the pending issue.

⁶ The rules were notified in G/SPS/N/IDN/94.

In March 2017, Indonesia reiterated its concern raised in the October 2016 SPS Committee regarding China's import ban on fresh mangosteen fruit. Indonesia recalled that it had taken actions to resolve the alleged pest and heavy metal contamination detected on its mangosteen fruits. Such actions included field and laboratories verification, as well as accommodating China's Draft Export Protocol. Indonesia explained that all procedures required for the export of mangosteen fruits to China had been completed, and therefore urged a positive response from China to resolve the issue. Indonesia expressed its willingness to continue bilateral engagement.

China stated that in 2013 it had detected quarantine pest *paraputo hispidus* and other harmful organisms and had measured levels of cadmium in Indonesia's mangosteen exports above the level specified in its standard. China noted that following several inspections and consultations, China and Indonesia had reached consensus on the Protocol of Phytosanitary Requirements for exporting mangosteens from Indonesia to China in September 2016. China reported that it was conducting the relevant internal legal procedures, and urged Indonesia to continue working closely with the competent authority of China with a view to finding a mutually satisfactory solution to the issue.

• ***Israel's concerns regarding United States MRLs for chlorpyrifos (STC 419)***

In March 2017, Israel expressed its concern regarding the United States proposed rule to withdraw its food pesticide residue tolerances for chlorpyrifos. Following the notification of the proposed text in November 2016 (G/SPS/N/USA/2912), Israel had submitted comments to the United States and discussed the issue bilaterally at various fora. Israel explained that chlorpyrifos was produced in Israel, used on some 20 major crops exported to the United States, and considered an efficient and cost-effective broad spectrum pesticide. It was less disruptive to beneficial insects than alternative pesticides and a good rotational option. Also, for several important pests, growers had limited or no viable alternatives to chlorpyrifos. Israel noted that the United States' decision was based on three studies conducted in residential areas using chlorpyrifos for indoor pest control, which could cause hand-to-mouth contact as well as dermal or inhalation exposure. According to Israel, the results of these studies did not suggest that the relevant Codex MRLs (insecticide ID-17) were unsafe for agricultural products. Israel believed that the United States' deviation from the existing international standard was not scientifically justified. The United States needed to develop individual risk assessments on the use of chlorpyrifos for each agricultural crop of concern, taking into account all available scientific evidence as well as the objective to minimize negative trade effects.

Ecuador echoed Israel's concern, underlining that chlorpyrifos was broadly used worldwide and in Ecuador since 1989 on a variety of crops, including bananas majorly exported to the United States. Ecuador called for the United States to scientifically justify its measure and highlight the risks to human health, considering that the measure seemed to be based on studies carried out on the agricultural use of chlorpyrifos. Ecuador also asked if the United States would undertake individual risk assessments for different agricultural products based on Codex standards. Finally, Ecuador expressed a special concern with the adoption date of 31 March 2017 and the strong effects that it would have on trade.

The United States confirmed that all comments received would be considered by the Environmental Protection Agency (EPA) in finalizing the proposed measure. While the United States appreciated that many comments called on EPA to base its residue levels on Codex standards, it recalled the right of Members, in line with the SPS Agreement, to carry out their own risk assessments. Further information on the scientific assessments used was available in G/SPS/N/USA/2912.

Eight issues relating to food safety that had been previously raised in the SPS Committee were discussed again during 2016 and the first quarter of 2017. These included:

- Paraguay and US concerns regarding China's proposed amendments to the implementation regulations on safety assessment of agricultural GMOs (STC 395);
- Japan's concerns regarding Chinese Taipei's import restrictions in response to the nuclear power plant accident (STC 387);
- Japan's concerns regarding China's import restrictions in response to the nuclear power plant accident (STC 354);
- Colombia, Ecuador and Peru's concerns regarding the application and modification of the EU Regulation on Novel Foods (STC 238);
- Argentina, Paraguay and US concerns regarding the EU proposal to amend Regulation (EC) No. 1829/2003 to allow EU member States to restrict or prohibit the use of genetically modified food and feed (STC 396);
- Argentina, China and US concerns regarding the European Union revised proposal for categorization of compounds as endocrine disruptors (STC 382);

- EU's concerns regarding India's amended standards for food additives (STC 403); and,
- EU's concerns regarding the Russian Federation's import restrictions on processed fishery products from Estonia and Latvia (STC 390).

1.2 Members' information related to food safety

WTO Members used the opportunity of the SPS Committee meetings during 2016 and the first quarter of 2017⁷ to provide other information relating to food safety, including:

- Australia provided information on the BSE food safety risk assessments which had been completed for Japan and Sweden by Food Standards Australia New Zealand (FSANZ);
- Brazil informed the Committee of its recent measures implemented on animal products (G/SPS/GEN/1545);
- Canada provided an update on the modernization of its food safety framework⁸ and explained that the draft of the Safe Food for Canadians Regulation (SFCR) consolidated existing federal food inspection regulations into one overarching set of requirements. Further information was available on <http://www.inspection.gc.ca/safefood>;
- Canada informed the Committee of the Canadian Food Inspection Agency's (CFIA) new electronic service delivery platform, "My CFIA" which provided a variety of online services such as export certificates, requests for licenses, permits and registrations. Although the existing system would be available during the transition period, Canada encouraged stakeholders to create an account during the platform's phased-in release in 2017. Requirements negotiated with foreign bodies would not be affected by the transition towards electronic certification. Additional information was available on the CFIA's website;
- The European Union highlighted some of the improvements introduced by its new Regulation 2015/2283 on novel foods, which was adopted on 25 November 2015;⁹
- The European Union informed the Committee of its ongoing process to review the current MRLs for pesticides, including how countries outside the European Union could contribute to the process;¹⁰
- Indonesia provided an update on its Regulation No. 04/2015 on Food Safety Control on Importation and Exportation of Fresh Food of Plant Origin;¹¹
- Japan informed the Committee of the most recent data from its food monitoring exercise, including its ongoing efforts to ensure food safety, as well as an update on the latest assessment by the International Atomic Energy Agency (IAEA), which indicated that the situation remained stable;
- Peru informed the Committee of the recent revision of its sanitary requirements governing the importation of processed foods, other than fishery and aquaculture products;¹²
- The Russian Federation provided an overview of its recent activities undertaken in cooperation with Codex, which included the hosting of two Codex events and the submission of a state policy report on healthy nutrition to FAO;
- Ukraine provided information on the progress made in the restructuring of its previously independent agencies into a single competent authority, the Food Safety and Consumer Protection Service; and
- The United States provided an update on the Food and Drug Administration (FDA) Food Safety Modernization Act (FSMA), highlighting that the FDA had now finalized its seven risk-based foundational rules to implement FSMA.¹³

1.3 Transparency

The SPS information management system (SPS-IMS) allows easy access and management of all WTO SPS-related documentation.¹⁴

⁷ G/SPS/R/82 plus corrigendum, G/SPS/R/83 plus corrigendum, G/SPS/R/84 and G/SPS/R/86.

⁸ G/SPS/GEN/1524.

⁹ G/SPS/GEN/1472.

¹⁰ G/SPS/GEN/1494.

¹¹ G/SPS/N/IDN/94.

¹² G/SPS/GEN/1496. More details can be found at: http://www.digesa.sld.pe/Orientacion/Requisitos_Sanitarios.asp.

¹³ G/SPS/N/USA/2503/Add.6, G/SPS/N/USA/2569/Add.3, G/SPS/N/USA/2570/Add.4., G/SPS/N/USA/2631/Add.2 and G/SPS/N/USA/2610/Add.2.

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.¹⁵ Although this recommendation does not change the legal obligations of WTO Members, it may enhance transparency regarding the application of Codex standards.

A total of 1,331 notifications, that is 1,157 proposed new or revised SPS measures and 174 emergency ones, were submitted to the WTO in 2016 and the first quarter of 2017. Among these, 837 regular notifications and 67 emergency notifications identified food safety as the objective of the measure. Of these, 289 of the regular and two of the emergency notifications identified a Codex standard as relevant, either indicating the application of the Codex standard or a deviation from it.

The SPS information management system (SPS-IMS) allows easy access and management of all WTO SPS-related documentation.¹⁶ Moreover, SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). 69% of notifications submitted during 2016 and the first quarter of 2017 were submitted online.

1.4 Equivalence

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 information was provided by the Codex regarding work on equivalence during the period. Members updated the Committee on relevant information related to equivalence:

- **Madagascar – Memorandum of understanding with China for shrimp exports**

In the March 2016 Committee meeting, Madagascar informed Members about the equivalence arrangements in place with regard to fishery products. Since the last inspection mission of the Food Veterinary Office of the European Commission in June 2012, the regulatory measures applied by the competent authority (Autorité Sanitaire Halieutique) to products intended for the European market were recognized as equivalent to those provided in the European sanitary regulations. Further Madagascar reported that after an inspection mission to Madagascar in 2014, the competent Chinese veterinary authority had also recognized measures applied by the competent authority as equivalent to their measures. In 2014, Madagascar signed a Memorandum of Understanding with China that governed shrimp exports to the Chinese market.

China took the floor and thanked Madagascar for its particular comments on cooperation on SPS requirements regarding its shrimp exports to China. China highlighted that it attached great importance to friendly and mutually beneficial cooperation with African countries and also that it welcomes high quality food and agriculture products on the Chinese market. China expressed that it looked forward to working more closely with Madagascar and other African countries in good faith to boost economic growth in Africa.

1.5 Monitoring the use of international standards

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.¹⁷ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

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 Eighteenth Annual Report was circulated to Members on 27 May 2016.¹⁸ The following issues were raised in 2016 and the first quarter of 2017:

¹⁴ See <http://spsims.wto.org>.

¹⁵ G/SPS/7/Rev.3.

¹⁶ See <http://spsims.wto.org>.

¹⁷ G/SPS/11/Rev.1.

¹⁸ G/SPS/GEN/1490.

Use of the Codex international standard on glyphosate

During the June and October 2016 Committee meetings, the United States reiterated concerns over the fact that some Members had already taken action, or were considering taking action, to no longer apply the Codex MRL for glyphosate. The measures being considered did not appear to be based on international standards or on risk of exposure. The United States recalled that a JMPR report from May 2016 had concluded that glyphosate was "unlikely to be genotoxic" and "unlikely to pose a carcinogenic risk to humans from exposure through diet." It was therefore important to distinguish these findings from that of IARC, which were based on hazard and not risk. The US EPA had recently published its review on glyphosate using all available data and would be seeking external peer review from a scientific advisory panel under the Federal Insecticide, Fungicide, and Rodenticide Act. The US EPA review had classified glyphosate as "not likely to be carcinogenic to humans at doses relevant for human health risk assessment."

