

**Committee on Sanitary and Phytosanitary Measures**

**SUMMARY OF THE MEETING HELD ON 27-28 OCTOBER 2004**

Note by the Secretariat<sup>1</sup>

**I. ADOPTION OF THE AGENDA**

1. The Committee on Sanitary and Phytosanitary Measures (the "Committee") held its thirty first meeting on 27-28 October 2004. The agenda proposed in WTO/AIR/2416 was adopted with amendments.
2. The Secretariat commented that the number of last minute submissions to the October meeting made it difficult to ensure that all documents were available to delegates in the correct format. The Secretariat requested that delegates submit documents well in advance of the Committee meeting, so that they could be circulated as formal documents, in the three WTO working languages.

**II. ACTIVITIES OF MEMBERS**

*New Zealand's biosecurity strategy*

3. The representative of New Zealand recalled that Members were informed in October 2001 of the development of a biosecurity strategy for New Zealand which aimed to provide direction and guidance for all agencies involved in biosecurity. The strategy was endorsed in August 2003 and the recommendations were to form the basis of New Zealand's biosecurity system for the next five years.
4. To support the implementation of the strategy, the existing biosecurity authority within the Ministry of Agriculture and Forestry would be restructured based on three streams of activity; pre-clearance, post clearance and policy and business development (G/SPS/GEN/517). The new structure would be called Biosecurity New Zealand and would come into effect from 1 November 2004. Biosecurity New Zealand remained an integral part of the Ministry of Agriculture and Forestry. More information could be found on the website at <http://www.maf.govt.nz/biosecurity/bio-strategy/index.htm>.

*Certification system for solid wood packing materials in Uruguay*

5. The representative of Uruguay reported that Uruguay continued to ensure conformance with certification of wood packing materials. Members would soon receive the full text of the regulation which established the various components of the certification system and was applicable to wood packing materials accompanying any exports to Uruguay, including those not subject to sanitary and phytosanitary control. The regulation also affected regulated articles and governed the administrative requirements for enterprises responsible for the packaging.
6. The representative of Egypt observed that implementation of ISPM 15 was a horizontal issue which was being discussed in the Committee on Trade and Environment in the context of

---

<sup>1</sup> This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights or obligations under the WTO.

environmentally preferable goods. It would be interesting to note the impediments that developing countries faced when exporting such goods. The representative of Uruguay stated that Uruguay's main concern was having adequate time to implement the certification system.

*Solid wood packing materials in the United States*

7. The representative of the United States informed the Committee that the United States had adopted new requirements for the importation of wood packing material. This final rule was published in the Federal Register on 16 September 2004 and was available on the APHIS website [www.aphis.usda.gov](http://www.aphis.usda.gov). The requirements would come into effect on 16 September 2005, giving countries sufficient time to implement these changes. The new measures were notified as G/SPS/N/USA/705 in May 2003 and were consistent with ISPM 15. These new requirements applied to wood packing material in all shipments including shipments of non-agricultural products. The representative of the United States urged Members to ensure that all interested agencies and commercial interests were alerted to these new requirements.

*Solid wood packing materials in Chile*

8. The representative of Chile expressed thanks to those Members who deferred the entry into force of ISPM 15 and to the standard-setting organizations and Members who provided training on its implementation. Chile's regulations on wood packing materials had been notified in G/SPS/N/CHL/170. The regulations specified the types of material that would be affected and incorporated the heat and fumigation treatment established by ISPM 15. The regulation also stipulated the requirements for trade markings and exempted certain products from treatment. Wood packing that was used for the import of goods of plant origin and accompanied with a phytosanitary certificate would be excepted. The regulations would come into effect on 1 June 2005 and comments were invited from Members. Chile was also in the process of gaining accreditation in order to certify that packing material from Chile complied with ISPM 15.

