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منظمة الأغذية
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Food and
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pour
l'alimentation
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Продовольственная и
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COMMISSION ON PHYTOSANITARY MEASURES

Eighth Session

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Activities of the SPS Committee and other relevant WTO Activities in 2012

Agenda item 12.2.1

Prepared by the World Trade Organization Secretariat

1. This report to the Eighth Session of the Commission on Phytosanitary Measures (CPM-8) provides a summary of the activities and decisions of the WTO Committee on Sanitary and Phytosanitary Measures (the "SPS Committee") during 2012. It identifies the work of relevance to the CPM and the International Plant Protection Convention (IPPC), including: specific trade concerns; transparency; equivalence; regionalization; monitoring the use of international standards; technical assistance; and private and commercial standards. The report also includes relevant information on dispute settlement in the WTO which occurred outside the context of the SPS Committee. A separate report is provided regarding the Standards and Trade Development Facility (STDF).

I. Work of the SPS Committee

2. The SPS Committee held three regular meetings in 2012: on 27-28 March, 10-11 July and 18-19 October.¹
3. The Committee agreed to the following tentative calendar of regular meetings for 2013: 21-22 March, 27-28 June, and 17-18 October.
4. Ms Miriam Chaves, from Argentina, served as interim Chairperson at the March 2012 meeting. At the July 2012 meeting, Ms Maria Albarece of the Philippines was appointed Chairperson for the 2012-2013 period.

¹ The report of the March meeting is contained in G/SPS/R/66, that of the July meeting in G/SPS/R/67 plus corrigenda, and that of the October meeting in G/SPS/R/69.

A. Specific Trade Concerns

5. The SPS Committee devotes a large portion of each regular meeting to the consideration of specific trade concerns (STCs). Any WTO Member can raise specific concerns about the food safety, plant or animal health requirements imposed by another WTO Member. Issues raised in this context are usually related to the notification of a new or changed measure, or based on the experience of exporters. Often other WTO Members will share the same concerns. At the SPS Committee meetings, WTO Members usually commit themselves to exchange information and hold bilateral consultations to resolve the identified concern.

6. A summary of the STCs raised in meetings of the SPS Committee is compiled on an annual basis by the WTO Secretariat.² Altogether, 344 STCs were raised in the eighteen years between 1995 and the end of 2012, of which 24% were related to plant health.

7. In 2012, three new phytosanitary issues were raised for the first time in the SPS Committee:

Indonesia's port closures (STC 330)

8. This trade concern was raised, at each of the three SPS Committee meetings held in 2012, by one or several of the following WTO Members: China, New Zealand, the European Union and the United States of America. Additionally, Australia, Canada, Chile, Japan, the Republic of Korea, South Africa and Thailand supported the concern. They all expressed concerns about Indonesia's closure of several entry ports for imports of fruit and vegetables, including the main port of Jakarta (Tanjung Priok), which entered into force in June 2012. The concern was that the port closures would threaten fresh fruit and vegetable exports to Indonesia. Indonesia was requested to provide scientific evidence for the measure and to notify its draft measures to the WTO, allowing sufficient time for formal comments from trading partners.

9. Indonesia recognized that the publication of its regulations³ had raised concerns among some WTO Members. Indonesia explained that it was seeking to prevent the spread of plant diseases and pests through effective management and regulation. Its largest sea port, Tanjung Priok, did not have appropriate facilities to implement quarantine measures and imports had been re-routed to other ports which had the requisite infrastructure. Indonesia was taking measures to improve the quarantine installation facility of that port, and the first stage of this improvement programme should be finished by the end of 2013. These steps were deemed necessary based on the results of a 2010-2011 assessment carried out by plant quarantine officials, which identified 15 exotic plant diseases that never previously existed in Indonesia. Indonesia remained concerned about the increasing number of interceptions that posed a serious threat to its plant and consumer protection.

US measures on fresh lemons from the North West region of Argentina (STC 336)

10. In July 2012, Argentina expressed concerns about the delay in reopening the US market for exports of fresh lemon from the North West region of Argentina. After six years of negotiations, in August 2000, the United States had opened its citrus markets for Argentinian exports. Argentina recalled that in September 2001, the United States suspended the import of citrus products from the North West region of Argentina following a court ruling. Negotiations to reopen the market were initiated in 2005, when citrus canker had already spread to Florida and could no longer be the reason to restrict imports from Argentina. In November 2011, in agreement with APHIS, Argentina sent a report demonstrating the absence of Citrus Variegated Chlorosis (CVC) in lemons. In May 2012, Argentina requested an answer from the United States and in June 2012, APHIS replied that despite the fact that the report indicated absence of CVC, there was no information indicating the conditions under which the lemon trees could become infected with the bacteria. Argentina was of the view that in ignoring the scientific evidence presented, the United States was acting inconsistently with the SPS

² The latest version of this summary can be found in document G/SPS/GEN/204/Rev.13. 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>

³ Ministry of Agriculture Regulation No 42/2012 and 43/2012.