The US EPA was currently in the process of rescheduling the meeting of the fifth scientific advisory panel to ensure additional epidemiological expertise would be available to the panel. The United States stressed the importance of following international standards and basing SPS measures on risk assessments, recalling Article 12.4 of the SPS Agreement and the direction given in G/SPS/11/Rev.2. The United States invited Members to think of how the Committee could provide greater understanding of how risk-based regulation of pesticides could ensure food safety in trade.

Argentina, Australia, Brazil, Canada and New Zealand echoed the concern of the United States and stressed the importance of aligning national MRLs for glyphosate with the relevant Codex standard.

In March 2017, Argentina reiterated its concern that some Members were considering the possibility of rescinding the use of glyphosate and thereby no longer apply the Codex MRL. In particular, Argentina noted that although the European Commission had approved the extension of the authorization for glyphosate use until the end of 2017, there still remained concerns regarding the immediate impact on trade of agricultural products if the authorization was not further renewed. Argentina highlighted the JMPR report from May 2016 that had concluded that glyphosate was "unlikely to be genotoxic" and "unlikely to pose a carcinogenic risk to humans from exposure through diet". A recent European Chemical Agency (ECHA) publication, dated 15 March 2017, had also concluded that the available scientific evidence did not meet the criteria to classify glyphosate as being carcinogenic, mutagenic or toxic for reproduction. Argentina noted that the ECHA conclusion was in accordance with previous statements from the European Food Safety Authority (EFSA). Argentina recalled the obligations of Article 3 of the SPS Agreement, highlighting that Members had the obligation to base their food safety measures on Codex standards or on scientific evidence. No scientific evidence had been provided by the European Union to justify deviation from the Codex standard. Argentina urged the European Commission to take into account the Codex standard, the EFSA opinion and the ECHA risk assessment in its next decision on the renewal of the authorization of glyphosate use.

The United States reiterated its concerns over the fact that some Members had already taken action, or were considering taking action, to no longer apply the Codex MRL for glyphosate. The United States understood that the measures being considered did not appear to be based on international standards or on a risk of exposure. Multiple robust risk assessments had been undertaken by international and national authorities (e.g. JMPR, EFSA, ECHA) on glyphosate, none of which had found convincing evidence regarding a carcinogenic risk to humans. In addition, glyphosate was subject to a periodic registration review by the US Environmental Protection Agency (EPA), in order to ensure that pesticides containing glyphosate continued to meet the statutory safety standard for registration. The United States further informed that in 2016 the EPA had published a review of all available data on the potential carcinogenicity of glyphosate, where it had proposed to classify glyphosate as "not likely to be carcinogenic to humans at doses relevant for human health risk assessment". This review had included, but also extended beyond, the studies reviewed by WHO and the International Agency for Research and Cancer (IARC) which had assigned a classification of "probable human carcinogen" to glyphosate. The EPA review had been evaluated by an independent scientific advisory panel, which had released its report in March 2017. The EPA was now currently reviewing the panel's report, and other comments, before making a final determination on the potential carcinogenicity of glyphosate. Draft human health and ecological risk assessments on glyphosate were also scheduled to be published later in 2017, for public comments. The United States underscored the importance of distinguishing between the assessments conducted by JMPR, EFSA, ECHA and the pending EPA risk assessment, from the report of IARC, which was based on an assessment of hazard only and not on risk. The United States further encouraged all Members to follow Codex glyphosate MRLs or to base SPS measures on science-driven risk assessments that incorporate realistic exposure scenarios.

Australia, Brazil, Canada, Chile and New Zealand echoed the concerns of Argentina and stressed the importance of following the Codex standard. The findings of the JMPR report of May 2016 were also noted and Members encouraged to take into account the guidance provided by JMPR and CCPR when developing, applying, re-evaluating or reauthorizing measures.

The WHO, on behalf of WHO and JMPR, confirmed the JMPR conclusions on glyphosate as outlined in the JMPR report of May 2016, and indicated that the process to review glyphosate was ongoing. The WHO further explained that JMPR would report to the CCPR in April 2017, and would not request a change in the MRLs for glyphosate.

1.6 Technical assistance

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.

On 24 and 25 October 2016, the WTO organized a Workshop on Pesticide Maximum Residue Levels in Geneva.¹⁹ This workshop was open to all Members, Observer governments and organizations with observer status in the SPS Committee. Throughout the two-day workshop, participants benefited from detailed presentations on the relevance of the SPS Agreement to pesticide MRLs, the Codex approach to establishing MRLs, as well as various regional and international initiatives focused on harmonizing MRLs and establishing MRLs for minor-use crops.

In addition, various WTO Members shared their national experiences on establishing MRLs and provided insights into the challenges of implementing and complying with Codex MRLs, as well as the impact of default MRLs and MRL expiration on international trade. Speakers from the private sector also contributed to the workshop, highlighting the various ways for the private sector to be involved in establishing MRLs, such as by providing the relevant technical data. Several follow-up actions were proposed during the workshop, with a view to addressing various concerns related to pesticide MRLs. The programme²⁰ and presentations from the workshop are available from the "Events, workshops and training" section under the WTO SPS Gateway (http://www.wto.org/english/tratop_e/sps_e/events_e.htm).

At the March 2017 SPS Committee meeting, 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 1994 to the end of 2016.²¹

Document G/SPS/GEN/997/Rev.7, circulated on 27 February 2017, provides information on all WTO technical SPS-related technical assistance activities planned for 2017, including the Geneva-based advanced course which provides in-depth and hands-on training to government officials. The WTO Secretariat will schedule regional SPS workshops in 2017, upon request from regional organizations, as well as national seminars upon request from WTO Members and acceding governments. Two regional SPS workshops are already scheduled to be held for Latin America and for Arab countries in 2017. In addition, a SPS Thematic Workshop on Transparency will be held in Geneva on Monday, 30 October and Tuesday, 31 October 2017. Further information on SPS activities is available via <http://www.wto.org/sps/ta>.

In 2016 and the first quarter of 2017, the Codex secretariat participated as resource persons in a number of WTO thematic, regional or sub-regional workshops held in Switzerland (Workshop on Pesticide MRLs), and in the Arab region (Kuwait), as well as in the Advanced Course on the SPS Agreement held in Geneva, with 25 participants. As always, these contributions were highly appreciated.

1.7 Review of the operation and implementation of the SPS Agreement

The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. As agreed in its Second Review,²² the Committee developed a procedure to facilitate the use of ad hoc consultations and negotiations to resolve trade problems.²³ 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. The second annual report on the use of the procedure,²⁴ was issued on 5 October 2016, covering the period 1 October 2015 until the end of September 2016. During this time-period, no Member requested consultations under this procedure.

¹⁹ The report of the workshop is available in document G/SPS/R/85.

²⁰ G/SPS/GEN/1514/Rev.1.

²¹ G/SPS/GEN/521/Rev.12.

²² G/SPS/36.

²³ G/SPS/61.

²⁴ G/SPS/GEN/1513.

During 2016, the SPS Committee continued its discussions on the report of the Fourth Review of the Operation and Implementation of the SPS Agreement, started in 2014, including proposals submitted by Members for possible areas of future work. However, the Committee was not able to adopt the report of the Review,²⁵ or a proposed Catalogue of Instruments available for WTO Members to Manage SPS Issues.²⁶ A recommendation in the Review Report regarding the Committee's future work on private standards has been a major point of contention. On the proposed Catalogue of Instruments, Members have not reached a consensus to include a disclaimer to clarify the legal status of the document.

In February 2017, the United States submitted a proposal containing possible options for the work on the Fourth Review.²⁷ The proposal presented three options. The first option was the status quo, i.e. that the adoption of the Fourth Review remain deadlocked. The second option was to ask the Secretariat to revise section 14 on SPS-related private standards, to describe the differing views and the depth of engagement on all sides. The third option was to skip the Fourth Review and begin the Fifth Review, with a modified process to facilitate reaching an agreement. The proposal was presented at the March 2017 Committee meeting and several Members noted their readiness to discuss the second option, noting that only a few issues remained unresolved.

The Chair also recalled some additional suggestions tabled by Brazil for paragraph 14.20 of the Fourth Review Report and invited interested Members to consult with each other and to submit by 31 May 2017 an agreed draft text for the second recommendation of paragraph 14.20.

Regarding the Catalogue of Instruments, it was agreed that the Secretariat would circulate a compilation of all of the previously proposed language for the legal disclaimer.

1.8 Private and commercial standards

Since June 2005, the SPS Committee has discussed the issue of private and commercial standards, and several information sessions have been held in the margins of the SPS Committee meetings. 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.²⁸ 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.

In October 2013, the SPS Committee formed an electronic working group (e-WG) focused on developing a working definition of an SPS-related private standard, with China and New Zealand as "co-stewards". In 2014, the co-stewards circulated two reports on the work of the e-WG,²⁹ but no consensus was reached by the Committee on a working definition. In March 2015, the co-stewards presented their latest report on the work of the e-WG.³⁰ They noted that the e-WG, while very close, had not been able to reach consensus on the working definition and therefore the SPS Committee agreed that the e-WG take a cooling off period.

In an effort to advance the work of the Committee on the Fourth Review and on private standards, the Chair tabled in October 2015 a package on SPS-related private standards that attempted to break the Committee's deadlock. The package contained a draft working definition of the term "SPS-related private standard", recommendations for inclusion in the Report of the Fourth Review, and three future actions for the Committee with regard to private standards. The hope was that the package would allow for trade-offs and make it easier to find a solution. Several consultations took place in 2016, with two groups of Members also discussing the Report on the Fourth Review and the recommendations for future work on SPS-related private standards contained therein. However, the Committee did not make any further progress on text for the outstanding recommendations on private standards. The Committee was also split on a new proposal from China to develop guidelines on private standards. Private standards remain a growing concern among developing countries, many of which urged continued efforts to find a compromise.

2 WORK OF THE TBT COMMITTEE

The TBT Committee held three regular meetings in 2016: on 9-10 March, on 15-16 June and on 10-11 November. The Committee also met on 29-30 March 2017, and will hold two additional regular meetings during 2017: 14-15 June and 8-9 November 2017.