*Solid wood packing materials in Australia*

9. The representative of Australia stated that the new import conditions for solid wood packing materials were effective on 1 September 2004. However, Australia's previous import standards on wood packing continued to be applied in parallel to ensure continued market access for countries not yet in a position to implement the standard. The new regulations were notified to the WTO as G/SPS/N/AUS/164 and addendum. Removal of bark was required as there were concerns on the effectiveness of ISPM 15 in meeting Australia's quarantine requirements. This requirement was based on data from interceptions of pests in imported products, the efficacy of fumigation and inspection in the presence of bark, as well as the effectiveness of the standard treatment on certain pests, namely pine wilt nematode. Data was currently being updated and would be available to interested Members. Australia was in the process of finalizing its accreditation system to enable Australian exports to comply with requirements of countries who had already implemented ISPM 15.

*Fruit fly free areas in Costa Rica*

10. The representative of Costa Rica stated that 24,700 square hectares in the west of the country was free of the Mediterranean fruit fly. This was a priority issue for the government as the presence of fruit flies imposed costs on producers and affected Costa Rica's market access. The representative of Costa Rica urged Members to recognize the area-free status as required by Article 6 of the SPS Agreement.

*Avian influenza situation and control in China*

11. The representative of China stated that the outbreak of highly pathogenic avian influenza (HPAI) first reported on 27 January 2004 in Longan County, Guangxi Province was now effectively under control due to China's systematic stamping-out policy. The last case of HPAI was reported on 6 July in Anhui Province. Since the immediate implementation of the stamping-out policy and strict quarantine measures there had not been a new outbreak nor had any case of the human form of HPAI been reported. Restrictions imposed on the infected areas had been lifted and normal poultry production had resumed. China had also been actively engaged in technical exchanges and cooperation programmes with several countries and the FAO to improve the regional capacity for the prevention and control of avian influenza. The FAO cooperation project on diagnostic laboratory and surveillance networks coordination for the control and prevention of avian influenza in East Asia would be launched in Beijing on 27-29 November. Veterinary officials and experts from several countries as well as the FAO, WHO, OIE were expected to attend this meeting. The representative of China requested Members to lift restrictions on China's poultry exports on the basis of the successful control of the avian influenza.

12. The representative of Thailand expressed support for China's efforts and progress in the control and eradication of avian influenza in China.

*Avian influenza in British Columbia, Canada*

13. The representative of Canada reported that the last infected premises were cleaned and disinfected on 18 June. The incubation period for the avian influenza virus is 21 days and by 9 July, there were no additional cases of infection detected. Therefore, as of 9 July and in accordance with OIE guidelines, the identified zone or control area in the Fraser Valley located in the Province of British Columbia was no longer infected with the disease. Bird owners were permitted to restock their premises in all regions of the control area and as an additional precaution, a 60-day surveillance period was implemented following the cleaning and disinfection of the affected premises. On 18 August, the regulation that established the control area was withdrawn and the movement of poultry and poultry products on the domestic markets resumed. No infected premises were found outside the control area. Canada was free of the highly pathogenic avian influenza and a number of Canada's trading partners had lifted all remaining import restrictions. The representative of Canada urged the few remaining trading partners that have not yet done so to remove their import restrictions on poultry and poultry products from all areas of Canada.

*Bovine spongiform encephalopathy (BSE) status in Canada*

14. The representative of Canada provided an update on Canada's regulatory response to the discovery of a BSE case in Alberta, Canada, in May 2003 and on the associated trade-related issues (G/SPS/GEN/530). Prior to the detection of the BSE case in May 2003, a number of measures were implemented to secure the safety of animal and public health and food safety inspection systems such as the enforcement of a ruminant feed ban in 1997 and mandatory cattle identification system in 2001. Additional requirements for the removal of specified risk material from all cattle slaughtered for human food was introduced in July 2003. In addition, on 9 July 2004, Canada announced its intention to require the removal of bovine specified risk material from the entire animal feed chain to supplement the ruminant feed ban established in 1997. The draft regulations regarding the removal of specified risk material from feed would be notified to Members shortly.

