CODEX ALIMENTARIUS COMMISSION E

Food and Agriculture Organization of the United Nations

World Health Organization

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ACTIVITIES OF THE WTO SPS COMMITTEE AND OTHER RELEVANT WTO ACTIVITIES IN 2015 AND THE FIRST QUARTER OF 2016

REPORT BY THE WTO SECRETARIAT[1]

This report to the 39th 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 2015 and the first quarter of 2016, 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 2015: on 26-27 March, on 15-16 July and on 14-16 October.[2] The Committee held its first meeting of 2016 on 16-17 March.[3] The two remaining meetings for 2016 are scheduled to take place on 30 June - 1 July and 26-27 October.

Ms Lillian Bwalya of Zambia served as Chairperson at the March 2015 meeting. At the July 2015 meeting, Mr Felipe Hees of Brazil was appointed Chairperson for the 2015-2016 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, 403 STCs were raised in the twenty years between 1995 and the end of 2015, of which 31% were related to food safety.

In 2015 and the first quarter of 2016, 26 new specific trade concerns were raised for the first time in the SPS Committee, including the following food safety issues of relevance to Codex:

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

In March 2015, the European Union expressed concerns about Members maintaining country-wide bans on EU poultry products. The European Union remarked that the early detection, control and eradication measures for avian influenza that were legally binding in EU member States had proved to be effective. The European

[1] This report has been prepared under the WTO Secretariat's own responsibility and is without prejudice to the positions of WTO Members or to their rights or obligations under the WTO.
[2] The report of the March 2015 meeting is contained in G/SPS/R/78, that of the July 2015 meeting in G/SPS/R/79 plus corrigendum, and that of the October 2015 meeting in G/SPS/R/81.
[3] The report of the March 2016 meeting is contained in G/SPS/R/82.
[4] The latest version of this summary can be found in document G/SPS/GEN/204/Rev.16. 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.

Union was disappointed that some Members had put temporary bans in place that had never been lifted or justified, while other Members had not informed the European Union about the steps or time required to recognize regionalization. The European Union made reference to the Committee's Guidelines to Further the Practical Implementation of Article 6 of the SPS Agreement (G/SPS/48) and invited all Members to allow trade of all safe products, especially from non-affected zones.

In October 2015, the European Union reported that specific trade concern No. 385 (General import restrictions due to highly pathogenic avian influenza) could be considered resolved as a number of Members had lifted their bans.

The Chairperson thanked the European Union and encouraged Members to continue informing the Secretariat of any resolved specific trade concerns.

- *Japan's concerns regarding Chinese Taipei's import restrictions in response to the nuclear power plant accident (STC 387)*

In March 2015, Japan expressed its concerns over the import ban imposed by Chinese Taipei on food exports from five Japanese prefectures after the accident at TEPCO's Fukushima Daiichi Nuclear Power Station, as well as over the draft strengthened import regulations that required a pre-test certificate issued by the Japanese Government for almost all Japanese foods from all remaining prefectures. Japan had repeatedly provided Chinese Taipei with comprehensive monitoring results to demonstrate that Japanese food was safe for human consumption. Four years had passed since the nuclear accident in 2011. In the meantime 13 Members such as Australia and Viet Nam had lifted their import restrictions. Many other Members, including the European Union, the United States and Singapore had eased their import restrictions based on sound scientific data. Japan believed that the measures maintained by Chinese Taipei were not based on relevant international standards and were more trade-restrictive than required. Japan therefore requested that Chinese Taipei lift the import ban on the five prefectures and withdraw the draft strengthened import regulations notified to the SPS Committee last November.

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

In July 2015, Japan recalled its concerns regarding the import ban imposed by Chinese Taipei as previously raised in the March 2015 SPS Committee meeting, and further highlighted the strengthened import restrictions which had been imposed since May 2015. According to information published by Chinese Taipei, none of the more than 70,000 samples of Japanese food products tested had exceeded Chinese Taipei's limit levels of radioactive cesium, which seemed to confirm the appropriateness of Japan's measures taken after the incident. Japan also noted that Chinese Taipei's import restrictions were not based on science, nor based on the relevant international standards, and were more trade restrictive than required. Japan requested that Chinese Taipei complete its risk assessment and immediately remove its measures. Japan also expressed hope that bilateral consultations would help find a mutually acceptable solution.

Chinese Taipei confirmed the implementation of control measures consisting in the temporary suspension of inspection applications for food produced in the Fukushima and the other four nearby prefectures since March 2011. However, in March 2015 food products from the restricted prefectures had entered the Chinese Taipei market using false labelling. Consequently, Chinese Taipei had implemented control measures requiring certificates of origin and, for specific food products and prefectures, radioactive examination reports. Chinese Taipei also noted concerns over the continuous leakage of radioactive contaminated water from Fukushima nuclear power plant since 2013. Chinese Taipei reiterated its commitment to bilateral efforts to find a solution to this matter.

In October 2015, Japan reiterated its concerns regarding the import restrictions and stressed that although an incident where some Japanese food products had been imported with false labelling was unfortunate, it should be clearly distinguished from the import ban. Japan noted that Chinese Taipei's import restrictions were not based on scientific evidence. Japan also questioned the extent to which Japan's treatment of radioactive contaminated water was relevant to food safety in this situation. With regard to alleged consumer concerns in Chinese Taipei about Japanese food safety, Japan noted that there had been a steady increase in food imports from Japan by Chinese Taipei over the past three years. Japan requested that Chinese Taipei complete its risk assessment and immediately remove its measures, even if on a step-by-step basis. Japan also expressed hope that bilateral consultations would result in a mutually acceptable solution.

Chinese Taipei confirmed the continued temporary suspension of inspection applications for food produced in the Fukushima and four other nearby prefectures since March 2011. According to information published by Japan, food products were still found to have radioactive residues and, in July 2015, several cases had been confirmed to have levels exceeding the tolerance levels proposed by Japan. Chinese Taipei reiterated its commitment to bilateral efforts to find a solution to this matter.

In March 2016, Japan reiterated its concerns regarding the import restrictions and reported that, despite receiving what it regarded as a positive response from Chinese Taipei affirming its commitment to bilateral efforts, as well as high-level leadership meetings held on the margins of the APEC Ministerial Meeting in November 2015, no progress had been made in resolving the issue. Japan noted that the ban was not scientifically justifiable as radioactive residues exceeding standard limits were only found in certain types of food, mostly wild mushrooms and game meat. Japan encouraged Chinese Taipei to move the process forward to resolve the issue as soon as possible.

Chinese Taipei described the measures in place and stated that they were necessary to address public health concerns, especially given the fact that contaminated water and materials had not been entirely cleaned and contaminated water continued to leak from the plant site. According to recent trade data, consumers were regaining confidence in Japanese products. Chinese Taipei reported that it had set up a joint working group with the Japanese Government and looked forward to cooperating closely with Japan under this joint-working mechanism.

Japan questioned the relevancy of contaminated water and public concern on food safety. Data from various sources showed a growing demand for Japanese food. Japan thanked other Members who had already lifted or eased their import restrictions.