Agreement, and the unjustified delay in reopening the market was seriously affecting the regional economy.

11. The United States stated that APHIS had worked with Argentina's SENASA for several years to develop a pest risk assessment and a set of risk mitigation measures that would permit the safe import of lemons from the North West region. The United States had sent a letter in June 2012 to SENASA communicating the outcome of APHIS' evaluation of Argentina's report on the transmissibility of CVC in lemons, and indicating that it would subsequently share a pest risk assessment for consultation. APHIS was waiting for SENASA's response to the letter.

12. In accordance with the provisions of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Argentina requested consultations with the United States on 30 August 2012 and the establishment of a panel on 6 December 2012.⁴

US restrictions on tomatoes (STC 339)

13. In October 2012, Senegal raised concerns regarding US restrictions on imports of tomatoes due to alleged presence of the pest *tuta absoluta*. The US ban had not been notified or verified with the Senegalese authorities, although subsequently a bilateral technical meeting had been held to seek resolution of the issue.

14. The United States highlighted that the issue raised by Senegal was discussed in a bilateral technical discussion and an agreement to work together to address the concern had been reached, with progress to be reported at the next meeting.

15. One issue relating to plant health that had been previously raised was discussed again during 2012:

Thailand's restrictions on table grapes, apples and pears (STC 326)

16. In October 2012, South Africa recalled that its exports of fresh fruit, particularly table grapes, apples and pears, as well as stone fruit, had been stopped as a result of Thailand's new Plant Quarantine Act. The Act prohibited imports of certain fresh produce until a PRA was completed. Consultations at technical and diplomatic levels had been pursued over the past four and a half years, in order to resume trade under the interim provision for historical exporters to Thailand. Although South Africa welcomed the recently concluded agreement which allowed its exports of fresh citrus fruit into Thailand, it remained concerned that the ban on other fresh fruits continued. South Africa urged Thailand to lift the ban, so historic trade could resume, and to conclude the required PRAs with urgency.

17. Senegal asked for information on the phytosanitary reason for this ban on table grapes and apples.

18. Thailand confirmed the implementation of the Thai Plant Quarantine Act, and that all of the relevant measures had been notified to the WTO. South Africa's request to export table grapes and other fruits to Thailand was now in the PRA process by the Thai NPPO. Thailand's exports of fresh produce to South Africa, such as mangosteen and longan, were subject to a similar PRA process. Thailand indicated that it had approved the PRA for citrus from South Africa, allowing importation of citrus fruits. Thailand suggested that the NPPOs of both countries engage directly to find a mutually satisfactory solution to the issue.

19. One phytosanitary issue that had previously been brought to the attention of the SPS Committee was reported to have been resolved, namely:

United States' import restrictions on Chrysanthemums (STC 292)

20. In July 2012, Costa Rica reported that its specific trade concern on the "Prohibition of Ornamental Plants Larger than 18 inches", raised for the first time in March 2010, had been resolved following the publication by the United States of a modified regulation addressing the concerns of

⁴ See WT/DS448.

Costa Rica. The United States thanked Costa Rica for its outstanding co-operation and collaborative efforts in resolving the concern.

21. WTO Members also used the opportunity of the SPS Committee meetings during 2012 to provide other information relating to plant protection measures, including:

- New Zealand indicated that the Ministry of Agriculture and Forestry (MAF) had merged with the New Zealand Food Safety Authority and the Ministry of Fisheries in 2011 (see WTO document G/SPS/GEN/1142). The new ministry would be called the Ministry for Primary Industries, with responsibility for all government work across the agricultural, horticultural, fisheries and aquaculture, forestry and food sectors, including imports and exports. The new ministry would continue to have primary responsibility for food safety and biosecurity. The new name would come into effect on 30 April 2012 and administrative changes (e.g. brands, official seals and logos) would run through to mid-2013.
- Australia reported on the reform of its biosecurity system and the release of Australia's draft biosecurity legislation for comment. Due to its size and complexity, the draft legislation had been released progressively. Australia had notified the first draft on in July 2012 as WTO document G/SPS/N/AUS/298, followed by two additional releases, and the final chapters of the draft legislation had been notified in G/SPS/N/AUS/298/Add.3. The consultation period had been extended to 24 October 2012. Australia would develop detailed regulations on the implementation of the legislation and notify these for comments. New legislation would replace the century-old Quarantine Act 1908. Revisions that might be of interest to Members were with respect to Australia's Appropriate Level of Protection (ALOP) and the biosecurity import risk analysis process. Existing approvals to export products to Australia would continue to be valid until their normal expiry dates. The Australian Quarantine and Inspection Service (AQIS) brand would be retired in 2013, but the Australian Department of Agriculture, Fisheries and Forestry would continue to have responsibility regarding biosecurity, agricultural, fisheries, forestry, food production and food safety sectors. The change would not affect the legal basis or competent authority under which orders, inspections and certifications were undertaken, nor Australia's requirements related to imported agricultural, food, plant and/or animal products. During the transition period any permit carrying the AQIS brand would be valid for the duration of the permit.
- Belize reported on a project funded by the Standard and Trade Development Facility (STDF) to apply the Multi-Criteria Decision Analysis Framework (MCDA) tool to structure the setting of priorities in SPS decision-making within a multi-disciplinary scenario. The application of the MCDA had resulted in eight capacity building options. Most important was the allocation of national funds for at least three of the top four options, which required minimal investments yet had impact on product diversification for small farmers. Several lessons were learnt in the application of the MCDA framework including that good stakeholder representation is essential in identifying key issues. The application of the specialized tools - OIE Evaluation of the Performance of Veterinary Services (OIE PVS) and the OIE Gap Analysis, the Phytosanitary Capacity Evaluation (PCE) and the Performance, Vision and Strategy Tools developed and applied by the Inter-American Institute for Co-operation on Agriculture (IICA) - helped identify the important areas that needed to be strengthened and established benchmarks by which competent authorities could measure their level of compliance. The MCDA framework allowed for clear prioritization of areas with the most impact on trade facilitation and encouraged greater appreciation by stakeholders of the work conducted by the SPS competent authorities.

B. Transparency

22. The SPS information management system (SPS-IMS) allows easy access and management of all WTO SPS-related documentation.⁵

⁵ See <http://spsims.wto.org>.

23. The legal obligation of WTO Members is to notify new or modified SPS measures when these deviate from the relevant international standards, including International Standards for Phytosanitary Measures (ISPMs). The recommendations of the SPS Committee, however, now encourage the notification of all new or modified measures even when these conform to international standards.⁶ Although this recommendation does not change the legal obligations of WTO Members, it may enhance transparency regarding the application of IPPC's ISPMs.

24. A total of 865 notifications of new or proposed SPS measures were submitted to the WTO in 2012. Among these, 198 regular notifications and 13 emergency notifications identified plant protection as the objective of the measure. Of these, 97 of the regular and 10 of the emergency notifications identified an IPPC standard as relevant, with 98% and 100%, respectively, indicating conformity to an IPPC standard. In 44% of these the specific ISPM of relevance was identified.

25. SPS National Notification Authorities can complete and submit SPS notifications online through the SPS Notification Submission System (SPS NSS). Almost 50% of notifications submitted during 2012 were submitted online.

C. Equivalence

26. The guidelines on the implementation of Article 4 of the SPS Agreement on equivalence⁷ notes, inter alia, the work on recognition of equivalence undertaken in the Codex, the OIE and the IPPC, and encourages the further elaboration of specific guidance by these organizations. At the 2012 March meeting of the SPS Committee, the IPPC representative indicated that it would start an analytical study on the topic of equivalence (see document G/SPS/GEN/1153).

D. Regionalization

27. Article 6 of the SPS Agreement requires that measures take into account pest- or disease-free areas or areas of low pest or disease prevalence. This concept is frequently referred to as "regionalization". Guidelines on regionalization⁸ adopted by the SPS Committee identify the type of information normally needed for the recognition of pest- or disease-free areas or areas of low pest or disease prevalence, as well as typical administrative steps in the recognition process. The Committee agreed to monitor the implementation of Article 6, on the basis of information provided by WTO Members.

28. The WTO Secretariat prepared a report on the implementation of Article 6, covering 2009 through 2011, based on information provided by WTO Members through notifications and at SPS Committee meetings.⁹ The report summarized: (i) requests for recognition of pest- or disease-free areas or areas of low pest or disease prevalence; (ii) determinations on recognition of regionalization; and (iii) Members' experiences in the implementation of Article 6 and the provision of relevant background information by Members on their decisions to other interested Members.