15. Many of Canada's trading partners had taken steps to restore market access for beef, meat products, genetics and other animal products. However, there were a few trading partners who continued to restrict access of Canadian products even though these products were identified by the OIE as being safe for trade without restrictions. The representative of Canada requested those Members to immediately remove the restrictions and for all trading partners to restore access for the

full range of edible meat and meat products from cattle based on appropriate certification regarding the removal of specified risk material and on live animals born after the implementation of the 1999 ban.

*Bovine spongiform encephalopathy (BSE) in Portugal*

16. The representative of the European Communities reported that a ban was imposed on all exports of live bovine and derived products from Portugal because of the high risks of BSE. Since then, the Portuguese authorities had taken steps to manage the disease. Inspections carried out by EC veterinary officials in February 2004 confirmed Portugal's compliance with EC standards, which were also in conformity with OIE standards. Portugal was now considered a moderate risk country and the European Communities had lifted all restrictions on beef on the hoof and derived products. Risk management and controls continued to be applied in Portugal as well as in other areas within the European Communities.

*EC traceability requirements for third countries under the General Food Law*

17. The representative of the European Communities informed the Committee on the implications for third countries of EC regulation 668/2000 on the traceability requirements for food products which would come into force on 1 January 2005. Article 18 of the General Food Law stipulated that operators in the field of human or animal feed products were to set up traceability systems that allowed the identification of the immediate supplier and the client. The EC importer was the first link of the applicability of Article 18 and must be able to identify the supplier in the third country exporting the product. Article 18 of the General Food Law was not applicable outside the European Union. There was no legal obligation for the third country exporter to identify the immediate supplier, though this would be welcome.

*Information from the European Communities on Sudan dyes*

18. The representative of the European Communities raised concerns that trade in different types of food stuffs was being affected because of the fraudulent use of banned colorants, Sudan Red 1, 2, 3, and 4 which were normally used in plastics and other synthetic compounds. These colorants were carcinogenic and were classified as Group 3 by the International Cancer Research Agency.

19. In June 2003, EC member States were required to analyze spices for the presence of Sudan Red 1. The results indicated that a wide range of products such as chillies, curry powder and foods containing these products were contaminated with Sudan Red 1. Other banned dyes such as Sudan Red 2, 3, 4 and Scarlet Red were also found in a wide range of food products and spices. Since January 2004, there had been 209 reported cases of contaminated foodstuffs, therefore more restrictive measures would be imposed on these substances. There was also a danger that rejected shipments of products containing the banned colorants were being re-sold to countries whose control services could not detect them.

*Information from the European Communities on new MRPL provisions*

20. The representative of the European Communities reported its intention to harmonize criteria for the analysis of certain residues in products of animal origin imported from third countries. In 2002, a minimum performance limit was set for certain prohibited residues in order to achieve the health protection levels of the European Communities. This performance limit was not a tolerance limit for residues as the residues were non-authorized substances. The minimum performance limit was the limit that every laboratory must achieve in order to complete the first step in the harmonization process.

21. If the result of an analysis surpassed the minimum performance limit, it would be considered to be in non-conformity with EC legislation. On the other hand, if the results of the analysis were below the minimum performance limit, the product would be accepted within the European Communities even though the substance was prohibited. The new regulations would also contain provisions on actions taken on shipments not in conformity with EC legislation. Members would be shortly be notified of these new requirements.

*Accession of the European Communities to the IPPC*

22. The representative of the European Communities stated that on 19 July 2004, the Agriculture Council of the European Union formally adopted a decision concerning the European Communities' accession to the International Plant Protection Convention. The Agriculture Council had also accepted the 1997 amendments to the IPPC Convention. The standard-setting procedures and rules of the IPPC explicitly provided for the participation of organizational structures such as the European Communities. The European Communities' accession to the IPPC would enable the European Communities to fully participate in the development of international standards and to further the objectives of harmonization of standards.

23. The representative of New Zealand stated that a large number of Members had not yet ratified the revised text of the IPPC convention, which would come into force only when two-thirds of the contracting parties had ratified it. He urged all remaining Members to ratify the revised text.