- *Norway's concerns regarding China's import regime, including quarantine and testing procedures for fish (STC 389)*

In July 2015, Norway expressed concern about China's new import control regime for seafood from Norway, which included extensive testing for up to 40 substances. As a result, the costs for importers and exporters were increased, and products were kept in quarantine for a longer period. However, China had not notified any finding that could explain such measure. Norway highlighted that the new regulation was implemented in a non-transparent and discriminatory manner, since the increased testing only applied to Norwegian products. Furthermore, since 2011, Norway had repeatedly asked for consultations at technical level, but this request had never been addressed. Norway urged China to provide information on this new regime and on quarantine procedures in general, and on all specific measures applicable to Norwegian seafood. Norway also requested China bilateral consultations on food safety issues relating to trade in seafood.

China responded that uncompliant products had been found on several occasions and constituted a risk for consumer health. The General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) had issued an announcement in 2011 to further strengthen inspection and quarantine of salmons imported from all Members. China stated that these measures were not new and were based on existing Chinese laws and regulations. Moreover, the measures were addressing the threat represented by Norwegian aquatic products mentioned in several reports over the last years. China had therefore strengthened the inspection and quarantine of high risk products.

Norway reiterated its request for consultations with China at a technical level and informed the Committee that Norwegian food safety regulations were harmonised with the EU legislation, and as a result, were in compliance with EU requirements.

- *EU's concerns regarding the Russian Federation's import restrictions on processed fishery products from Estonia and Latvia (STC 390)*

In July 2015, the European Union indicated that, as of 4 June, the Russian Federation introduced a ban on imports of all fishery products from Estonia and Latvia, allegedly due to deficiencies detected during recent inspections. The European Union stated that the measure had been notified very late, was inconsistent with the SPS Agreement and taken in violation of Russia's WTO Accession commitments which included not to suspend exports from groups of establishments without first having provided the technical information and scientific justification of the risks detected, and not to take such measures before the expiry of the timeframe provided for the adoption of corrective measures. The Russian Federation had not provided evidence of immediate risk to consumers caused by deficiencies in the control systems of Estonia and Latvia, which had been regularly inspected by the Russian Federation in recent years without having identified any major problems. The measures were clearly more trade restrictive than necessary and the ban had been announced before the official reports of the inspections were provided to the competent authorities of Latvia or Estonia. The European Union expressed its willingness to cooperate with the Russian Federation to address their concerns but requested the Russian Federation to lift the ban, to bring its measures in line with international standards, and to respect its WTO obligations.

The Russian Federation replied that conclusions by Russian experts about deficiencies in the work of the Latvian and Estonian competent authorities overlapped with the results of previous investigations by the European Union, and the presence of a risk was also confirmed by the notifications of the EU Commission in the rapid alert system. Russia stressed the importance and urgency of the report made by the European Union about the safety of food products. An inspection in 2013 had showed that Latvia and Estonia had not taken measures to withdraw unsafe products from the market. According to Russia, the European Union had failed to take necessary measures in relation to establishments where violations were detected and to inform its trade partners. Indeed, between 2013 and July 2015, Russian inspections had revealed more than 2,000 cases of unreliable certification, and yet, no effective measures had been taken against the violators. The Russian Federation had concluded that the guarantees given by the European Union were not reliable. As a result, Russia was forced to impose temporary restrictions, as stated in official letters to the European Union. The measures were not bans, but temporary restrictions, and complied with the SPS Agreement, which allowed Members to adopt measures to protect human, animal or plant health.

The European Union clarified that they did not dispute Russia's right to take SPS measures, but expected proportionate measures taken in a transparent manner and in accordance with the SPS Agreement.

In October 2015, the European Union reiterated its concerns regarding the Russian Federation's restrictions, which it had previously raised in the July 2015 SPS Committee meeting. The European Union further highlighted that Article 2.1 required that measures taken to protect human, animal or plant life or health must be consistent with the provisions of the Agreement. In addition, the European Union recalled that Articles 2.2 and 5.6 required measures to be based on scientific evidence and not to be more trade restrictive than necessary. Furthermore, the Russian Federation had adopted the ban just one day after the submission of the preliminary report of the audit to the competent authorities, in contrast with the reasonable time commitment it made prior to its accession. The comments provided by Latvia and Estonia on the audits had not received a response by the Russian Federation, more than three months after the submission.

The Russian Federation responded that it was justified in imposing temporary restrictions on fishery products from Latvia and Estonia. Upon inspection, the Russian authorities found that Latvia and Estonia were unable to produce safe products that complied with requirements from both importing and exporting countries. Therefore, the Russian Federation had concluded that the guarantees provided by the EU veterinary services were not reliable. Many of these products had continued to be marketed and exported to the Russian Federation, which called for another round of inspections. The Russian Federation was cooperating with veterinary services of Latvia and Estonia to objectively assess the safety systems of fish processing establishments. Comments on the preliminary report had been received, but Latvian and Estonian authorities could not show that the withdrawal of potentially hazardous products was timely and effective enough. The Russian Federation was concerned that trading partners were not being informed about product safety problems. The temporary restrictions were in compliance with the international Eurasian Economic Union legal framework and with international standards. Before imposing the restrictions, relevant information had been published on the official website and consultations had been held with Latvian and Estonian authorities. Final reports of the inspections had just been sent to the veterinary services. The Russian Federation asked Latvia and Estonia to carry out their own inspection of the establishments and of their compliance with the Eurasian Economic Union veterinary requirements. The competent authorities of Latvia and Estonia had indicated that they did not oppose the Russian Federation's decisions and the EU representatives had agreed that the certification of products from Latvia and Estonia to Russia should be suspended. However, certification had not been suspended. Nevertheless, the Russian Federation was ready to find a solution on this issue.

The European Union replied that some of the information which had been provided by the Russian Federation contradicted EU information, reiterating that no major problems had been found in the numerous inspections held by the Russian Federation. Furthermore, the European Union indicated its concern with the statement that the EU had voluntarily agreed to suspend the certification of products from Latvia and Estonia, which did not reflect the EU information. The European Union reiterated the transparency of its own information and urged the Russian Federation to repeal its measures.

In March 2016, the European Union reiterated its concerns regarding the Russian Federation's restrictions as previously indicated in the July and October 2015 SPS Committee meetings. The European Union also stated that the Russian Federation had not taken into account the corrective actions taken by Estonia and Latvia, even after having been informed in writing. The European Union indicated its willingness to cooperate with the Russian Federation on this issue and requested the Russian Federation to lift the ban and respect its WTO obligations.