²⁵ G/SPS/W/280/Rev.2.

²⁶ G/SPS/W/279/Rev.2.

²⁷ G/SPS/W/291

²⁸ G/SPS/55.

²⁹ G/SPS/W/276 and G/SPS/W/281.

³⁰ G/SPS/W/283.

2.1 Specific Trade Concerns

During the three meetings held in 2016, 31 new specific trade concerns were raised for the first time in the TBT Committee, as well as 63 old ones.³¹ In addition, 8 new specific trade concerns and 48 old ones were raised at the first meeting of 2017.³² Codex standards were mentioned in twenty of the specific concerns raised over this period:

- ***United States et al.*³³ concerns regarding European Union's Quality Schemes for Agricultural Products and Foodstuffs, G/TBT/N/EU/139, G/TBT/N/EU/139/Add.1 (IMS ID 512)³⁴**

The United States raised concerns regarding Denmark's application for registration of the terms "danbo" and "havarti" as protected geographic indications for cheese. These two GI applications had been published by the European Union under Regulation 1151/2012 of the European Parliament and of the Council on the quality schemes for agricultural products and foodstuffs. The Codex Alimentarius had adopted production standards: 50 years, in the case of "danbo" and 30 in the case of "havarti". These Codex standards had been adopted in order to ensure the quality and uniformity of these cheeses in the various countries producing them.

The United States explained that both registration applications were still pending. However, if granted, these GI registrations would result in the prohibition within the European Union of the two names for any cheese produced outside of Denmark. The United States posed a series of questions to the European Union. First, if the pending EU-level applications by Denmark to seek the restricted use of these Codex-standardized, common terms solely to Danish producers were approved, would the European Union prohibit imported cheeses from using the Codex-standardized terms on the products' labels, even if those cheeses conformed to their respective Codex standards? Second, if the applications related to these two names were approved within the European Union, would the European Union seek to use international treaties to prohibit cheeses being sold in other markets from using the Codex-standardized terms on the products' labels, even if those cheeses conformed to their respective Codex standards? Third, had the European Union considered less trade-restrictive means of implementing regulations pertaining to "danbo" and "havarti"?

Uruguay supported the US concerns and requested the European Union to provide Members with an update on the GI applications.

The European Union responded that the original measure had been notified under G/TBT/N/EU/139 and G/TBT/N/EU/139/Add.1. The European Union was not in a position to provide a detailed reply with regard to an update on the pending applications, due to the short notice of the request. The European Union remained open to discuss this issue bilaterally.

During the November 2016 and March 2017 TBT Committee meetings, Members repeated their concerns. In the March 2017 TBT Committee meeting, the European Union indicated that the procedure for granting of protection to the terms "danbo" and "Havarti" as Geographical Indications (GIs) in the EU had not yet been finalized. The European Union also noted that the elements raised by the United States pertained to intellectual property rights, in particular to GIs. The European Union considered, therefore, as had been stated in the November 2016 TBT Committee meeting, that any issues concerning intellectual property rights should not be discussed in the TBT Committee, but were more appropriately addressed in TRIPS Council. The European Union invited the United States to consider discussions on this issue through appropriate WTO channels, as well as bilaterally.

³¹ G/TBT/39/Rev.1.

³² For more information on any STC, please search for the ID number in the TBT Information Management System: <http://tbtime.wto.org/en/SpecificTradeConcerns/Search>.

³³ Uruguay and the United States.

³⁴ STC first raised on 15 June 2016, see G/TBT/M/69, paras. 3.46-3.49; 10 November 2016, see G/TBT/M/70, paras. G/TBT/M/70, paras. 2.302-2.308; and 29 March 2017, see G/TBT/M/71, paras. 2.246-2.248.

- **Republic of Korea et al.**³⁵ **concerns regarding China's Formula Registration Regulation for Infant and Follow-up Formula, G/TBT/N/CHN/1165 (IMS ID 493)**³⁶

The Republic of Korea expressed concern about the requirement to register with the China Food and Drug Administration (CFDA) the infant formula products manufactured in, distributed in, or imported to China, as well as the limitation on the number of infant products allowed to be registered by one company. Recalling international standard-setting bodies, the Republic of Korea pointed out that Codex also provided requirements for substances, but without limiting the number of brands and formulas. Accordingly, the Korean Government requested that China accept the following: (i) to recognize Korean formula products and compositions previously assessed by and registered at the Certification and Accreditation Administration of China (CNCA) in 2014, once the CFDA's new regulation came into effect; (ii) to simplify the registration process for new infant and follow-up formula product compositions, to ensure that on-site inspection and expert review were not duplicated in the course of new facility registration at CNCA and formula composition registration at CFDA; and (iii) to allow registration of new formula products through scientific demonstration of ingredients and compositions without limitation on the number of brands or formula compositions, if obvious differences in ingredients were scientifically demonstrated.

The European Union shared Korea's concerns, particularly on the limitation which would apply to each company setting a maximum of 9 recipes within 3 product lines, stressing the potentially serious negative impact on EU exports to China. The impact of such a limitation would be aggravated by the fact that the limitation would affect producers who would be deprived of the possibility of serving major brands of infant formula who currently rely on them as production partners for their products. Without modification of this article, the number of brands on the Chinese market would be reduced by an estimated 80%. The European Union could see no justification to this limitation, neither on the basis of food safety nor on the basis of any other legitimate objective. The European Union requested reconsideration of this limitation and flagged that written comments had been sent to China covering other serious concerns.

Japan also shared the concerns of other Members and asked China to eliminate the quantitative limitation on registration of products.

China committed to conveying all comments and concerns back to its capital, since the substantive issues raised by Members were brought to its attention at very short notice.

During the June 2016, November 2016 and March 2017 TBT Committee meetings, Members repeated their concerns. China stated that it was internationally recognized that infant formula should only be a nutritional supplement to breastfeeding, that the composition of infant formula milk powder should be similar to breast milk, and that there should not be too many kinds of formulas. China's research had concluded that large foreign infant formula manufacturers had no more than three brands. To address Members' concerns on on-site inspection, China clarified that it mainly focused on the R&D data of milk powder formulas and manufacturers' capacity to turn formulas into production. China also indicated that it would try to avoid possible duplicative inspections by more communication. China emphasized that the regulation was applied in a non-discriminatory manner and was in line with the TBT Agreement.

- **Indonesia's concern over Russian Federation's Implementation plan related to excise tax on palm oil and soda product (ID 500)**³⁷

Indonesia was concerned that the Russian Federation's implementation plan was potentially not in line with the provisions of GATT Article III:2 and TBT Agreement related to non-discrimination and avoidance of unnecessary trade barriers.

The Russian Federation drew attention to the fact that these requirements for palm oil and other oils, established in its Customs Union technical regulations "On oil and fat products", were in full compliance with CODEX STAN 210-1999 and with the provisions of Article 2.4 of the TBT Agreement.

- **Guatemala et al.**³⁸ **concerns regarding Bolivia's Food Labelling and Advertising Law (ID 501)**³⁹

Guatemala was concerned *inter alia* that Bolivia's labelling regulations had not considered the standards of Codex Alimentarius.

Guatemala and other Members expressed support for Bolivia's public health objectives of reducing obesity and related non-communicable diseases asking Bolivia to notify the implementing regulations of the law to the TBT Committee.

³⁵ European Union, Japan, New Zealand and the United States.

³⁶ STC first raised on 9 March 2016, see G/TBT/M/68, paras. 2.4-2.8; 15 June 2016, see G/TBT/M/69, paras. 3.328-338, 10 November 2016, see G/TBT/M/70, paras. 2.251-2.258; and 29 March 2017, see G/TBT/M/71, paras. 2.199-2.203.

³⁷ STC first raised on 9 March 2016, see G/TBT/M/68, paras. 2.45-2.46.

³⁸ Guatemala, the European Union, the United States and Canada.

³⁹ STC first raised on 9 March 2016, see G/TBT/M/68, paras. 2.47-2.51.

Bolivia assured Members that the raised concerns would be dealt with by the appropriate bodies in capital. In the meantime, Members were informed that the Government of Bolivia had adopted Law No. 775 promoting healthy eating and that it was currently in the process of being developed as appropriate, in consideration of the provisions of the TBT Agreement. The regulation would be made available to Members as established in the TBT Agreement once ready.

- ***Argentina et al.⁴⁰ concerns over European Union - Revised Proposal for the Categorization of Compounds as Endocrine Disruptors of 19 February 2013 by DG Environment (IMS ID 393)⁴¹***

Argentina reiterated its concern with the revision process being undertaken by the European Union to define its criteria for identifying substances with endocrine disrupting properties. Argentina supported the need to provide stronger protection for human health and the environment so long as this was done in way that was consistent with WTO Agreements, in particular the SPS and TBT Agreements. Argentina was concerned that in accelerating the roadmap deadlines, comments submitted by the international scientific community, industry and third countries would not be taken into account in the final proposal. Therefore, in order to avoid unnecessary barriers to trade, the future regulation to be adopted by the European Union should rely on an effective risk assessment taking into the account the actual exposure to risk, including the possibility of establishing maximum residue limits under the import tolerance approach, instead of classifications based on hazard identification, which will ultimately determine a default MRL detection level of 0.01 ppm for substances covered under that approach.

Canada, Colombia, Chile and the United States shared concerns regarding the EU approach to identifying and regulating the use of plant protection and biocidal products that may have endocrine-disrupting properties.

The European Union noted, as had been explained in previous meetings, that the European Commission would be carrying out a comprehensive impact assessment analyzing different options on defining criteria for the identification of endocrine disruptors and their corresponding health, socio-economic and environmental effects in the EU legislation. Detailed information about the impact assessment, including the analytical report of the responses to the public consultation, was published on the website of DG Health and Food Safety. With regard to the impact assessment, the Commission had organized several roundtables and a public conference about the on-going impact assessment. A technical meeting on the Joint Research Centre Methodology had also supported the impact assessment and estimated which chemicals would fall under the different criteria to identify endocrine disruptors as outlined in the roadmap. The impact assessment was now entering its final stage and the Commission would present proposals for the new criteria to identify endocrine disruptors in the EU's plant protection products regulation and biocidal products regulation before summer 2016. The European Union would notify the new proposal to the WTO, in full transparency, to allow interested parties' comments to be taken into account.