*Foot and Mouth Disease (FMD) in Argentina*

24. The representative of Argentina reported on the progress of Argentina's national plan to eradicate FMD. The OIE had declared the region north of latitude 42° free of FMD with vaccination on 7 July 2003 but this status was suspended on 5 September 2003 due to a single outbreak close to the northern border. The outbreak did not have epidemiological implications for the rest of the country as it was limited to a subsistence farm. Nevertheless, Argentina implemented control and prevention measures recommended by the OIE. Preventative measures such as epidemiological investigations and vaccination programmes were implemented as well as border programmes with additional monitoring and risk mitigation measures. Eradication strategies included the culling of animals, vaccination, clinical and serological monitoring and demonstration of the absence of viral circulation.

25. Six months after the detection and implementation of control measures, the area was free of the disease. Twelve months following the outbreak, inspection of animals suspected of FMD revealed that the disease had been eradicated. Serological sampling conducted in the entire country confirmed the absence of the virus and Argentina was working to get its FMD-free status recognized by the OIE.

**III. SPECIFIC TRADE CONCERNS**

(a) New Issues

*China's measures on US poultry*

26. The representative of the United States raised concerns over China's nation-wide ban on US poultry products following the detection of low pathogenic avian influenza in the state of Delaware in February 2004. China had not modified its import ban accordingly when highly pathogenic avian influenza was detected in the state of Texas. The import ban was applied to the entire territory of the United States despite the fact that the highly pathogenic avian influenza outbreak was confined to a limited area. The outbreaks were brought under control and eradication, cleaning and disinfection of the highly pathogenic infected premises was completed on 23 February 2004.

27. On 20 August 2004, trading partners were advised that the six-month period prescribed by the OIE had elapsed and that the United States was free of highly pathogenic avian influenza. Despite this, China still maintained the ban on poultry products from the entire territory of the United States. These restrictions were not scientifically justified and were inconsistent with SPS obligations. China was requested to lift the ban immediately and to ensure that future implementation of emergency measures were consistent with Article 6 of the SPS Agreement.

28. The representative of Canada noted similar concerns with China maintaining a comprehensive ban when regionalized measures were the appropriate response, and sought a removal of all measures with respect to Canada.

29. The representative of China stated that China had adopted provisional emergency measures early in 2004 to prevent the entry and spread of low and highly pathogenic avian influenza. A ban on the importation of US poultry and poultry products was therefore implemented. China had actively communicated with the United States for updates of its avian influenza status. In August 2004, a team of Chinese experts visited the United States to conduct on-site inspections with the objective of regionalizing its ban on avian influenza as well as the possibility of lifting the ban on US poultry. A risk assessment was being conducted and a decision would be made based on the outcome of the risk assessment. The actions that China had taken were consistent with Article 6 of the SPS Agreement and OIE guidelines and recommendations.

*EC deviation from international standard for wood packing material*

30. The representative of the United States expressed concerns over EC Directive 2004/102 which affected the importation of wood packing material. The Directive required the debarking of wood used in packing material in addition to the heat and fumigation treatment prescribed by ISPM 15. The representative of the United States recalled that the issue of debarking was considered by IPPC Members during the development of ISPM 15 where it was determined there was insufficient scientific evidence to justify the debarking requirement as an additional risk management measure.

31. The debarking requirement would disrupt US trade with the European Communities of around US\$80 billion. Furthermore, the unjustified deviation from ISPM 15 undermined efforts to increase international harmonization. Several other Members had indicated their intention to require additional measures beyond what was required by ISPM 15 and the proliferation of different requirements for packing material had the potential to impede trade significantly. The representative of the United States requested the European Communities to reconsider its measures or to postpone the implementation of the debarking requirements until scientific justification was available.

32. The representative of New Zealand stated that countries or regions should not adopt unilateral measures for wood packing material that would cause the disruption of the global implementation of ISPM 15. However, there might be technical justifications for requiring bark-free ISPM 15 compliant wood packing material.