The Russian Federation stated that it looked forward to close cooperation between the regulatory authorities, however, the import requirements of the Russian Federation and the Eurasian Economic Union needed to be followed. The Russian Federation had opened its market to EU member States through its accession obligations and found that EU guarantees had not been reliable as regular detection of banned contaminants,

such as poly-aromatic hydrocarbons and benzopyrene, had occurred through monitoring programmes. The Russian Federation claimed that notifications from the EU Rapid Alert System for Food and Feed (RASFF) to withdraw potentially hazardous products were not timely or effective as only around 20% were withdrawn and the rest exported. In addition, the Russian Federation had not received responses to questions submitted to Latvian authorities regarding an establishment that had exported potentially unsafe products and whether or not additional testing for benzopyrene had taken place. As mentioned previously, the Russian Federation was closely cooperating with the veterinary services of Latvia and Estonia to assess the safety systems implemented. However, questions remained and the Russian Federation believe that there was a lack of transparency as RASFF notifications sent to third countries seemed to be simplified, containing no specific information on the establishments or consignments where violations had been detected which impeded the withdrawal of potentially hazardous products. The CVO of Latvia had officially informed the Russian Federation that it was the European Commission which had notified all RASFF registered cases when harmful substances had been detected in EU products to the Russian Federation. No information on excessive levels of benzopyrene in Latvian products had been provided. The Russian Federation would continue cooperating in order to resume imports of canned fish and planned to carry out another round of inspections of processing plants in Latvia and Estonia in March-April 2016. The competent authorities had been notified.

The European Union noted the Russian Federation's statement and expressed its surprise that the facts presented by the Russian Federation did not correspond to the information it possessed.

- *Paraguay and United States' concerns regarding China's proposed amendments to the implementation regulations on safety assessment of agricultural GMOs (STC 395)*

In July 2015, Paraguay raised a concern about the inclusion of some socio-economic aspects in the Chinese risk assessment process for GMOs, contrary to Article 5 of SPS Agreement and to the guidance of the relevant international organizations recognized by the WTO. The amendments to the implementing regulations had been notified in G/SPS/N/CHN/881. Paraguay stated that the measures, which went beyond scientific principles, could lead to arbitrary or unjustified distinctions, and that the inclusion of these elements could undermine the production of safe food. Paraguay therefore requested China to reconsider the amendments to the regulations.

The United States shared Paraguay's concern, and stressed the importance of notification of such measures to allow trading partners to review proposed changes, provide and discuss comments, and see them being taken into account. The United States highlighted its concerns about the negative impact that policies related to regulatory approval procedures for biotech products could have on the ability of consumers and producers to reap the benefits of advances in technology through trade. The delays and lack of transparency in China's current biotech approval process meant that several products were pending at various stages in the process, despite the SPS Agreement's prohibition on undue delays in approval procedures and its obligation regarding standard processing periods and for a mechanism to resolve complaints. China was seeking to remove the specific timelines governing its regulatory review process, and was introducing new criteria referring to economic and social considerations. The United States had requested additional information from China in order to better understand the objectives behind the proposed changes. The United States also wished to ensure that the measures would comply with the SPS Agreement, and requested that China delay the implementation of the revisions to allow for a substantive dialogue with its trading partners. The United States further requested that China approve the currently pending events in a timely fashion and that the proposed changes to China's approval system not depart from the key tenets of timely, predictable science-based approvals required by the SPS Agreement.

China replied that the changes to its regulations aimed to enhance the management of safety evaluations for agricultural GMOs. The draft version of these management measures had been notified on 2 June and was open to comments until 1 August 2015. China indicated that it had not received comments from the United States and Paraguay, but would take any comments into consideration for further modification and improvement of the measures.

In October 2015, the United States again raised concerns with China's Proposed Amendments to the Implementation Regulations on Safety Assessment of Agricultural Genetically Modified Organisms, which amends the requirements for the safety assessment for genetically engineered products (notified as G/SPS/N/CHN/881). The United States appreciated the extensive and productive bilateral meetings held with Chinese authorities since the July 2015 Committee meeting. The United States also welcomed China's reaffirmation of the importance of implementing timely, transparent, predictable, and science-based approval processes that were based on international standards, as well as China's commitment to revise and improve its regulation based on comprehensive consultations with domestic and international stakeholders and to enhance its capabilities in safety administration and safety approval of agricultural biotechnology products. The United States noted again that there were 24 products pending at various stages in China's regulatory process, including seven poised for final adoption that had been pending as long as since 2010, and requested

that China approve these products in a timely and expeditious fashion. The United States thanked China for its engagement and commitments to resolving this process.

Paraguay shared this concern about the inclusion of socio-economic aspects in the Chinese risk assessment process for GMOs, contrary to Article 5 of SPS Agreement and to the guidance of the relevant international organizations. Paraguay stated that the measures, which went beyond scientific principles, could lead to arbitrary or unjustified distinctions, and that the inclusion of these elements could undermine the production of safe food. Paraguay therefore requested China to reconsider the amendments to the regulations.

China replied that the changes to its regulations aimed to enhance the management of safety evaluations for agricultural GMOs in response to the rapid development of biotechnology and social and environmental concerns. The draft version of these management measures had been notified on 2 June and had been open to comments until 1 August 2015. China received comments from Australia, Brazil, Canada and the United States. China thanked Members for their comments and was now in the process of reviewing and analysing them. Feedback to Members would be provided through the proper channels. China assured Members that, in line with the relevant requirements of the SPS Agreement, China's agricultural GMOs safety evaluation would be based on science, taking into account the relevant economic factors. China remained ready to continue bilateral discussions and consultations with interested Members on this issue.

In March 2016, the United States reiterated its concerns with China's Proposed Amendments to the Implementation Regulations on Safety Assessment of Agricultural GMOs. The United States stated that China approved only three of the 11 pending products that were poised for final approval. The products which are still pending were subject to technical and administrative questions. The United States viewed this as an attempt to slow down new product approvals by posing procedural questions, imposing regulatory requirements not used by other countries and by asking questions outside of the contours of scientific evidence. Following the consensus between the presidents of the two countries and commitments made at the bilateral dialogues in November 2015, the United States expected that China's biotech reviews would move forward with greater transparency, timeliness, predictability and would rely on science as the only criteria for evaluating the products of agriculture biotechnology. The United States also reiterated that China also committed to revise and approve its regulations, based on comprehensive consultation with domestic and international stakeholders and to enhance its capability of safety administration and safety approval of the agricultural products. Hence, the United States hoped to see China's concrete actions to achieve greater the predictability in the approval process and to ensure science based decisions are taken when it amends its regulatory process as indicated in the document G/SPS/N/CHN/881. In this regard, the United States looked forward to China's publication and notification of its final revision to the Decree 8 upon its completion of its domestic procedures. Finally the United States noted that there are 22 products pending at various stages in China' regulatory process including the eight products mentioned earlier, poised for final adoption. The United States praised the Chinese engagement to preserve harmonious trade relationship.

China's explained that its proposed amendments to the Implementation Regulations of Safety Assessment of Agricultural GMOs are aimed at improving the management of GMOs, in response to the rapid development of biotechnology, and social and environmental concerns. China informed that it is currently reviewing and analysing all comments and will provide Members with feedback through proper channels, while maintaining transparency. Further, China stated that its GMO safety management has always been based on internationally-acknowledged risk analysis principles, including risk assessment, risk management and risk communication. China also pointed out that risk management and risk communication, or economic and social factors, will not affect their scientific conclusion of risk assessment. This process, in turn, will make the decision-making process more transparent, promote development and trade while complying with SPS rules. China hoped to continue its bilateral consultation mechanism and discuss GMO-related concerns thoroughly in order to facilitate trade in a mutually-beneficial manner.