During the June 2016, November 2016 and March 2017 TBT Committee meetings, Members repeated their concerns. In the March 2017 TBT Committee meeting, the European Union stated that the mandate given by the EU Commission was to set criteria for the identification of endocrine disruptors through the implementation of pesticides legislation and not to modify endocrine disruptors' general approach. The draft pesticides regulation had been notified to the WTO and this approach adopted by co-legislators in 2009. The EU Commission proposed to amend derogations for endocrine disruptors in the pesticide legislation in accordance with technical and scientific knowledge in June 2017. The European Union reaffirmed its commitment to comply with its obligations and recalled that replies to written comments had been provided in February 2017. The proposal was divided between endocrine disruptors' criteria and a technical amendment to the existing derogation in December 2016 to facilitate EU decision-making process. This division changed the legal drafting and not the content, in order to offer member States, the EU Parliament and Council the opportunity to discuss each aspect separately. While the decision-making process was ongoing, there was no formal vote on the criteria or the derogation's amendment at the Standing Committee on Plan, Animals, Food and Feed for Pesticides' meetings in 21 December 2016 and 28 February 2017. The European Union was reflecting on how to proceed further and noted that the current interim criteria for endocrine disruptors' identification would apply until agreement was achieved. The European Union was committed to act in a fully transparent manner and would keep Members informed on further developments.

⁴⁰ Canada, Argentina, Australia, Brazil, Chile, Colombia, Ecuador, Egypt, Guatemala, Mexico, New Zealand, South Africa, Thailand, the United States and Uruguay.

⁴¹ STC raised on 17 June 2015, see G/TBT/M/66, paras. 3.137-3.142; 4 November 2015, see G/TBT/M/67, paras. 2.139-2.145; 18 March 2015, see G/TBT/M/65, paras. 2.121-2.124; 5 November 2014, see G/TBT/M/64, paras. 2.165-2.167; 18 June 2014, see G/TBT/M/63, paras. 3.142-3.144; 19 March 2014, G/TBT/M/62, paras. 2.205-2.206; 30 October 2013, see G/TBT/M/61, paras. 2.170-2.172; 17 June 2013, see G/TBT/M/60, paras. 3.57-3.61; 9 March 2016, see G/TBT/M/68, paras. 2.139-2.148; 15 June 2016, see G/TBT/M/69, paras. 3.137-3.146; and 10 November 2016, see G/TBT/M/70, paras. 2.123-2.136; and March 2017, see G/TBT/M/71, paras. 2.106-2.119.

- **Canada et al.⁴² concerns over Indonesia's Regulation of the Minister of Agriculture No. 139/Permentan/PD.4, 10 December 2014, concerning Importation of Carcass, Meat and/or Processed Meat Products into the Territory of the Republic of Indonesia, and Regulation of the Minister of Agriculture No. 02/Permentan/PD.4, 10 January 2015, concerning the Amendment of the Regulation of the Minister for Agriculture No. 139/Permentan/PD.4, 10 December 2014, G/TBT/N/IDN/98 (IMS ID 461)⁴³**

Canada raised its concerns with the broad product coverage of the regulations and the lack of clarity about their intended objectives. Canada urged Indonesia to provide more clarity regarding the proposed measures, specifically with regard to how these measures fell within the scope of the TBT Agreement and how they would be consistent with Indonesia's national treatment obligations.

Australia expressed its concern that the new regulation imposed additional restrictions on imports of meat and meat products, including new restrictions on how long meat products can be stored before arrival to Indonesia. Australia was particularly concerned that the new regulation continued to only allow State Owned Enterprises (SOEs) and Regional State Enterprises to import secondary beef cuts and carcasses, and only then in limited defined circumstances at the direction of Government Ministers. The new regulation maintained additional packing, labelling and purpose-of-use requirements on imported meat products that did not apply to domestic products and continued to prohibit the importation of a range of meat products and cuts, including certain types of offal.

The European Union supported the concerns of other Members and requested a written reply to the concerns it had submitted in writing, in particular on the requirements for production premises and transportation of Halal products, which should be aligned with relevant standards.

Brazil noted three specific concerns with the Minister of Agriculture Regulations Number 139/2014, namely: (i) the measure established the purchase of a certain amount of domestic beef as a condition for the importation of bovine meat; (ii) the importation of beef would only be allowed in some specific and limited end-uses, such as for hotels, restaurants, catering and special needs, among others; and, (iii) one of the licensing requirements for importation was subject to short time periods and strict deadlines.

Indonesia⁴⁴ indicated that the Minister of Agriculture Regulation 139/2014 and its amendment had been revised through Minister of Agriculture Regulation 58/2015 and notified to the WTO as G/TBT/N/IDN/98/Add.1. In addition, the Regulation was aimed at ensuring the security, safety and certainty of the available halal products for public consumption and utilization. The provisions stipulated in the regulations were also aimed at ensuring a fair market mechanism and preventing unnecessary disruption in meat supply.

During the June 2016 TBT Committee meeting, Members repeated their concerns. Indonesia indicated that since the concerns raised were subject to the on-going DSU process, the Committee would be informed once the process had been resolved.

- **European Union et al.⁴⁵ 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)⁴⁶**

Canada expressed concern with regard to the burdensome nature of the conformity assessment procedures for the regulation. Canada had received industry complaints on the requirement to provide a verification checklist to demonstrate compliance on a per shipment basis. The process of providing samples to an Ecuadorian Accreditation Organization, in addition to self-certification, suggested this conformity assessment was duplicative, redundant and trade restrictive.

⁴² Australia, Brazil and the European Union.

⁴³ STC raised on 17 June 2015, see G/TBT/M/66, paras. 3.245-3.247; 4 November 2015, see G/TBT/M/67, paras. 2.214-2.218; 18 March 2015, see G/TBT/M/65, paras. 2.30-2.33; 9 March 2016, see G/TBT/M/68, paras. 2.230-2.235; and 15 June 2016, see G/TBT/M/69, paras. 3.216-3.219.

⁴⁴ Indonesia's full statement is contained in document G/TBT/W/444.

⁴⁵ Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Mexico, Peru, Switzerland, the United States, and the European Union.

⁴⁶ STC raised on 19 March 2014, see G/TBT/M/62, paras. 2.32-2.37; 18 June 2014, see G/TBT/M/63, paras. 3.111-3.119; 5 November 2014, see G/TBT/M/64, paras. 2.175-2.186; 18 March 2015, see G/TBT/M/65, paras. 2.146-2.155; 17 June 2015, see G/TBT/M/66, paras. 3.153-3.16219; 4 November 2015, see G/TBT/M/67, paras. 2.146-2.152; 9 March 2016, see G/TBT/M/68, paras. 2.155-2.164; 15 June 2016, see G/TBT/M/69, paras. 3.152-3.159; 10 November 2016, see G/TBT/M/70, paras. 2.140-2.145; and 29 March 2017, see G/TBT/M/71, paras. 2.128-2.132.

The European Union shared Canada's concerns with the regulation and recalled its previous interventions,⁴⁷ in particular regarding the lack of proportionality of the measure, its departure from Codex guidelines and the use of "high in" warnings.

Mexico also expressed its concerns regarding RTE INEN No. 022 on the labelling of processed and packaged food products. Guatemala reiterated concerns regarding the lack of transparency in terms of complying with TBT Agreement notification obligations and the lack of public consultation. Costa Rica echoed concerns expressed by other delegations, in particular with regard to the lack of scientific evidence and the departure from relevant international standards.

Ecuador noted that Resolution No. 116 was related to certification requirements corresponding to an administrative measure. RTE INEN No. 022 had been in force since 23 December 2014 and was based on the 2012 Ministry of Health's study on health and nutrition, which concluded that Ecuador's epidemiological profile reflected an upward trend in the number of non-communicable diseases across the population. Other strategies had been encouraged with regard to nutrition, such as promoting maximum levels of fat and sugar. Ecuador noted that the requirements of foodstuff labelling were in line with Article 12 of the TBT Agreement to guarantee the right of consumers to relevant, clear and precise information about the content and characteristics of the foodstuffs in order to make informed choices. In addition, Ecuador was complying with paragraph 3.3.1 of the PAHO "Action Plan for the Prevention Obesity in Children and Adolescents", which established rules that take into consideration Codex norms in place for front-of-package labelling that allow for quick and easy identification of energy-dense, nutrient-poor products and sugar-sweetened beverages. Ecuador informed the Committee that RTE INEN No. 022 was being properly implemented and that its reference standards were adapted to Codex standards.

During the June 2016, November 2016 and March 2017 TBT Committee meetings, Members repeated their concerns. Ecuador reiterated that Resolution No. 116 established labelling requirements and was not a technical regulation. In relation to the Regulation on Food Labelling, Ecuador noted that the Ministry of Health had conducted consultations with the private sector and the health sector in order to assess the implementations of these laws. The technical regulation was under review and some of its modifications would include, *inter alia*, the calculation of the sugar content through a graphic labelling, the content and the concentration allowed per unit, the graphic system that would be used for milk, and GMOs indications.

- ***United States et al.*⁴⁸ concerns over Chile's proposed amendment to the Food Health Regulations, Supreme Decree No. 977/96 (IMS ID 370)**⁴⁹

Canada reiterated its concerns that the published regulations deviated from international standards, may not be based on scientific evidence, and may be more trade restrictive than necessary. Canada suggested that nutrient content limits based on actual serving sizes normally consumed at one sitting could provide an effective way of meeting the policy objective.

Mexico also raised several concerns on the regulations related to Chile's failure to comply with: the transparency obligation set forth in Article 2.9 of the TBT Agreement; and the need to base technical regulations on international standards, as stipulated in Article 2 of the TBT Agreement, since these provisions were not consistent with the General Guidelines on Claims of the Codex Alimentarius (CAC/GL 1 1979, point 3.5). Mexico also expressed concerns regarding the provision relating to the label "HIGH IN" (fats, sodium, sugar or calories) and stipulations for the prohibition on advertising, among others. Mexico requested that Chile submit the provisions that had given rise to the amendments to the Food Health Regulations to public consultation. In addition, Mexico asked Chile to harmonize the requirements set forth in the Regulations with the General Guidelines on Claims of the Codex Alimentarius (CAC/GL 1 1979, point 3.5).

⁴⁷ G/TBT/M/67, para. 1.148.