33. The representative of Canada shared the concerns of the United States on the importance of achieving harmonization. ISPM 15 allowed for the introduction of debarking requirements only where it could be scientifically justified. Countries that were introducing debarking requirements should present a risk analysis or provide scientific justification. The issue of debarking was under review by the international forestry quarantine research group. The European Communities and those countries introducing debarking requirements were requested to reconsider their measures until the completion of the international review.

34. The representatives of China, Mexico and the Philippines shared the concerns of the United States and urged Members not to apply measures in excess of ISPM 15 in the absence of any

scientific justification. The Philippines was in the process of incorporating ISPM 15 in its national legislation and would examine the impact of the EC regulation on Philippines' trade.

35. The representative of Chile stated that its measures were under public consultation and it would be pleased to receive comments from Members.

36. The representative of the European Communities stated that EC Directive 2000/29 was adopted on 5 October 2004, establishing protective measures against the introduction and spread of harmful organisms to plant and plant products into the European Communities. These measures were notified on 10 November 2003 and would enter into force on 1 March 2005.

37. There was some flexibility in the requirements for the markings as specified in Annex 2 of ISPM 15 and in the conditions required for dunnage. For wood packing material manufactured, repaired or recycled before 28 February 2005, the requirements for the markings would not come into effect until 31 December 2007. The requirements for dunnage (except wood less than 6 mm thick) and processed wood would not come into effect until 31 December 2007. These products could be made from debarked wood that was free from pests. The representative of the European Communities stated that ISMP 15 allowed for the requirement of wood packing material to be made from debarked wood where this could be scientifically justified. The European Communities had included these requirements to ensure protection against future infestation or re-infestation once treatment had been completed. The current regulations were being considered by EC authorities in Brussels and the Committee would be informed of any changes.

#### *India's ban on food grade wax*

38. The representative of the United States stated that on 13 August 2003, India's Ministry of Health and Family Welfare published gazette notification GSR 656 amending the 1955 Prevention of Food Adulteration Act by prohibiting the sale of fresh fruits and vegetables coated with waxes, mineral oils and colours. This amendment threatened US horticultural exports to India and was not notified to the WTO. The new requirements exceeded those of the Codex and were adopted without scientific justification. Furthermore, the long shipping journey to India's ports means that the export of US fruits and vegetables without waxing was not a viable alternative. Waxing was an essential treatment required to maintain shelf life. India was requested to notify this measure to the WTO so that Members could have the opportunity to comment on the regulations.

39. The representative of India replied that he would inform the relevant authorities of the concerns of the United States. The measure in question had earlier been published in draft form in the Ministry of Health notification GSR 852 on 30 December 2002, inviting comments from all interested parties. The current measure was in force due to increasing incidents of the use of unsafe wax and adulteration of food with harmful chemicals. This was also a problem with domestic food traders and vendors. The issue of wax coating of fruits and vegetables was being examined by an expert group under the auspices of the Ministry of Health.

#### *Korea's septoria controls on horticultural products*

40. The representative of the United States stated that since April 2004, Korea had banned imports of citrus from California due to concerns of the fungi *septoria citri*. The United States was working closely with Korean plant health officials to address this concern although no cases of the fungi had been detected in any US shipment of citrus. The United States had proposed several measures to address Korea's plant health protection concerns and technical discussions would be held on 4 November. The United States hoped that discussions on the protocol would be finalized and trade resumed quickly as the harvesting season would shortly begin.

41. The representative from Korea stated that *septoria citri* was one of the most serious quarantine pests in Korea. The US proposed protocol did not fully address Korea's concerns. A ban was imposed on fruits originating from two particular areas in the United States where the fungi was repeatedly detected.

(b) Issues Previously Raised

*Japan's official control restrictions*

42. The representative from New Zealand recalled that the issue of Japan's official control restrictions had first been raised in the Committee in March 2002 but bilateral exchanges had been occurring since 1986. At the last Committee meeting Japan had indicated that it had concluded its review of its plant quarantine regime and would be notifying Members of the changes in December 2004. The representative of New Zealand asked whether Japan had adopted the necessary procedures to expand its non-quarantine pest list to include those pests already present in Japan that were not under official control as defined by the IPPC.