- *Argentina, Paraguay and United States' 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)*

In July 2015, Argentina raised concerns about this amendment, notified in G/TBT/N/EU/284, which would allow EU member States to restrict or prohibit the use of genetically modified food and feed approved at EU level. Currently, member States had the right to restrict or prohibit imports of such products when there was scientific proof that they represented a risk for health or for the environment. The new EU proposal would allow member States to ban or restrict the use of these products without requiring scientific evidence. In the past, the European Union and its member States had attempted to justify restrictions on use of GMOs for scientific reasons, without success. This new proposal could be considered as an alternative way to reach the same objective. The measure would enable EU member States to create unnecessary barriers to international trade. It would also introduce unpredictability in commodity trade, and would affect the single market and the free movement of goods in the European Union. Argentina therefore invited the European Union to reconsider this

draft amendment and to implement the current EU legislation on authorization and approval of GMOs in the entire European Union in accordance with multilateral rules.

Paraguay shared Argentina's concerns with respect to the EU proposal, which could have an effect on products used for several years and which had not had any adverse effect on human and animal health or on the environment. The amendment would allow member States to take measures not be based on scientific evidence, which would therefore not comply with the SPS Agreement. The European Union was a major trading partner for Paraguay and Argentina, and the proposal was of great concern for their producers. Paraguay therefore asked the European Union to reconsider the amendment of the regulation.

The United States also shared the concern, raising procedural questions, since the EU proposal had only been notified to the TBT Committee, but should also have been notified to the SPS Committee in accordance with Article 7 and Annex B of the SPS Agreement, and the SPS Committee's Recommended Transparency Procedures contained in G/SPS/7/Rev.3. The amendment related to Regulation (EC) No. 1829/2003 that was an SPS measure because it governed the health and safety approvals of biotech products. This measure had been notified to the SPS Committee in G/SPS/N/EEC/149, with several addenda and corrigenda. The United States also expressed substantive concerns regarding the amendment's potential adverse effects on trade, including unfair competition, regulatory uncertainty, increased costs, and damages to integrated supply chains. The proposal could lead to a proliferation of arbitrary and discriminatory measures and to a lack of clarity and certainty. Finally, the United States recalled the EC-Biotech (2006) dispute, in which the DSB had found that nine EU member State bans of biotech products approved at the EU level were inconsistent with the European Union's obligations under the SPS Agreement. Yet some EU member States had maintained such bans, and adopted new ones. The United States urged the European Union not to adopt the proposal.

Brazil, Canada and Uruguay also shared this concern, emphasizing the measure's potential negative effect on trade and seeking additional information.

The European Union explained that the proposal was not an SPS measure. It had no relation to the protection of life or health, since restrictions linked to health risks or to the environment were excluded. As a consequence, the measure did not fall under the scope of the SPS Agreement. The European Commission would report the comments received from the WTO Members to its co-legislators. The European Union indicated that it had complied with its transparency obligations by notifying the legislation, which clearly indicated that member States could not invoke the risks to health or life to impose a ban or a restriction on GMOs.

In October 2015, Argentina reiterated its concerns about this amendment, as previously indicated in the July 2015 SPS Committee meeting. Argentina further recalled a recent statement by the Committee on Agriculture of the European Parliament stating that this measure should be compatible with the international obligations of the European Union in the WTO and Article 34 of the Treaty on the Functioning of the European Union (TFEU), which prohibits quantitative restrictions on exports between EU member States and all measures having equivalent effect. Argentina requested the European Union to withdraw the draft amendment and implement the current EU legislation on authorization and approval of GMOs throughout the entire European Union in accordance with multilateral rules.

The United States further reiterated its concerns as presented in the July 2015 SPS Committee meeting and requested clarifications on the status of the proposal within the relevant EU bodies. The United States reported that on 3 September 2015 the European Parliament's Agriculture and Rural Development Committee (ComAgri) rejected the European Commission's proposed national 'opt out' system for genetically engineered imports. ComAgri also urged the Parliament's Environment, Public Health, and Food Safety Committee (ComEnvi) to reject the proposal. The United States requested more information on the review procedure of ComEnvi as well as about the status of an impact statement and legal opinion to be developed by the European Commission on the behest of the European Parliament. The United States appreciated the EU efforts to keep the SPS Committee apprised of actions related to its regulations on approvals of genetically engineered products, including with respect to Commission withdrawal of its current proposal and any subsequent actions, such as consideration of alternative proposals that the Commission may or may not undertake. The United States urged the European Union not to adopt the proposal.

Brazil, Canada, Paraguay and Uruguay also shared this concern, emphasizing the measure's potential negative effect on trade and seeking additional information.

The European Union recalled its explanation from the July 2015 SPS Committee meeting and further highlighted that the European Commission would reply to the comments received from WTO Members via the TBT channels.

In March 2016, Argentina reiterated its concern regarding the draft legislation and further requested the European Union to withdraw the draft amendment and implement the current EU legislation on authorization and approval of GMOs, throughout the entire European Union in accordance with multilateral rules.

Canada recalled that it had raised its concern over this proposal in the past SPS and TBT Committee Meetings. In August 2015, Canada submitted comments in response to EU's TBT notification and thanked the European Union for responding to those comments. Canada continued to believe that any EU member State's measure taken under this proposal could have the potential to disrupt trade and introduce uncertainty. Canada noted the recent opinion of the European Council for Legal Service that the proposal is unlikely to be found consistent with the European Union internal market rules or its WTO commitments. Canada expressed its interest to know the European Union's plan for the future and whether or not the European Union plans to withdraw the same and present an alternative proposal. In addition, Canada would monitor the issue closely.

The European Union explained that the proposal falls outside of the remit of the SPS Agreement. It had no relation to the protection of life or health, since restrictions linked to health risks or to the environment were excluded. As a consequence, the measure did not fall under the scope of the SPS Agreement and therefore it had been notified under the TBT Agreement. The European Commission would reply to the comments received from WTO Members via the TBT channels. The European Union also mentioned that the proposal is currently under discussions at the Council of Ministers and the legislative process for the same is on-going.

- *EU's concerns regarding India's amended standards for food additives (STC 403)*

In October 2015, the European Union raised its concerns on India's Draft Food Safety and Standard Amendment Regulation, as detailed in G/SPS/N/IND/108. The European Union welcomed the user-friendly and simple approach to the listing of food additives in food products, as well as the hierarchical listing of food additives. However, the European Union observed that the regulation needed further clarification and improvement in several areas. The draft regulation recommended maximum levels of additives only where Codex had set such levels in the General Standard for Food Additives (GSFA). The European Union noted that the GSFA had expressly stated that a lack of reference to a particular additive or to a particular use of an additive in a food in GSFA did not imply that the non-listed additive was unsafe or unsuitable for use. The European Union further noted that the GSFA was neither complete nor exhaustive and that many Members had implemented maximum levels of additives on a scientific basis where no Codex standard existed. In addition, for wines and spirits, in the European Union's view, India had not taken into consideration the adoption of standards by other international standard-setting bodies, such as the International Organization for Vine and Wine (OIV). In this regard, the European Union outlined several steps that India could take to avoid unnecessarily disrupting trade, such as setting standards that took into account the safety of products and benefits for consumers, which were proportionate, necessary, as well as scientifically and technologically justified. The European Union requested India to take into account all of its comments, including any additional comments submitted after the 4 October deadline, and welcomed a written response from India at the earliest convenience. The European Union further urged India to notify the measure to the WTO Committee on Technical Barriers to Trade.