E. Monitoring the Use of International Standards

29. 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.¹⁰ These problems, once considered by the SPS Committee, are drawn to the attention of the relevant standard-setting body.

⁶ G/SPS/7/Rev.3.

⁷ G/SPS/19/Rev.2.

⁸ G/SPS/48.

⁹ G/SPS/GEN/1134.

¹⁰ G/SPS/11/Rev.1.

30. 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 Fourteenth Annual Report was adopted by the Committee on 11 July 2012.¹¹

31. At the 2012 July meeting of the SPS Committee, Argentina submitted a proposal to revise the monitoring procedure¹², which was further discussed at the October meeting. The proposed modifications to the procedure would include in the annual report the issues that have been raised under the agenda item on specific trade concerns when these relate to non-use of international standards or the absence of existing standards, to better reflect the actual importance of the international standards. No consensus has been reached on the proposal by Argentina and the SPS Chairperson encouraged bilateral discussions amongst WTO Members on the subject matter.

32. In March 2012, a number of WTO Members raised in a joint submission, which was supported by many other WTO Members, a horizontal concern regarding the number of SPS measures that were not based on international standards, guidelines and recommendations or that had inadequate scientific justification.¹³ These measures often unduly restricted trade and appeared to be associated with objectives not deemed as legitimate under international trade rules. The submission aimed at reaffirming: (i) the need for science-based international guidelines, standards and recommendations; (ii) the need to support and strengthen confidence in SPS international standard-setting bodies; and (iii) the need for sanitary and phytosanitary measures which resulted in a higher level of protection than would be achieved by measures based on the relevant international standards, guidelines and recommendations to be established on the basis of science.

33. At the 2012 July meeting, Brazil presented a document regarding the increase in demand for scientific advice to support food control systems.¹⁴ Argentina, Belize, Canada, Chile, the European Union, and the United States all supported the communication and in particular the crucial role of the scientific advice bodies. Belize emphasized the limited scientific capability of developing countries. The European Union recalled that the OIE and IPPC also needed support as independent scientific advice was indispensable to the work of all SPS standard-setting bodies. IPPC noted the support provided by the European Union for its work.

34. At the 2012 October meeting, The United States encouraged all WTO Members to promote the use of international standards in their national SPS programmes and to actively participate in the on-going work of IPPC, Codex and OIE. Brazil, Canada, Chile and Paraguay also stressed that the international standards setting bodies needed to be inclusive to achieve harmonization. By participating in the work of the ISSBs and ascribing to these international standards, Members would contribute to minimizing diverging requirements. Benin, Burkina Faso and Morocco recognized the importance of the standard-setting bodies, and noted the problem faced by developing countries in conducting risk assessments in the absence of standards. An appeal was made to speed up the process of standards setting, especially where there is a need for specialist / technical knowledge, and to support developing countries in producing local exposure data for conducting risk assessments.

35. At the three 2012 SPS Committee meetings, the IPPC representative reported on the Implementation Review and Support System (IRSS).¹⁵

F. Technical Assistance

36. 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 the IPPC and relevant technical assistance activities of the FAO.

¹¹ G/SPS/59.

¹² G/SPS/W/268.

¹³ G/SPS/GEN/1143/Rev.2.

¹⁴ G/SPS/GEN/1165.

¹⁵ G/SPS/GEN/1153, G/SPS/GEN/1169 and G/SPS/GEN/1204.

37. At its March 2013 SPS Committee meeting, the WTO Secretariat presented its report entitled "SPS Technical Assistance and Training Activities", containing detailed information on all SPS-specific technical assistance activities undertaken by the WTO Secretariat from 1 September 1994 to 31 December 2012.¹⁶

38. Document G/SPS/GEN/997/Rev.3, circulated in March 2013, provides information on all WTO technical assistance activities in the SPS area planned for 2013, including the Geneva-based advanced course which provides in-depth and hands-on training to government officials. Two regional workshops on the SPS Agreement are scheduled for 2013. National seminars are provided upon request by WTO Members and acceding governments. Further information on SPS activities is available through <http://www.wto.org/sp/ta>.