43. The representative of the United States stated that the United States had also raised similar concerns in previous Committee meetings and looked forward to reviewing the report on Japan's plant quarantine regime at the end of the year. The representative of the European Communities expressed support for the statements made by New Zealand and the United States and urged Japan to align its phytosanitary measures with IPPC definitions and guidelines.

44. The representative of Japan replied that Members would be notified of the changes in its legislation in December 2004 and amendments would be made no later than March 2005.

*India's import restrictions on almonds*

45. The representative of the United States recalled that India's requirements for methyl bromide fumigation for numerous products from the United States was raised in the last Committee meeting. The fumigation requirements were adopted in November 2003, but were notified only in January 2004, two months after the measure had come into force. Bilateral discussions were held with India where it was agreed that US almonds would be allowed under the previous import requirements until June 2005. Phosphine was a proven and effective treatment for quarantine and storage pests associated with almonds. Nonetheless, the United States was conducting further research to develop long-term solutions to address India's concerns.

46. The representative of India stated that the United States had provided information and data on the efficacy of phosphine as a fumigant. However, until field data was available, US almonds would be allowed into India subject to fumigation at the port of entry.

*Korea's residue level testing requirements*

47. The representative of the United States raised concerns over Korea's notification G/SPS/N/KOR/123 which came into effect in August 2003. Grains, fruits and vegetables were subject to annual MRL test requirements for the presence of 196 agricultural chemicals and affected US exports. Amendments were made to G/SPS/N/KOR/123 with the issuance of G/SPS/N/KOR/154 and 155 in March 2004, but these amendments did not fully address the concerns of the United States. For example, Korea had proposed in G/SPS/N/KOR/154 that imported foods with clean records would be exempted from the mandatory laboratory inspections. However, the proposed exemptions had not been put into effect in the final revised regulations.

48. Furthermore, although Korea had reduced the number of chemicals subject to mandatory laboratory inspection from 196 to 47, testing fees of approximately US\$500 per test were still applied.



The testing fee was still twice as large as that initially proposed by the Korean Food and Drug Administration in October 2003. Domestic producers were only subject to random testing and the costs were borne by the Korean government. The US concerns were directly related to distinctions in fees between imported goods and like-products produced in Korea in accordance with Annex C of the SPS Agreement. This was a violation of the WTO national treatment principle. The United States had held bilateral consultations with Korea and had raised this issue several times in the Committee. Korea's efforts to mitigate the trade restrictive requirements were not sufficient.

49. The representative of the European Communities shared the concerns of the United States as the European Communities had also been affected by Korea's testing requirements. Korea's measures as notified in G/SPS/N/KOR/123 were still being implemented and the amendments as notified in G/SPS/N/KOR/154 and 155 did not have a proposed implementation date. Korea's current testing requirements were disproportionate to the risks and were discriminatory against imported products. The representative of the European Communities requested Korea to remove these restrictive measures and to align them to international standards.

50. The representative of Korea stated that it would take some time to revise the relevant legislation needed to implement the measures notified in G/SPS/N/KOR/154 and 155. The testing fee had been substantially reduced and was now one-third the cost of the previous fee. However, the fee was still two times higher than what was proposed in October 2003 because the domestic industry was concerned that the proposed testing fee was not sufficient to compensate for testing requirements needed to ensure the safety of foods. Testing fees would be adjusted in the future when the need arose. Korea applied strict guidelines to domestic products with respect to the use of agro-chemicals and did not discriminate between imported and domestically produced products. The representative of Korea took note of the concerns of the United States, particularly with reference to Annex C of the SPS Agreement.