The United States supported the concern and highlighted that although it supported aligning food standards to Codex, the Codex standard was not designed to be a comprehensive standard for all additives commonly used in the production of wine and distilled spirits. The standard did not include some main additives commonly used in the production of these beverages. The United States indicated that it had submitted comments and urged India to take these comments into account in finalizing the measure. Chile also supported the concern and noted that it would submit comments to India.

India responded that it had notified the measure in August 2015 and had provided time for comments until 4 October 2015. India hoped that the concerned Members had submitted their comments in writing, so that the concerns could be addressed appropriately by the authorities.

In March 2016, The European Union reiterated its concerns on India's Draft Food Safety and Standard Amendment Regulation, as outlined in the March 2015 SPS Committee meeting, and further observed that the regulation, if maintained as notified, risked disrupting both national Indian production and imports to India. The European Union urged India to maintain its engagement in the Codex and OIV work and to modify the regulation based on EU's written comments and questions submitted.

The United States again supported this concern and stated that its comments and those from a domestic wine industry association had been submitted in January 2016, but had yet to receive a response. The United States requested such response to be provided and invited Indian experts to attend a technical forum to be hosted by the World Wine Trade Group in May 2016.

Chile and New Zealand supported the concern and echoed sentiments already expressed concerning the inclusion of commonly-used and safe additives, and encouraged India to work closely with the Codex working group as the proposal was further developed.

India reported that its Food Safety and Standards Authority had attempted to harmonize the standards of food additives with that of Codex. The Authority was working on finalizing the list of food additives as soon as possible and comments from interested stakeholders were being taken into consideration.

- *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 that countries which had authorized its use had a split production system to export to the European Union. The outcome of an audit in 2011 and 2013 on Santa Catarina's production system revealed detections of ractopamine and thus Brazil could not provide adequate guarantees that meat produced in such state would comply with EU regulations. The European Union remained open for further bilateral discussions based on any new information provided by Brazil.

- *Brazils' 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. 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.

Seven issues relating to food safety that had been previously raised in the SPS Committee were discussed again during 2015 and the first quarter of 2016. These included:

- Peru's concerns regarding the regulation of the European Parliament and of the Council on novel foods (STC 238);
- China and Viet Nam's concerns regarding US measures on catfish (STC 289);
- Norway's concerns regarding China's quarantine and testing procedures for salmon (STC 319);
- US concerns regarding France's ban on Bisphenol A (BPA) (STC 346);
- Japan's concerns regarding China's import restrictions in response to the Japanese nuclear power plant accident (STC 354);
- Japan's concerns regarding Korea's strengthened import restrictions on food and feeds products with regard to radionuclides (STC 359); and
- Argentina, China and the United States' concerns regarding the European Union's revised proposal for categorization of compounds as endocrine disruptors (STC 382).

1.2 Members' information related to food safety

WTO Members used the opportunity of the SPS Committee meetings during 2015 and the first quarter of 2016[5] to provide other information relating to food safety, including:

- Antigua and Barbuda provided updates on the progress made in establishing a National SPS Committee and the ongoing legislative reform related to its Animal Health and Food Safety Bills;
- Argentina informed Members about the structure of its National Animal Health and Agrifood Quality Service (G/SPS/GEN/1455);

[5] G/SPS/R/78, G/SPS/R/79, G/SPS/R/81 and G/SPS/R/82.

- Bahamas reported on the ongoing work to revise its SPS-related legislation (e.g. Agriculture Health and Food Safety Bill, and Food Safety and Quality Bill);
- Belize provided information on a national Codex workshop held in the capital city of Belmopan on 28-29 January 2015;
- Belize updated Members on the steps taken at the national level to strengthen its food safety system;
- Grenada provided an update on its new Food Safety Act which was adopted in 2015;
- Indonesia updated Members on its food safety control on importation and exportation of fresh food of plant origin (Regulation No. 04/2015);
- Japan reported updates on its response to TEPCO's Fukushima Daiichi nuclear power station accident and on import restrictions on Japanese food regarding radioactive nuclides;
- Morocco provided an update on the creation of departments for risk assessment, SPS measures and market access within the National Food Safety Office (ONSSA);
- Peru informed Members of the outcome of the 46th Meeting of the Codex Committee on Food Hygiene, held in Lima on 17-21 November 2014 (G/SPS/GEN/1396);
- Peru presented information on its National Fisheries Health Agency;
- The European Union informed Members of the Commission's proposal to amend regulation (EC) no. 1829/2003 regarding the possibility for EU member States to restrict or prohibit the use of genetically modified food and feed;
- The European Union reported on its public consultation on defining criteria for identifying endocrine disruptors (G/SPS/GEN/1448);
- The European Union provided information on its new legislation on Novel Foods (G/SPS/GEN/1472);
- The Russian Federation informed Members of the regional workshop on food standards within CCEURO, which was held in Saint Petersburg (Russia) on 17-18 September 2015;
- The Russian Federation reported on its ongoing cooperation with the Codex Alimentarius Commission;
- The United States provided information on the new self-reporting tool of the US Food Safety Inspection Service; and
- The United States provided an update on the implementation of the Food Safety Modernization Act.

1.3 Transparency

The SPS information management system (SPS-IMS) allows easy access and management of all WTO SPS-related documentation.[6]

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.[7] 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 1,281 notifications, that is 1,167 proposed new or revised SPS measures and 114 emergency ones, were submitted to the WTO in 2015. Among these, 923 regular notifications and 41 emergency notifications identified food safety as the objective of the measure. Of these, 433 of the regular and one 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.[8] Moreover, SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). 57% of notifications submitted during 2015 were submitted online.

[6] See http://spsims.wto.org.
[7] G/SPS/7/Rev.3.
[8] See http://spsims.wto.org.

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. In March 2015, Codex informed the SPS Committee about its new work on guidance for the monitoring of the performance of national food control systems. Codex noted that the product of this work would not replace the equivalence provisions of the SPS Agreement. The final product would be available in about two to three years to improve the functioning of national food control systems.

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.[9] 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 Seventeenth Annual Report was circulated to Members on 2 June 2015.[10]

In October 2015, Burkina Faso explained that a lack of a Codex standard for imidacloprid in sesame seed had caused barriers to trade by leaving it up to each country to define its own maximum residue level. Burkina Faso had received two official notifications that its exports of sesame to Japan had been intercepted. Japan had taken interest in the sesame problem and had granted technical assistance to set good crop practices and determine maximum sesame contamination by the pesticide and the waiting period. Burkina Faso noted the need for Codex to adopt a standard on sesame and establish MRLs for pesticides in view of increasing transparency. Chile, Madagascar, Morocco, Nigeria, Paraguay and Senegal supported Burkina Faso's statement. Noting the importance of sesame as an export commodity, Madagascar called on other partners and organizations to financially support Codex work on this issue so that an MRL for sesame could be established. Nigeria noted that its olive oil exports to the US had been returned due to detection of pesticides, for which MRLs had not been set by Codex. Senegal noted the difficulty in conducting risk assessments in the absence of such standards. Paraguay encouraged Codex to start work on MRLs for sesame and chia. Codex acknowledged that it had not set any MRLs for sesame seeds and recommended that the issue also be brought to the attention of CCPR and JNPR. This issue was a good example of the gaps in Codex standards that had been mentioned in earlier Committee discussions.