⁴⁸ Argentina, Australia, Brazil, Canada, Colombia, Costa Rica, European Union, Guatemala, Mexico, Peru, Switzerland, and the United States.

⁴⁹ STC raised on 6 March 2013, see G/TBT/M/59, paras. 2.26-2.42; 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; 18 March 2015, see G/TBT/M/65, paras. 2.92-2.100; 17 June 2015, see G/TBT/M/66, paras. 3.107-3.118; 4 November 2015, see G/TBT/M/67, paras. 2.111-2.117; 9 March 2016, see G/TBT/M/68, paras. 2.111-2.122; 15 June 2016, see G/TBT/M/69, paras. 3.105-3.113; and 10 November 2016, see G/TBT/M/70, paras. 2.102-2.107.

The United States appreciated the inclusion of an implementation review mechanism in the final measure, but asked Chile to delay implementation in order to fully review and consider comments received from foreign stakeholders in the context of this mechanism. As raised in past meetings, the United States encouraged Chile to evaluate the impact of the "warning" element of the icons, and the use of 100 gram and 100 ml portion sizes. In addition, the United States emphasized five outstanding issues: first, whether concentrated fruit juice would be considered "sugar" and unflavoured syrups used in baking such as corn syrup would be considered "syrup". Second, whether Chile would verify the addition of sodium, saturated fats, sugar, and honey, amongst others. Third, whether foods such as whole grain breakfast cereals, whole milk, yogurt, cooking oils, and cheese would be exempt from the measure. Fourth, the United States requested Chile to develop guidance or otherwise provide transparency on these issues and to consult with all stakeholders in doing so. Fifth, the United States asked Chile to confirm whether voluntary claims would be allowed when the claim was not related to a nutrient that exceeds the relevant threshold.

Guatemala and Costa Rica shared the expressed concerns.

Chile stated that it had complied with the obligations of the TBT Agreement in terms of transparency by notifying to the WTO, as well as complying with recommendations of the Committee by responding to comments received from trading partners, and informing the general public via the website of the Ministry of Health. With respect to advertising, Chile doubted that such measures were covered by the TBT Agreement as stated on previous occasions. Statistics showed that the prevalence of childhood obesity and related non-communicable diseases had increased in Chile, which is the reason why it had enacted this measure together with other related measures over time. Chile expressed its willingness to hold consultations with concerned Members who needed further information regarding implementation of the measure, bilaterally, in the Committee or elsewhere.

During the June 2016 and November 2016 TBT Committee meetings, Members repeated their concerns. In the November 2016 TBT Committee meeting, Chile referred to its previous statements in the Committee and highlighted that it had explained its regulation in detail and clarified Members' doubts during the thematic session on food labelling. In addition, the regulation had entered into force on 27 June 2016 and was being implemented nationally in accordance with the progressive implementation policy contained in it. Chile affirmed that its measure complied with the TBT Agreement and expressed willingness to continue bilateral discussions to solve any outstanding doubts.

- ***Australia et al.⁵⁰ 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)⁵¹***

The European Union reiterated concerns with Regulation 30/2013, which introduced a mandatory health warning message on sugar, salt and fat content on the label of all processed food products. The European Union noted that Regulation 30/2013 had been amended by Regulation 63/2015, which postponed the date of application until 2019. However, Regulation 63/2015 did not alter the substance of Regulation 30/2013. The European Union asked for information about the results of any study undertaken by the Indonesian Ministry of Health to determine the types of food included in the high risk and low risk classifications. The European Union looked forward to the issuing of implementing provisions for this Regulation addressing product coverage in detail, as well as of guidelines including further details. The European Union requested that both measures be notified to the TBT Committee while still in draft form, so that Members were provided with sufficient time for comments. The European Union also reiterated its previous request for clarification and detailed information on several issues related to the placement of nutrition information and related health warnings on the label, acceptance of test results issued by laboratories other than those accredited or recognized by the Indonesian National Accreditation Body (KAN), and the placement of stickers after importation, as an alternative to labelling in the country of origin.

Canada, Guatemala and Australia shared the concerns raised.

Indonesia⁵² indicated that it would conduct further studies to measure changes in the pattern of consumption of salt, sugar and fat, in order to determine the type of processed food needed for the requirement to include information about the content of sugar, salt and fat as well as health messages.

⁵⁰ Australia, Brazil, Canada, Guatemala, Mexico, Switzerland, the United States and the European Union.

⁵¹ STC raised on 17 June 2013, see G/TBT/M/60, paras. 3.42-3.46; 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; 18 March 2015, see G/TBT/M/65, paras. 2.116-2.120; 17 June 2016, see G/TBT/M/66, paras. 3.143-3.150, 4 November 2015, see G/TBT/M/67, paras. 2.134-2.138; 9 March 2016, see G/TBT/M/68, paras. 2.149-2.154; 15 June 2016, see G/TBT/M/69, paras. 3.147-3.151; and 10 November 2016, see G/TBT/M/70, paras. 2.137-2.139.

⁵² Indonesia's full statement is contained in document G/TBT/W/445.

During the June 2016 and November 2016 TBT Committee meetings, Members repeated their concerns. In the November 2016 TBT Committee meeting, Indonesia indicated that it was still determining the categories of processed food results which would be mandatory. As for fast food products, the regulation would only be required for food provisions that had more than 250 outlets. Testing reports from approved laboratories of other Members, based on a reciprocal approach and in line with an international scheme, would be accepted. Testing mechanisms in Indonesia would be in accordance with its rules and regulations on standardization and conformity assessments. The modalities of the implementation of the regulation would also be defined by technical guidance currently being discussed.

- **Canada et al.⁵³ concerns over Peru's Act to Promote Healthy Eating Among Children and Adolescents (IMS ID 383)⁵⁴**

The United States reiterated its substantive concerns about the technical parameters for labelling enacted in the Supreme Decree 007-2015-SA. First, the United States was concerned that nutrition labelling was only mandatory when either a voluntary claim was made or the consumption warning was required. Second, the consumption warning expressed in this measure would apply to significantly more foods and non-alcoholic beverages than those specified in WTO notification G/TBT/N/PER/59. Third, the proposed threshold for the amount of sodium and saturated fats that would require a consumption warning and nutrients facts panel was significantly lower than the Codex guidance. Fourth, the United States asked Peru to provide clarification of the basis on which it established the per portion nutrient content limit for sugar, and how Peru determined that an across-the-board nutrient threshold based on 100 gram or 100 millilitre amounts of large categories of foods was appropriate for the Peruvian population.

Mexico expressed concerns with regard to Law No. 30021, "Law to Promote Healthy Eating Among Children and Adolescents". Peru had indicated that the regulatory provisions that would implement the Law had not yet been issued. However, Supreme Decree No. 007/15/SA, "Regulations establishing the technical parameters for sugar, sodium and saturated fat content in processed foods and non-alcoholic beverages", had been published approving technical parameters in respect of the content of certain substances (sugar, salt and saturated fats) in processed foods. Specifically, the "Final Additional Provision" stipulated that these new provisions "shall enter into force within the time frame determined by the Regulations implementing Law No. 30021", and Mexico therefore asked for an update on the progress on their preparation. Mexico also reiterated a number of previously expressed concerns regarding the lack of fulfilment of transparency obligations and adherence to the principle that public policies must have a scientific basis or be in accordance with international parameters in order to fulfil international commitments. Other concerns were raised in relation to the inherent nutritional characteristics and the use of the term "HIGH" on food labels, in light of the Codex Guidelines on Nutrition Labelling.

Guatemala, Canada and Costa Rica reiterated their concerns with Peru's Act.

Peru stressed the importance of reducing levels of obesity and other non-communicable diseases amongst the vulnerable population, particularly children and adolescents, objectives this measure sought to address. The legislative amendments adopted had the legitimate objective of protecting public health as had been recognized by the other Members in their interventions. Peru was working on a complementary measure which would allow implementation of the Law 3-21 with a multi-sectoral commission which aimed to establish and implement provisions on nutrition, overweight and obesity issues. While it was difficult to say when this law would come into force in the short term; however, Peru recognized that businesses needed a reasonable length of time to allow them to adapt their production to new requirements.

During the June 2016, November 2016 and March 2017 TBT Committee meetings, Members repeated their concerns. In the March 2017 TBT Committee meeting, Peru reiterated its previous comments and indicated that it was still reviewing the comments received on the draft regulations, which had been notified to the WTO and the Andean Community on 9 September 2016, in order to determine whether it was relevant to include them in the final regulations for publication in the Official Journal. The final regulations implementing Law No. 30021 would enter into force 180 days after their publication. Law No. 30021 provided for a period of 60 days to comply with its provisions and of 120 days to adapt to specific provisions on advertising and warnings. Both periods would begin upon the entry into force of these regulations. Peru remained available for further bilateral discussions.

⁵³ Argentina, Brazil, Canada, Colombia, Costa Rica, Guatemala, Mexico, Switzerland, the United States and the European Union.

⁵⁴ STC raised on 17 June 2013, see G/TBT/M/60, paras. 3.16-3.25, 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; 18 March 2015, see G/TBT/M/65, paras. 2.110-2.115; 17 June 2015, see G/TBT/M/66, paras. 3.128-3.136; 4 November 2015, see G/TBT/M/67, paras. 2.127-2.133; 9 March 2016, see G/TBT/M/68, paras. 2.129-2.138; 15 June 2016, see G/TBT/M/69, paras. 3.129-3.136; 10 November 2016, see G/TBT/M/70, paras. 2.116-2.122; and 29 March 2017, see G/TBT/M/71, paras. 2.120-2.127.

- **Australia and Canada's concerns regarding India's Labelling Regulations for Canola Oil (IMS ID 413)⁵⁵**

Canada reiterated concerns relating to the Food Safety and Standards Authority of India's (FSSAI) advisory re-affirming the position that the product in question must be labelled and marketed as "Imported Rapeseed - Low Erucic Acid Oil (Canola Oil)", which directly affected exports, marketing and sales of canola oil in India. Canada was concerned that the regulation was more trade restrictive than necessary to achieve India's legitimate objective and strongly encouraged India to accept "canola oil" as a synonym for "rapeseed - low erucic acid oil," consistent with India's past practice, the existing Codex standard for naming of vegetable oils, as well as with India's application of the Codex standard to other vegetable oils (i.e. maize and arachis). Noting that the Supreme Court of India had ruled against the FSSAI's interpretation of the regulation and that the decision had been sent to the Bombay High Court for final ruling, Canada asked when a ruling on the issue was expected. Canada encouraged India to consider an alternative measure regarding labelling requirements for canola oil that did not unnecessarily create a barrier to trade.