G. Review of the Operation and Implementation of the SPS Agreement

39. The SPS Committee is mandated to review the operation and implementation of the SPS Agreement every four years. As agreed in its Second Review¹⁷, the Committee is developing a procedure to facilitate the use of ad hoc consultations and negotiations to resolve trade problems. At its 2012 October meeting, the Committee agreed that an electronic "working group" (open to all interested WTO Members), would work with "stewards" to seek compromises on each of the five main issues of discord¹⁸. The results will be considered by the SPS Committee at its March 2013 meeting.

40. Following the Third Review¹⁹, the SPS Committee agreed to prioritize three issues for further consideration: (i) cooperation between the SPS Committee and the Three Sisters; (ii) improving the procedure for monitoring the use of international standards; and (iii) control, inspection and approval procedures (Article 8 and Annex C).

41. Members were encouraged to discuss their experiences with control, inspection and approval procedures, and the European Union presented its approach to SPS audits and inspections in third countries.

42. In October 2011, the WTO Secretariat organized a Geneva-based workshop on coordination of SPS matters at the national and regional levels. The workshop brought together officials responsible for participation in and implementation of the SPS Agreement, Codex, IPPC and/or OIE for an in-depth discussion, at a technical level, on best practices in coordination at national and regional levels.²⁰ The workshop addressed recommendations to national governments and regional bodies, and also recommended that the SPS Committee consider developing guidelines for good national coordination and/or a manual of good practices. Also, the SPS Committee formally agreed to a proposal from Canada and Japan to encourage the Three Sisters to undertake joint work on cross-cutting issues, such as, inter alia, certification, inspection, approval procedures and/or risk analysis.²¹

H. Private and Commercial Standards

43. 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.²² These actions relate to defining the scope of the discussions on these

¹⁶ G/SPS/GEN/521/Rev.8.

¹⁷ G/SPS/36.

¹⁸ (1) The mandatory/voluntary nature of the procedure; (2) issues of transparency/confidentiality; (3) the role of facilitator; (4) timeframes for the procedure; and (5) relationship with NAMA/other initiatives in the context of the Doha negotiations.

¹⁹ G/SPS/53.

²⁰ G/SPS/R/65.

²¹ G/SPS/58.

²² G/SPS/55.

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.

44. Discussions in 2012 focussed mainly on the development of a working definition of "SPS-related private standards"²³, although no consensus has yet been reached. A number of Members are of the view that this issue is not within the mandate of the SPS Committee; nonetheless several Members shared information on relevant developments and their interactions with the private standard-setting bodies. Belize reported that every single one of its agricultural export products is affected by SPS-related private standards.

II. Other Relevant WTO Activities

A. Dispute Settlement

The WTO Dispute Settlement Procedure

45. 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.²⁴ 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.

46. According to the SPS Agreement, when a dispute involves scientific or technical issues, the panel should seek advice from appropriate scientific and technical experts. Scientific experts have been consulted in all SPS-related disputes. The experts are usually selected from lists provided by the OIE, IPPC and Codex, standard-setting organizations referenced in the SPS Agreement. The parties to the dispute are consulted in the selection of experts and regarding the information solicited from the experts.

SPS Disputes

47. As of March 2013, more than 450 complaints had formally been raised under the WTO's dispute settlement procedures. Of these, 40 alleged violations of the SPS Agreement, and the SPS Agreement was relevant also in two other disputes. Twenty SPS-related complaints, on 15 issues, have been referred to a panel.

48. Three panel reports have concerned plant pests and quarantine requirements: (i) the United States complaint about Japan's requirement for testing each variety of fruit for efficacy of treatment against codling moth (*Japan-Agricultural Products*)²⁵; (ii) the United States' complaint about Japan's set of requirements on apples imported from the United States relating to fire blight (*Japan-Apples*)²⁶; and (iii) New Zealand's complaint against Australia's restrictions on apples (*Australia-Apples*).²⁷

²³ G/SPS/W/265/Rev.2.

²⁴ A flow chart of the dispute resolution process can be consulted at (http://www.wto.org/english/thewto_e/whatis_e/tif_e/disp2_e.htm).

²⁵ The report of the panel is contained in document WT/DS76/R. The Appellate Body report is contained in document WT/DS76/AB/R.

²⁶ The report of the panel is contained in document WT/DS245/R. The Appellate Body report is contained in document WT/DS245/AB/R.

²⁷ The report of the panel is contained in document WT/DS367/R. The Appellate Body report is contained in document WT/DS367/AB/R.

49. As noted above, Argentina requested consultations with the United States on 30 August 2012, and the establishment of a panel on 6 December 2012, regarding US measures on fresh lemons from the North West region of Argentina.²⁸

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

²⁸ See WT/DS448.