In October 2015, Belize expressed its concern regarding Members' deviations from the use of international standards in the application of measures in international trade. In this regard, Belize asked whether this was a result of a gap in the international standard setting process, which in turn caused some countries to apply measures that were far more stringent than the recommendations set by Codex, the OIE and the IPPC. Members consistently applying measures that deviated from the recommendations called into question not only the efficacy of the international standard setting processes but even the relevance of the bodies recognised in the SPS Agreement. Belize noted that if the international standard setting process caused problems that led to such deviations, the SPS Committee's agenda item on monitoring the use of international standards was the most appropriate place to identify and discuss the issue. Paraguay noted its agreement with Belize and thanked Japan for providing technical assistance to overcome issues regarding MRLs in sesame.

In July and October 2015, the United States expressed concern that some Members had taken action, or were considering taking action, to restrict the use of glyphosate, an active ingredient in many commonly used pesticides, due to an assessment from the WHO International Agency for Research on Cancer (IARC) declaring the compound as probably carcinogenic. The United States noted that IARC's findings were based on an assessment of hazard and not risk, and urged Members to base their SPS measures for glyphosate on the Codex standard, or on a risk assessment that included realistic exposure scenarios and considered all available data. Ukraine shared the US concern on the scientific justification of restricting glyphosate use. Brazil, Canada, China and Paraguay also supported the United States' concern and stressed the importance of following the standard set out by Codex. They also recalled the differences in the mandates of IARC and of the Joint FAO/WHO Meeting on Pesticide Residues (JMPR) *vis-à-vis* hazard identification and risk assessment for regulatory purposes. In July 2015, Codex stated that at the last meeting of the Codex Committee on Pesticide Residues (CCPR), a delegate had questioned the lack of consistency between the IARC and Joint FAO/WHO Meeting on Pesticide Residues (JMPR) assessments of glyphosate. Codex emphasized that the roles of the bodies were different, as IARC focused on hazard characterization while JMPR performed risk

[9] G/SPS/11/Rev.1.
[10] G/SPS/GEN/1411.

assessments and exposure assessments for regulatory purposes. In October 2015, Codex informed the Committee that a WHO task force had reviewed the IARC report and had recommended that JMPR conduct a full re-evaluation of glyphosate under their field of competence, most likely by May 2016. Once the final evaluation was complete, it would go to the Codex Committee on Pesticide Residues (CCPR) for consideration. Codex also highlighted the importance of risk communication, as the mere establishment of a hazard should not mean that trade should be restricted.

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 12 and 13 October 2015, the WTO organized a workshop on transparency in Geneva.[11] This workshop was open to all Members, Observer governments and organizations with observer status in the SPS Committee. Various funding arrangements made it possible for a large number of developing country and least developed country (LDC) participants to not only attend the workshop but also the subsequent Committee meeting. Approximately 150 participants received hands-on training on how to access and use SPS-related information and how to notify their SPS measures. Participants also shared national experiences and debated how to further improve transparency in this area.

The programme[12] and presentations of 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 2016 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 2015.[13]

Document G/SPS/GEN/997/Rev.6, circulated on 23 February 2016, provides information on all WTO technical SPS-related technical assistance activities planned for 2016, 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 2016, upon request from regional organizations, as well as national seminars upon request from WTO Members and acceding governments. In addition, document G/SPS/GEN/997/Rev.6/Add.1 provides information on the SPS Thematic Workshop on Maximum Residue Levels (MRLs), to be held in Geneva on Monday, 24 October and Tuesday, 25 October 2016. Further information on SPS activities is available through http://www.wto.org/sps/ta.

In 2015 and the first quarter of 2016, the Codex secretariat participated as resource persons in a number of WTO regional or sub-regional workshops held in Asia (Thailand), and in the Arab region (Kuwait), as well as in the Advanced Course on the SPS Agreement held in Geneva, with 23 participants. In May 2015, the Codex secretariat participated by video-link in a sub-regional workshop on the SPS and TBT Agreement held in Kenya for member states of the Intergovernmental Authority on Development (IGAD). As always, these contributions were highly appreciated.

1.7 Review of the operation and implementation of the SPS Agreement

The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. As agreed in its Second Review,[14] the Committee developed a procedure to facilitate the use of ad hoc consultations and negotiations to resolve trade problems.[15] 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. In October 2015, the Secretariat introduced the first annual report on the use of the procedure[16], which covers the period from the adoption of the procedure in July 2014 until the end of September 2015. During this time-period, no Member had requested consultations under this procedure.

During 2015, 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,[17] or a proposed Catalogue of Instruments available for WTO Members to Manage SPS Issues.[18] A recommendation in the Review Report regarding the Committee's future work on private standards has been a major point of

[11] G/SPS/R/80.
[12] G/SPS/GEN/1446.
[13] G/SPS/GEN/521/Rev.11.
[14] G/SPS/36.
[15] G/SPS/61.
[16] G/SPS/GEN/1457.
[17] G/SPS/W/280/Rev.2.
[18] G/SPS/W/279/Rev.2.

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 March 2016, the Chair suggested addressing the Review Report, and more specifically the recommendations on future work regarding SPS-related private standards, together with the working definition of SPS-related private standards and possible future actions. He invited Members to submit their suggestions on the proposals submitted by some Members on the issue.

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.[19] 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 a New Zealand as "co-stewards". In 2014, the co-stewards circulated two reports on the work of the e-WG[20], 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.[21] 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 October 2015, the Chairperson reiterated its statement made under the Fourth Review discussions, that in his view, the three issues (the working definition; the recommendations related to private standards in the Review Report; and the Committee's future work on that issue) were linked and could only be resolved together. Like for the Fourth Review, he invited Members to consider the text he had distributed at the informal meeting and noted his intention to convene intersessional informal meetings or consultations to continue the dialogue and prepare the ground for a possible resolution.

2 WORK OF THE TBT COMMITTEE

The TBT Committee held three regular meetings in 2015: on 18-19 March, on 17-18 June and on 4-6 November. The Committee also met on 9-10 March 2016, and will hold two additional regular meetings during 2016: 15-16 June and 9-11 November 2016.

2.1 Specific Trade Concerns

During the three meetings held in 2015, 37 new specific trade concerns were raised for the first time in the TBT Committee, as well as 49 old ones.[22] In addition, 11 new specific trade concerns and 49 old ones were raised at the first meeting of 2016.[23] Codex standards were mentioned in fifteen of the specific concerns raised over this period:

- *Republic of Korea et al.[24] concerns regarding China's Formula Registration Regulation for Infant and Follow-up Formula, G/TBT/N/CHN/1165.[25]*

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.