Australia also shared its concerns regarding the regulation which only allowed canola oil to be used as a secondary term, which was not consistent with the Codex Standard for named vegetable oils, which permitted the use of synonym descriptors for "rapeseed oil", including canola oil. This was an unnecessary labelling burden for Australian exporters of refined canola oil to India while it was their understanding that the term canola oil was often used to describe domestic products that were available for local sale in India.

India replied that there had been no change in the regulatory status since the previous meeting held in June 2015 and referred interested delegations to India's intervention from that meeting.⁵⁶

In the June 2016 TBT Committee meeting, Canada and Australia repeated their concerns. India referred interested delegations to its intervention from the June 2015 meeting.

- **Japan et. al⁵⁷ concerns over India's Food Safety and Standards Regulation for Food labelling requirements, G/TBT/N/IND/34, G/TBT/N/IND/43, G/TBT/N/IND/46, G/TBT/N/IND/53 (IMS ID 298)⁵⁸**

The European Union raised concerns regarding the restrictive "recommended maximum levels of additives" for use in all kinds of products. The European Union noted that the regulation did not acknowledge that "the lack of reference to a particular additive or its usage in food does not imply the unsafeness or unsuitability of an additive or its usage in food", in line with the Codex General Standard for Food Additives (GSFA, Codex Stan 192-1995). Furthermore, the regulation did not take into consideration the adoption of standards by other international standard bodies such as the World Vine and Wine Organization (OIV) or by other countries, which were set on the basis of science, of longstanding good practices, of technology needs and safety. The European Union also requested India to update the Committee on the process of amending specific parts of the Indian food standards in line with Codex standards. This process was important to facilitate the imports of products such as olives, whole-wheat pasta, vinegar and mineral water, among others.

The United States sought an update on the status of India's efforts to align domestic requirements with international standards and understood that India had expected to complete those efforts by the end of 2014. The United States requested India to provide a timeline for the publication of the amended FSSAI Rules. The United States was of the view that wholesale bags of agricultural commodities should not need to be labelled with consumer-focused information upon arrival at Indian ports.

Australia and Guatemala also shared concerns regarding the regulation.

India informed the Committee that the FSSAI had harmonized its standards on food additives with Codex, with effect from 23 December 2015. The new concerns and suggestions raised by Members, such as that concerning labelling of wholesale food items, would be forwarded to capital for consideration.

⁵⁵ 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; 18 March 2015, see G/TBT/M/65, paras. 2.160-2.162; 17 June 2015, see G/TBT/M/66, paras. 3.165-3.167; 4 November 2015, see G/TBT/M/67, paras. 2.155-2.157; 9 March 2016, see [G/TBT/M/68](#), paras. 2.167-2.169; and 15 June 2016, see [G/TBT/M/69](#), paras. 3.162-3.164.

⁵⁶ G/TBT/M/66, para. 3.167.

⁵⁷ Australia, Canada, Chile, Japan, New Zealand, Switzerland, the United States and the European Union.

⁵⁸ STC raised on 24 March 2011, see G/TBT/M/53, G/TBT/M/53, paras. 115-119; 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; 18 March 2015, see G/TBT/M/65, paras. 2.83-2.87; 17 June 2015, see G/TBT/M/66, paras. 3.96-3.102; 4 November 2015, see G/TBT/M/67, paras. 2.99-2.103; 9 March 2016, see G/TBT/M/68, paras. 2.99-2.105; and 15 June 2016, see G/TBT/M/69, paras. 3.93-3.98.

In the June 2016 TBT Committee meeting, Members repeated their concerns. India updated the Committee on certain issues raised in the meeting and in the previous meeting of March 2016. First, on the issue of harmonization with Codex standards, India informed the Committee that FSSAI had recently operationalized 33 Codex standards, and that the direction issued by the authority dated 26 April 2016 was available on its website. Second, the harmonization of additives with Codex was being finalized based on consideration of comments from stakeholders and the revisions proposed in Draft Food Safety and Standards (Food Products Standards and Food Additives) Amendment Regulations, 2015 were being processed. The list of additives in the case of wine based on OIV had been approved and was in the draft notification process. Third, the FSSAI was reviewing the existing regulation on packaging and labelling, where a Draft Food Safety and Standards (Labelling and Claims) Regulation had been framed and was under consideration by the Scientific Panel and Committee. The new draft Regulation took into consideration the United States' concern regarding the labelling requirement for bulk packing but until the regulation was finalized and enforced the existing provisions of Food Safety and Standards (Packaging and Labelling) Regulation, 2011 should be followed.

- **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)⁵⁹**

Switzerland reiterated its concerns regarding the requirements for mandatory statements on the product for "energy drinks", as well as restrictions on marketing. These measures differed from Codex standards on claims and on nutrition, including the principle whereby 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. It was unclear what health impact Saudi Arabia and GCC countries expected from these unique measures, how the public reacted to such warnings, and if alternatives had been considered.

The United States noted that although the present concern was directed towards Saudi Arabia, it was a GCC-wide technical regulation so the US comments were directed towards all of the Members of the GCC. The United States expressed its concern regarding the scientific and other technical evidence used to support this regulation, and requested further information regarding the rationale for, as well as any research or data supporting the regulation, including size and total acidity limits, and the need for multiple health warnings.

The European Union shared concerns regarding the large discretionary restrictions which, on the basis of the notified draft, could be imposed on the marketing of these products by regional or local authorities. Such an approach made it possible for lower level authorities to create barriers to trade and as such was a source of regulatory uncertainty. The European Union was also concerned about the lack of clear scientific substantiation of the statement to be included on energy drinks.

The Kingdom of Saudi Arabia reiterated the reason for the implementation of this measure.⁶⁰ Regarding the draft regulation which had been notified, the GSO TBT Committee was still receiving comments from Members and questions would be replied to in due time.

During the June 2016, November 2016 and March 2017 TBT Committee meetings, Members repeated their concerns. In the March 2017 TBT Committee meeting, the Kingdom of Saudi Arabia reiterated that the requirements of the Saudi Ministerial Council Decree regarding energy drinks and the GSO draft requirement on handling of energy drinks were not to impede market access but rather to protect consumer life and health. Saudi Arabia had engaged in positive bilateral discussion with its interested trading partners to ensure that such requirements would not create unnecessary obstacles.

- **The European Union et al.⁶¹ concerns regarding Ecuador's Draft Technical Regulation of the Ecuadorian Standardization Institute (PRTE INEN) No. 189: "Labelling of Alcoholic Beverages", G/TBT/N/ECU/243 (IMS ID 433)⁶²**

⁵⁹ STC raised on 5 November 2014, see G/TBT/M/64/Rev.1, paras. 2.34-2.38; 18 March 2015, see G/TBT/M/65, paras. 2.212-2.215; 17 June 2015, see G/TBT/M/66, paras. 3.212-3.214; 4 November 2015, see G/TBT/M/67, paras. 2.194-2.196; 9 March 2016, see G/TBT/M/68, paras. 2.200-2.204; 15 June 2016, see G/TBT/M/69, paras. 3.197-3.199; 10 November 2016, see G/TBT/M/70, paras. 2.164-2.167; and 29 March 2017, see G/TBT/M/71, paras. 2.149-2.151.

⁶⁰ G/TBT/M/67, para 2.196.

⁶¹ Canada, Chile, the European Union, Mexico and the United States.

⁶² STC raised on 18 June 2014, see G/TBT/M/63, paras 3.28-3.29; 5 November 2014, see G/TBT/M/64, paras. 2.235-2.237; 18 March 2015, see G/TBT/M/65, paras. 2.194-2.198; 17 June 2015, see G/TBT/M/66 paras. 3.179-3.184; 4 November 2015, see G/TBT/M/67, paras. 2.173-2.178; 9 March 2016, see G/TBT/M/68, paras. 2.181-2.187; and 15 June 2016, see G/TBT/M/69, paras. 3.175-3.180.

The European Union recalled its concerns in relation to: (i) the obligation to state the name of the importer in the front label; (ii) the requirement that the labelling of alcoholic products be done in the country of origin, not allowing labelling or relabelling in a primary customs area; and (iii) the need to undergo certification by a conformity assessment body in order to verify compliance with labelling requirements. The European Union also sought clarification on the relation between the proposed technical regulation and resolution SENAE DGN 2013 0300 RE.

The United States supported other Members' interventions and raised concerns, particularly with Ecuador's requirement that the name of the importer of alcoholic beverages be placed on the exported product in the country of origin, with no flexibility for placement in customs bonded warehouses via the use of supplementary labels (stickers). During the previous TBT Committee meeting, Ecuador had noted that it was suspending this regulation. The United States requested that Ecuador confirm the suspension of this regulation through a notification to the WTO and also asked for an update on Ecuador's efforts to align the suspension with customs regulations.

Mexico reiterated its concerns regarding the scientific and technical justification for the labelling requirement. Mexico requested that the definition of Tequila, as contained in Ecuadorian Technical Standard NTE INEN No. 338, be adjusted so that it did not run counter to the definition in Mexican Official Standard NOM 006 SCFI 2012 and queried the procedure to request this amendment. Mexico also requested an update on the issuance of the final version of Technical Regulation RTE INEN No. 189 and other import requirements for the Mexican industry, in relation to the labelling at origin provisions laid down in Resolution SANAE DGN 2013 0300 RE.

Canada shared its concerns regarding Ecuador's requirement that the labelling of products be done in the country of origin. Standard practice in the internationally traded spirits industry was to apply, in the country of production, generic front labels providing mandatory information. All country-specific information was then affixed on the back or secondary label in customs bonded warehouses located in the importing country.

Chile and Guatemala echoed the concerns expressed on the regulation regarding the labelling of alcoholic beverages.

Ecuador responded that draft regulation INEN 189 on labelling of alcoholic beverages had been notified in 2014 and that its entry into force remained suspended until the completion of the revisions of Ecuadorian Technical Regulation 33 on labelling of alcoholic beverages, INEN 338 on alcoholic beverage definitions and other standards and requirements for alcoholic beverages. These standards would be open for public consultation shortly and would then be considered for approval.

During the June and November 2016 TBT Committee meetings, Members repeated their concerns. In the November 2016 TBT Committee meeting, Ecuador confirmed that No. 189 – Labelling of Alcoholic Beverages was currently suspended and stressed that its national authorities were still assessing the concerns and comments made by Members.

- ***European Union et al.⁶³ concerns regarding India's Draft Food Safety and Standards (Alcoholic Beverages Standards) Regulations, 2015, G/TBT/N/IND/51 (IMS ID 494)⁶⁴***

The European Union expressed concern about India's draft alcoholic beverages regulation establishing the requirements and definitions applicable to different types of alcoholic beverages (such as spirits, wines and beers), as well as labelling requirements, which from the EU perspective risked creating unnecessary barriers to trade, particularly given inconsistencies with current international practices, notably the oenological practices and definitions set by the International Organisation of Vine and Wine (OIV), as well as inconsistencies with Codex. It was further noted that a number of labelling provisions were not in line with the Codex standard for the labelling of pre-packaged foods (CODEX STAN 1-1985) such as India's requirement for the indication of an expiry date. Moreover, concern was raised on the "allergen and health warnings" proposed in the draft and India was requested to amend and clarify such provisions. Further, the European Union suggested that in the current notified draft, India explicitly should refer to an extensive list of additives allowed in the production of alcoholic beverages, including all those set by Codex and the OIV.

The United States was concerned that this regulation set a number of compositional limits for which standards did not exist in Codex, for example, levels for many chemical contaminants in alcoholic beverages. Limits regarding pH, carbon dioxide, and sugar levels pertaining to the quality of alcoholic beverages rather than safety.

⁶³ Australia, Canada, Chile, Guatemala, Mexico, New Zealand, South Africa, Switzerland and the United States.

⁶⁴ STC raised on 9 March 2016, see G/TBT/M/68, paras 2.9-2.20; 15 June 2016, see G/TBT/M/69, paras. 3.309-3.320; 10 November, see G/TBT/M/70, paras. 2.234-2.250; and 29 March 2017, see G/TBT/M/71, paras. 2.189-2.198.

India mentioned that the "Draft Food Safety and Standards" (Alcoholic Beverages Standards) was still under consideration by the Indian authorities pending finalization. A more detailed list of permitted food additives was expected to be finalized in due course, and comments of WTO Members and other stakeholders were being considered appropriately in finalizing the measure.

During the June 2016, November 2016 and March 2017 TBT Committee meetings, Members repeated their concerns. India maintained that the draft standards were in line with international standards, keeping in view the prevailing domestic conditions. Regarding compositional limits for which Codex standards did not exist, it was noted that although these parameters were not available in Codex, they were important to ensure the safety of the product. These quality parameters had to be fixed by the Food Authority. India explained the conditions under which stickers would be allowed to be placed on alcoholic beverages at port before customs clearance. On Mexico's concerns expressed at a previous meeting about its alcoholic beverage "Tequila", India informed the Committee that "Tequila" had now been deleted, as it was a geographical indication. All geographical indications had been removed and products having geographical indications would have to conform to the requirements of their country of origin. On the timing of any planned notification of a further list of additives, India informed that comments regarding additives had been finalized, and, once approved by the Scientific Committee and Food Authority; the final draft would be notified to the TBT Committee. Also, a request had been made to remove compositional limits from whiskies for the reason that certain type of whiskies exceeded the proposed limit of 50%. The matter had been considered but could not be accepted as per the recommendations of the Scientific Panel. In the context of Draft Food Import Regulations, India said that the labelling requirements for duty-free sales at airports had been exempted.

- ***United States et al.65 concerns regarding Indonesia's Halal Product Assurance Law No. 33 of 2014 (IMS ID 502)66***

The United States recognized the importance of Indonesian consumers knowing whether products are halal and expressed its commitment to work with Indonesia to ensure that this objective was achieved without creating any unnecessary barriers to trade. The United States reiterated its hope that previously noted concerns would be addressed through implementing regulations and requested an update on their content and status, as well as on preparations to set up the new institution provided for in Presidential Decree 93/2015. The United States urged Indonesia to ensure that the drafts were submitted to the TBT Committee prior to being finalized in order to allow for sufficient notice and comment from all stakeholders.

The European Union expressed its concerns that, according to the information available, the scope of the law was very broad and extensive, affecting, among other sectors, food and beverages, pharmaceutical and cosmetics. The law would be implemented gradually and enforced as from 2019. However, certain Halal requirements had already been set out in separate regulations (e.g., for imports of carcasses and meat). The European Union considered that the lack of transparency on implementing rules and this fragmented approach created uncertainty as to the requirements applicable at any point in time. The European Union requested that Indonesia notify the law via the TBT notification system, as well as any subsequent implementing rules, and that reasonable time be allowed for Members to comment. In particular, on Halal certification and labelling, the European Union requested clarification as to whether the provisions on mandatory labelling would also apply to non-Halal products. It also welcomed information on any other potential trade restrictions that the law might bring to non-Halal products.

Brazil expressed its interest in following the matter closely, especially with regard to the obligation for non-discrimination between domestic and imported products under the WTO TBT Agreement.

Indonesia provided responses to the intervening delegations in document G/TBT/W/443.

During the June 2016, November 2016 and March 2017 TBT Committee meetings, Members repeated their concerns. Indonesia stated that the Halal Product Assurance Law was scheduled to be applicable in 2019. By that time, all products being distributed and sold in Indonesia would be classified into two categories, halal and non-halal. Only products which were derived from, or consisted of, animal products would be required to have halal or non-halal labels. Various ministries and government agencies were still discussing the shape and form of the implementing regulations, as well as the substantial elements to ensure consistency with other rules. Mutual recognition of certification for foreign certification bodies was done through an agreement with BPJPH. Indonesia remained available for bilateral discussion with interested delegations.

⁶⁵ Australia, Brazil, European Union and New Zealand.

⁶⁶ STC raised on 9 March 2016, see G/TBT/M/68, paras 2.52-2.55; 15 June 2016, see G/TBT/M/69, paras. 3.321-3.327; 10 November, see G/TBT/M/70, paras. 2.259-2.264; and 29 March 2017, see G/TBT/M/71, paras. 2.204-2.211.

- ***United States et al.***⁶⁷ ***concerns regarding Thailand's Milk Code - Draft Act on Controlling to the Marketing Promotion on Food for Infant and Young Children and Other Related Products BE, G/TBT/N/THA/471 (IMS ID 503)***⁶⁸

The United States indicated its concerns with the clarity of the draft measure, and in this light urged Thailand to allow for sufficient time after publication of the final rule and before implementation and enforcement, for further bilateral technical discussions, allowing the US industry to come into compliance with the measure. The United States asked Thailand to provide a scientific explanation for its complete ban on marketing and advertising on follow-up formula intended for children up to 36 months of age. In particular, scientific explanation was requested for how a ban on health claims and trademark information on labels would help accomplish the desired goal of increasing and sustaining breastfeeding. Further, explanation was sought as to the lack of distinction in regulating the marketing of infant formula and follow-up formula. Concerns were also raised in relation to the proposal in the Draft Act to treat violations of the advertising and marketing requirements as criminal offenses, as well as imposing prison time for certain offenses.

Thailand informed the United States that the draft act was in the process of being published in the Government Gazette and that it would only come into force 180 days following the date of publication.

During the June 2016, November 2016 and March 2017 TBT Committee meetings, the United States and other Members expressed their concerns regarding the measure. Thailand reiterated that there was a strong need for a regulation that controlled marketing promotion of milk products that were specifically marketed for infants and young children. Thailand had been using Codex as its guide to develop its quality and safety standards for food including milk products. However, some issues were not sufficiently covered by Codex, and therefore other internationally recognized guidelines had been used, while ensuring that their application did not contradict Codex. The draft Act did not prohibit industry from showing health and nutrition claims on the labels. Furthermore, in general the draft Act did not prohibit the use of trademarks, brand names, logos, and symbols of products. In line with other existing food-related laws in Thailand, exaggerated claims and misleading advertisements were criminal offenses and punishable by law.

- ***Guatemala and Mexico's concerns regarding Bolivia's Technical regulations on the labelling of foods and products destined for human consumption that consist of, contain or derive from genetically modified organisms, G/TBT/N/BOL/3, G/TBT/N/BOL/3/Add.2 (IMS ID 517)***⁶⁹

Mexico expressed concerns that the measure could contravene Article 2.2 of the TBT Agreement and requested further clarification with regard to the use of relevant international standards to support the technical content of the Bolivian measure. Mexico noted that its industry maintained that there was no difference between genetically modified and conventional products with respect to their protein, nutritional, toxicological or allergenic composition, and as such should not receive different treatment. In addition, with respect to the implementation of the regulations, its industry had noted concerns with the technical and economic impracticability of establishing the system of segregation and traceability in the supply channels for basic agricultural products and in the subsequent stages of food manufacturing and marketing that would be necessary in order to comply with the proposed labelling. Mexico therefore requested Bolivia: (i) to consider eliminating the requirement of a labelling scheme for food entering Bolivia that included wording indicating the GMO content, in the absence of scientific basis for discriminating between conventional and genetically modified products; (ii) to explain the grounds for this measure; and (iii) to arrange a video conference or meeting with the technical services responsible for drawing up the measure.

Guatemala recognized the legitimate objective of protecting public health, but remained concerned that these measures could hinder trade. In addition, Guatemala highlighted the lack of harmonization being generated across the region with regard to food labelling, as a result of the introduction of different measures in each country.

⁶⁷ Argentina, Canada, the European Union and New Zealand.

⁶⁸ STC raised on 9 March 2016, see G/TBT/M/68, paras 2.56-2.59; 15 June 2016, see G/TBT/M/69, paras. 3.345-3.352; 10 November, see G/TBT/M/70, paras. 2.275-2.281; and 29 March 2017, see G/TBT/M/71, paras. 2.212-2.217.

⁶⁹ STC raised on 10 November 2016, see [G/TBT/M/70](#), paras. 2.19-2.24.