China committed to conveying all comments and concerns back to its capital.

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[19] G/SPS/55.
[20] G/SPS/W/276 and G/SPS/W/281.
[21] G/SPS/W/283.
[22] G/TBT/38/Rev.1.
[23] For more information on any STC, please search for the ID number in the TBT Information Management System: http://tbtimsadmin.wto.org/web/pages/search/stc/Search.aspx.
[24] European Union and Japan.
[25] STC first raised on 9 March 2016, see G/TBT/M/68, paras. 2.4-2.8.

- *European Union et al.[26] concerns over India's Draft Food Safety and Standards (Alcoholic Beverages Standards) Regulations, 2015, G/TBT/N/IND/51[27]*

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 EU 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.

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.

- *Indonesia's concern over Russian Federation's Implementation plan related to excise tax on palm oil and soda product[28]*

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.[29] concerns regarding Bolivia's Food Labelling and Advertising Law[30]*

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.

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.*[31] *concerns over European Union - Revised Proposal for the Categorization of Compounds as Endocrine Disruptors of 19 February 2013 by DG Environment (ID 393)*[32]

Argentina reiterated its concern with regard to the review process being undertaken by the EU to define criteria at the European level for the identification of substances that may have endocrine disrupting properties. Argentina also considered that due to the relevance, complexity and magnitude of the subject, a multifocal approach should be adopted, involving all multilateral system stakeholders such as the Codex Alimentarius,

[26] European Union, the United States, Japan, Australia, Chile, New Zealand, Guatemala and Canada.
[27] STC first raised on 9 March 2016, see G/TBT/M/68, paras. 2.9-2.20.
[28] STC first raised on 9 March 2016, see G/TBT/M/68, paras. 2.45-2.46.
[29] Guatemala, the European Union and Canada.
[30] STC first raised on 9 March 2016, see G/TBT/M/68, paras. 2.47-2.51.
[31] Canada, the United States, Brazil and Egypt.
[32] 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 and 17 June 2013, see G/TBT/M/60, paras. 3.57-3.61.

the World Health Organization (WHO), the United Nations Environment Programme (UNEP) and others. Furthermore, Argentina welcomed the opportunity to provide comments in the context of public consultations and emphasized the importance of continuing to conduct the process in a transparent manner, taking due account of contributions from stakeholders.

2.15. The European Union noted that, as had been mentioned in previous meetings, the EU had initiated a comprehensive impact assessment that would analyse different options for defining criteria for the identification of endocrine disruptors and their corresponding health, socio-economic and environmental effects, once incorporated in the different parts of EU legislation. The European Commission would present proposals for new criteria to identify endocrine disruptors in the EU's plant protection products and biocidal products regulations only after the conclusion of the impact assessment. This criterion might also have an impact on other pieces of EU legislation. Pending the new criteria, interim criteria were applicable in both the biocidal products and plant protection products regulations. The EU would notify the new proposal to the WTO in order to allow third parties' subsequent comments to be duly taken into account.

- *European Union's concern regarding Brazil's Draft Ordinance Act Nº. 374, 27 November 2014 (Portaria SDA/MAPA 374/2014) Establishes quality requirements for wine and derivatives of grape and wine (ID 470)*[33]

The European Union noted that some provisions of this draft measure departed from the relevant OIV recommendations as well as Codex standards with regard to a minimum content for indicating on the label the grape variety of lower share, and also with regard to a requirement to classify wine according to colour. Some of these differences would oblige EU wine producers to modify their labels and therefore entail higher production costs. In this respect, the EU recalled that Article 2.4 of the TBT Agreement called for the use of international standards.

Brazil observed that since this TBT notification referred to a proposed measure subject to public consultations, the measure under discussion had not produced any affects in the trade of wine and derivatives of grape and wine. Brazil requested the EU to submit their remarks in writing so that they could be replied to in a comprehensive manner and indicated its availability for bilateral discussion with all Members on this matter.

- *Canada et al.* [34] *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)*[35]

Canada remained concerned with the broad product coverage of the regulations and the lack of clarity surrounding its intended objectives. Australia also indicated its concerns that additional packaging, labelling and purpose requirements had been imposed on imported and not on domestic meat products.

Indonesia stated that the Indonesian Ministry of Agriculture Regulation 139/2014 was not aimed at limiting imports or disturbing trade relations but rather to protect Indonesian consumers' health from risks that arose from diseases carried by offal that contained residual hormones. Both Regulations also contained halal provisions under which, only establishments that produced Halal-products alone, and operated under the halal system, were eligible to export meat to Indonesia. Indonesia indicated that its requirements for manual slaughtering in poultry were consistent with Codex CAC-GL 24-1997.

- *European Union et al.*[36] *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)*[37]

The European Union raised concerns over Ecuador' s decree which imposed nutrition food labelling obligations such as "high in" warnings and a colour-coded warning system. The European Union questioned

[33] STC raised on 17 June 2015, see G/TBT/M/66, paras. 3.35-3.38 and 4 November 2015, see G/TBT/M/67, paras. 2.259-2.261.
[34] Australia.
[35] 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 and 18 March 2015, see G/TBT/M/65, paras. 2.30-2.33.
[36] Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Mexico, Peru, Switzerland, the United States, and the European Union.
[37] 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 and 4 November 2015, see G/TBT/M/67, paras. 2.146-2.152.

the effectiveness of this decree and asked Ecuador if it had considered less restrictive alternatives that would assist consumers to make an informed choice.

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

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

The United States also expressed concern over the Ecuadorian technical regulation RTE INEN 022 as it pertains to the mandatory requirement to label food and beverage products with the statements "contains transgenics". They argued that for foods derived from genetically modified organisms that had been found to be substantially equivalent to conventional counterparts, mandating the use of such statements in labels could create the erroneous impression that the product was less safe than conventional products. Genetically engineered products that had been evaluated through risk-based safety assessments in accordance with international guidelines, such as through the Codex Alimentarius Commission, should not be required to use different labelling. In addition to confusing consumers, such labelling would likely also increase costs to industry, consumers, and government authorities. The United States believed that rather than a mandatory labelling requirement, a voluntary approach to the labelling of such products would allow for consumer choice. The US further reiterated its concerns in the TBT Committee meeting held in June 2015.

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

The European Union, the United States, Costa Rica and Brazil reiterated their concerns during the June 2015 TBT Committee meeting and added that the Codex Guidelines on Nutrition Labelling (CAC/GL 2-1985 CODEX) stated that the information contained in the nutrient declaration "should not lead consumers to believe that there is exact quantitative knowledge of what individuals should eat in order to maintain health, but rather convey an understanding of the quantity of nutrients contained in the product". Switzerland was of a similar view and noted that the colour coded "traffic light" warning system foreseen under the project would unfairly discriminate against certain products without conveying sound information to consumers.

- *United States et al.[38] concerns over Chile's proposed amendment to the Food Health Regulations, Supreme Decree No. 977/96 (IMS ID 370)[39]*

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

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

[39] 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 and 4 November 2015, see G/TBT/M/67, paras. 2.111-2.117.

countries in implementing the recommendations of the 2004 WHO Global Strategy on Diet, Physical Activity and Health and the 2008 WHO Strategy on Non-Communicable Diseases.