The Plurinational State of Bolivia noted that Article 13 of the General Law of Consumer Rights stated that reliable, comprehensive, relevant, easily accessible and timely product information should be available to consumers. As such, the objective of the Bolivian standards was to guarantee those rights to consumers and therefore needed no further scientific or technical justification. Bolivia maintained that there was no global precedent in the field of requirements for food for human consumption, whereby labelling which indicated GMO content would be a technical barrier to trade. Regarding international standards, Bolivia emphasized that it was a signatory to many international agreements besides Codex, each with equal legal and constitutional value, in particular to the Cartagena Protocol on Biosafety (with reference to Article 18.2). In conclusion, Bolivia stated that whilst Codex did not prescribe GMO labelling, neither did it deny the possibility of using it. Moreover, Codex document CAC/66/2011 recognized the use of different approaches for labelling of foods derived from modern biotechnology.

- ***European Union and the United States' concerns regarding Uganda's — Alcoholic beverages specifications, G/TBT/N/UGA/434; G/TBT/N/UGA/435, G/TBT/N/UGA/437, G/TBT/N/UGA/438, G/TBT/N/UGA/439, G/TBT/N/UGA/440, G/TBT/N/UGA/441 (IMS ID 519)***⁷⁰

The European Union raised several concerns in relation to Uganda's alcoholic beverages specifications. Firstly, the drafts required the date of manufacture to be indicated on some of the products. In this regard, the European Union reiterated that the Codex Standard, Labelling of Prepackaged Foods (CODEX STAN 1-1985) did not require such a compulsory labelling indication. In addition, the European Union considered that for alcoholic beverages, the date of manufacture would have no added value since they were not perishable products and this could therefore mislead the consumer. Secondly, according to the notified drafts, imported products would have to indicate the name and address of the manufacturer. The European Union noted that Codex Standard, Labelling of Prepackaged Foods (CODEX STAN 1-1985) recommended indicating the name and address of the importer as a contact point for consumers for any product-related question or issue, and considered the approach of consumers contacting a person in the marketing country and in their own language easier than in the country of export. Thirdly, the European Union requested clarification of the meaning of some of the analytical requirements set out in some of the notified drafts such as, for example, those for total solids, volatile acids such as acetic acids, higher alcohols and furfural. Lastly, the European Union reiterated that Codex Standard, Labelling of Prepackaged Foods (CODEX STAN 1-1985) did not provide for the compulsory labelling of indications like "blending" for blended products and "white rum" for rum that is not aged.

The United States voiced support for the European Union's comments which resembled their own concerns relating to Kenya's East African Community (EAC) alcoholic beverage standards (IMS ID 510). The United States urged Tanzania and Burundi to provide notifications if they planned adopting similar measures.

Uganda noted that comments received from the European Union and other Members on these alcoholic beverages standards had been answered. As the standards were, however, slated for review, he assured the European Union that any remaining concerns would be considered at that time.

During the March 2017 TBT Committee meetings, the European Union reiterated their concerns. Uganda explained that the EAC had undertaken a process to harmonize standards for alcoholic beverages in 2014. During the national adoption phase, Uganda notified 12 standards to the WTO, consistent with the TBT Agreement transparency provisions. Comments received from the EU and other Members on the draft standards had been processed, and duly responded to by Uganda. The EAC secretariat had convened a technical committee meeting on alcoholic and non-alcoholic beverages on 20-24 February 2017, where it had considered comments received from trading partners, including those submitted by the European Union. To that end, new East African Standards had been developed. Uganda indicated that it would subject the draft standards to the formal national adoption mechanism, and that they would be notified according to the transparency procedures of the TBT Agreement.

⁷⁰ STC raised on 10 November 2016, see G/TBT/M/70, paras. 2.33-2.36; and 29 March 2017, see G/TBT/M/71, paras. 2.279-2.282.

- **European Union et al.⁷¹ concerns regarding Kenya's East African Community (EAC) alcoholic beverage standards (IMS ID 510)72**

The European Union, whilst expressing its support for efforts to fight the consumption of adulterated alcoholic beverages, asked Kenya, and other Members of the East African Community (EAC), to notify this and any other applicable technical regulations so as to give Members the opportunity to provide comments in order to find a solution that properly addressed their concerns without creating unnecessary barriers to trade. In the meantime, the European Union asked Kenya and other EAC members to suspend the application of these measures. The European Union believed that widely accepted international standards and practices correctly addressed this type of health concern and would therefore welcome discussions with EAC members in order to analyse how their technical regulations could be better aligned with them.

The United States also noted that many of the notifications submitted by Uganda and Rwanda over the past few years on alcoholic beverage labelling and analytical production limits deviated from widely accepted international standards and practices. It was unclear why such deviations were necessary in fulfilling the objectives of the measure. The United States welcomed discussions with EAC members to find a solution that would not unnecessarily restrict trade, such as greater alignment with standard international practices.

Chile supported the request that Kenya notify the measure, which would enable them to make comments. South Africa noted that the pursuance of health protection objectives should be done in a transparent manner, taking into consideration international standards and best practices. South Africa expressed its concern with the measure's 14% alcohol percentage with no actual alcohol percentage tolerance allowed from what was printed on the label. This tolerance exclusion and the 14% limit would in practice exclude many of South African red wines from the Kenyan Market. South Africa thus asked Kenya to consider that a label and actual alcohol tolerance of between 0.5 and 1.0% be allowed for the importation of wine.

Kenya said that, together with other EAC Partner States, it had been working on the harmonization of standards to facilitate both regional and international trade. The EAC alcoholic beverage standards were among others to have been harmonized in this process. Kenya was committed to the principle of transparency and would therefore ensure that the concerns raised by the European Union and shared by the United States, Chile and South Africa would be addressed as soon as possible.

During the November 2016 and March 2017 TBT Committee meetings, Members repeated their concerns. In the March 2017 TBT Committee, Kenya informed the Committee that in July 2016, it had notified the regional harmonized Alcoholic Beverage Standards to the TBT Committee. Kenya also provided information on the process to develop these regional standards, highlighting that revised standards would be released for public review in April 2017, and would be notified to the TBT Committee in accordance with the requirements of the TBT Agreement.

3 OTHER RELEVANT WTO ACTIVITIES

3.1 The WTO dispute settlement procedure

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.⁷³ 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.

⁷¹ Chile, South Africa and the United States.

⁷² STC raised on 15 June 2016, see G/TBT/M/69, paras. 3.39-3.43; 10 November 2016, see G/TBT/M.70, paras. 2.299-2.301; and 29 March 2017, see G/TBT/M/71, paras. 2.243-2.245.

⁷³ 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.

3.1.1 SPS disputes

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.

As of March 2017, more than 520 complaints had formally been raised under the WTO's dispute settlement procedures. Of these, 45 alleged violations of the SPS Agreement, and the SPS Agreement was relevant also in two other disputes. Twenty-four SPS-related complaints, on 19 issues, have been referred to a panel.

Thirteen 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 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);
- A complaint by China in 2009 regarding US measures affecting imports of poultry; *US - Poultry* (WT/DS392);
- A complaint by Brazil in 2014 regarding Indonesia's measures concerning the importation of chicken meat and chicken products; *Indonesia – Chicken* (WT/DS484); and
- A complaint by Japan in 2015 regarding Korea's measures on import bans, and testing and certification requirements for radionuclides; *Korea — Radionuclides* (WT/D495).
- A complaint by Brazil in 2016 regarding certain measures imposed by Indonesia on the importation of meat from cattle of the species *Bos Taurus*; *Indonesia — Bovine Meat* (WT/DS506).

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. Panel deliberations are ongoing for: Brazil's complaint regarding Indonesia's measures on chicken meat and chicken products; and Japan's complaint regarding Korea's measures related to radionuclides. Brazil's complaint against Indonesia's measures concerning the importation of bovine meat is still at the consultation stage.

3.1.2 Recent developments on SPS disputes

1.1. 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 on 27 June 2014.⁷⁴ The panel was composed on 22 July 2014, following which the panel report was circulated in August 2016 and the Appellate Body report in February 2017.

1.2. On 8 March 2017, Mexico requested consultations with Costa Rica regarding certain measures concerning the importation of fresh avocados.⁷⁵

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

3.2 The Standards and Trade Development Facility

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

1.3. At the WTO's 9th Ministerial Conference in Bali, Indonesia in December 2013, Members concluded negotiations of the Trade Facilitation (TF) Agreement.⁷⁶ 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, 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.

In line with the decision adopted in Bali, Members undertook a legal review of the text and adopted on 27 November 2014 a Protocol of Amendment⁷⁷ to insert the new Agreement into Annex 1A of the WTO Agreement. The TF Agreement entered into force on 22 February 2017, after two-thirds of WTO Members completed their domestic ratification process, in accordance with Article X:3 of the WTO Agreement.⁷⁸ The TF Agreement is the first multilateral trade deal delivered by the WTO since its creation and represents a major breakthrough in the history of the organization.

1.4. The TF Agreement consists of three main sections: Section I, which sets out the substantive obligations on facilitating customs and other border procedures in 12 articles; Section II, which contains special and differential treatment provisions that provide implementation flexibilities for developing and least-developed country Members; and Section III, which contains provisions that establish a permanent committee on trade facilitation at the WTO, require Members to have a national committee to facilitate domestic coordination and implementation of the provisions of the Agreement and sets out a few final provisions.

1.5. In order for a WTO Member to take advantage of the implementation flexibilities, it must designate and notify to the WTO the measures that it can implement immediately, and which it can only implement with more time and/or technical assistance.⁷⁹

1.6. 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 in November 2014. More information on this Facility is available at <http://www.tfafacility.org/>

⁷⁴ WT/DS475.

⁷⁵ WT/DS524.

⁷⁶ WT/MIN(13)/36, WT/L/911.

⁷⁷ WT/L/940.

⁷⁸ WT/MIN(13)/36, WT/L/911, paragraph 3.

⁷⁹ 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.

1.7. The TF Agreement concerns all border agencies – not just customs authorities. Although the negotiators took care to avoid overlap or clash with provisions of the SPS Agreement, they also included language to address possible conflicts. Paragraph 6 of the Final Provisions of the TF Agreement states that "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 language makes it clear that the TF Agreement will not diminish Members' existing right to take science-based measures to protect human, animal or plant life or health within their territories. However, implementation of the TF Agreement can contribute to facilitating trade in goods subject to SPS controls (there is often room for streamlining SPS measures and their application), for example, by making import requirements more accessible through internet publication, by reviewing and reducing formalities, and by allowing advance filing of import documents so that processing can begin before the goods arrive. It would also provide more fairness in border procedures, for example, by requiring authorities to inform the importer when goods are detained, allowing the possibility of a second test, and protecting importers interests in the application of an import alert system.

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