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

Chile indicated its willingness to receive any additional comments and to collaborating with Members on any remaining issues.

During the June 2015 TBT Committee meeting, Members reiterated their concerns regarding Chile's measure. Mexico recalled that the Codex Alimentarius had discouraged the use of any label or labelling – such as "high in calories" or "high in salt" which employed words, pictures or other devices that may lead the consumer to fear consuming a food product.

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

During the November 2015 TBT Committee meeting, Members recalled their previous concerns that, *inter alia,* Chile's proposed amendments were not based on the General Guidelines on Claims of the CODEX Alimentarius (CAC/GL 1 1979, Article 3.5). Furthermore, Members were concerned with the use of the warning messages, which in the form of a "stop sign" would bear the inscription "excess of" sugar, saturated fats, sodium or calories and that this practice may not be in line with CODEX General Guidelines on Claims (CAC/GL 1-1979). The United States asked Chile to explain the basis for the limits for sodium and energy in solid foods as Chile's initial nutrient limit, for example, sodium appeared to be based on 20% of the CODEX Nutrient Reference Values – Non-communicable Disease (NRV-NCD) of 2000 mg/day. Chile was proposing to reduce the sodium limit by 5% per year. The United States also suggested the use of serving sizes based on the type of food that is allowed by CODEX rather than an across-the-board serving size of 100 grams or 100 millilitres.

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

- *Australia et al.[40] 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)[41]*

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

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

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

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

During the June and November 2015 TBT Committee meetings, Members repeated their concern that the measure deviated from the Codex Guidelines on Nutrition, whereby labelling should not lead consumers to believe that there was an exact quantitative knowledge of what individuals should eat to maintain good health, but rather convey an understanding of the quantity of nutrients contained in the products. The United States inquired whether Indonesia could not consider using the Codex Nutrient Reference Values for labelling purposes for sodium and saturated fat, which provided another means for consumers to identify foods "low" and "high" in nutrients of concern and the Codex "low" claims, "no added sugars" claims, and other conditions for health claims.

[40] Australia, Brazil, Canada, Switzerland, the United States and the European Union.
[41] 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 and 4 November 2015, see G/TBT/M/67, paras. 2.134-2.138.

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

- *Canada et al.[42] concerns over Peru's Act to Promote Healthy Eating Among Children and Adolescents (IMS ID 383)*[43]

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

- *Australia and Canada's concerns regarding India's Labelling Regulations for Canola Oil (IMS ID 413)*[44]

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

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

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

- *Mexico et al.[45] concern over Thailand's Draft Notification of the Alcoholic Beverages Control, Re: Rules, Procedure and condition for Labels of Alcoholic Beverages, issued under B.E. (IMS Item no. 427)*[46]

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

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

Members reiterated their concerns regarding the draft rules on Alcoholic Beverages Control during the November 2015 TBT Committee meeting.

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

[43] 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 and 4 November 2015, see G/TBT/M/67, paras. 2.127-2.133.

[44] 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 and 4 November 2015, see G/TBT/M/67, paras. 2.155-2.157.

[45] Australia, Canada, Mexico, New Zealand, South Africa, the United States and the European Union.

[46] STC raised on 18 June 2014, see G/TBT/M/63, paras. 3.9-3.13; 5 November 2014, see G/TBT/M/64 paras 2.207-2.220; 18 March 2015, see G/TBT/M/65, paras 2.174-2.180, 17 June 2015, see G/TBT/M/66 paras. 3.168-3.178 and 4 November 2015, see G/TBT/M/67, paras. 2.158-2.172.

- *Japan et. al[47] concerns over India's Food Safety and Standards Regulation for Food labelling requirements (IMS ID 298)[48]*

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

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

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

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

- *Switzerland and the European Union's concerns regarding the Kingdom of Saudi Arabia's Decree of the Saudi Arabian Ministerial Council on the sale and marketing of energy drinks of 4 March 2014 (IMS ID 442)[49]*

[47] Australia, Canada, Japan, New Zealand, Switzerland, the United States and the European Union.
[48] 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 and 4 November 2015, see G/TBT/M/67, paras. 2.99-2.103.
[49] 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 and 4 November 2015, see G/TBT/M/67, paras. 2.194-2.196.

Saudi Arabia's decree on the sale and marketing of energy drinks introduced a specific mandatory statement for energy drinks that warns consumers against the healh risks connected to its consumption. Switzerland noted that a negative mandatory statement seemed more restrictive than necessary and that it also seemed to go beyond any relevant international standard. In this latter respect, Switzerland recalled that the CODEX standards on nutrition provided that declarations on products should not lead consumers to believe that there is exact quantitative knowledge of what individuals should eat in order to maintain health, but rather convey an understanding of the quantity of nutrients contained in the product.

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

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.[50] A panel of three individuals considers written and oral arguments submitted by the parties to the dispute and issues a written report of its legal findings and recommendations. The parties to the dispute may appeal a panel's decision before the WTO's Appellate Body. The Appellate Body examines the legal findings of the panel and may uphold or reverse these. As with a panel report, the Appellate Body report is adopted automatically unless there is a consensus against adoption.

3.1.1 SPS disputes

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 2016, more than 500 complaints had formally been raised under the WTO's dispute settlement procedures. Of these, 44 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.

Twelve 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).

[50] 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.

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

3.1.2 Recent developments on SPS disputes

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.[51] The panel was composed on 22 July 2014 and the final report was circulated on April 2016 to the parties involved in the dispute.

Brazil requested the establishment of a panel concerning certain measures imposed by Indonesia on the importation of meat from fowls of the species Gallus domesticus and products from fowls of the species Gallus domesticus. As per the request of Brazil, the Director-General composed the panel on 3 March 2016, and deliberations are on-going.[52]

Japan requested the establishment of a panel concerning Korea's import bans and its additional testing and certification requirements for radionuclides, that both affect the importation of food products from Japan. As per the request of Japan, the Director-General composed the panel on 8 February 2016, and deliberations are ongoing.[53]

On 4 April 2016, Brazil requested consultations with Indonesia regarding certain measures imposed by Indonesia on the importation of meat from cattle of the species *Bos taurus*.[54]

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

At the WTO's 9th Ministerial Conference in Bali, Indonesia in December 2013, Members concluded negotiations of the Trade Facilitation (TF) Agreement.[55] 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 on 27 November 2014 adopted a Protocol of Amendment[56] to insert the new Agreement into Annex 1A of the WTO Agreement. The TF Agreement will enter into force after two-thirds of WTO Members have completed their domestic ratification process in accordance with Article X:3 of the WTO Agreement.[57] As of March 2016, 72 Members have ratified the Agreement.

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.

[51] WT/DS475.
[52] WT/DS484.
[53] WT/DS495.
[54] WT/DS506.
[55] WT/MIN(13)/36, WT/L/911.
[56] WT/L/940.
[57] WT/MIN(13)/36, WT/L/911, paragraph 2.

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.[58]

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/.

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.

[58] 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.