*EC conditions for the importation of bees*

51. The representative of Argentina expressed continued concerns over the EC measures for the importation of bees, hives, queens with or without attendants, and bee-keeping material. The measures were not justified by scientific evidence or a risk assessment and did not take into consideration the different pest status of exporting countries. The concerned parasites had not been detected in Argentina and recent studies confirmed the absence of the parasites. Reports of the studies were made available to the European Communities and the final version would be submitted to the OIE confirming the absence of the parasite in the main exporting regions. Despite having taken these measures, trade in queen bees from Argentina was still restricted. Argentina urged the European Communities for a prompt resolution of the issue as trade in queen bees was a seasonal activity.

52. The representative from the European Communities stated that bilateral discussions were held with Argentina where it was explained that these measures were adopted to prevent the introduction of two particular bee parasites that were of serious risk to the EC bee population. The recent interception of a contaminated shipment from Portugal justified the protective measures adopted by the European Communities. Although Argentina had submitted eight reports, the European Communities were still not satisfied that Argentina's measures were sufficient to guarantee a parasite-free status. The reports did not indicate how particular geographical and climatic conditions would permit regionalizing the province of Buenos Aires. The European Communities were not in a position at this time to relax controls on bee imports from Argentina. Information received by the European Communities indicated that exports of Argentine bees were not affected during the 2004 season. However, the European Communities were prepared to discuss the impact of its measures on international trade with Argentina.

*Indonesia's restrictions on the importation of certain products due to FMD*

53. The representative of Argentina reported that Indonesia continued to prohibit imports of Argentine bee. Indonesia required the country of origin to be free from FMD 12 months preceding the shipment and without vaccination over the past three consecutive years. These requirements exceeded OIE guidelines and recommendations. The representative of Argentina requested Indonesia to comply with OIE recommendations or submit a risk analysis to justify its measures.

54. The representative from Brazil shared Argentina's concerns. Indonesia had prohibited imports of soybean and soybean products from FMD-free areas with vaccination in Brazil. Indonesia's measures were inconsistent with OIE guidelines and recommendations and Article 6 of the SPS Agreement.

55. The representative of Indonesia explained that any country wishing to export to Indonesia must be free of FMD and rinderpest as stipulated in the Indonesian Ministry of Agriculture Decree 1992. Countries meeting these requirements were allowed to export to Indonesia. With respect to Argentina, imports were allowed when Argentina was declared FMD-free in 2000. However, imports were suspended when there was an outbreak of the disease. Argentina and Brazil had not been declared FMD-free without vaccination by the OIE. The same conditions also applied to soybean and soybean products and imports would be allowed into Indonesia once the outbreaks were brought under control.

*Panama's restrictions on dairy products*

56. The representative of Argentina informed the Committee that he had received positive news on the issue of Panama's restrictions on dairy products and was hopeful of a resolution by the next Committee meeting.

57. The representative of Panama stated that bilateral consultations were held with Argentina prior to the Committee meeting and he was optimistic of resolving the issue.

*United Arab Emirates' and Qatar's import restrictions on Spanish olive oil*

58. The representative of the European Communities stated that bilateral consultations were held with several Gulf countries prior to the meeting to address restrictions imposed on Spanish olive oil by the United Arab Emirates, Qatar, Oman, Bahrain and Kuwait. The European Communities were hopeful for a prompt resolution of the issue and would also be holding bilateral meetings with Oman and Kuwait. The issue of contaminated Spanish olive oil was a one-off incident that occurred in 2001. The concerned EC State had the situation under control within a month of the incident happening and now exported to more than 70 countries world-wide.

*India's restrictions on live birds, fresh meat and other animal products due to avian influenza*

59. The representative of the European Communities expressed concerns that India continued to impose a ban on some live animals and a range of products of animal origin due to the risk of entry of highly pathogenic avian influenza (HPAI) into India. India issued two notifications, on 7 July and on 6 August, informing Members of the relaxation of the ban for a range of products. However, the ban was disproportionate to the risk and there was no scientific basis for some of the measures imposed by India. The ban should be confined to regions affected by the disease following OIE guidelines and recommendations. The European Communities have been declared by the OIE as being free of HPAI and safeguard measures had been put in place to protect and maintain this sanitary status. India was requested to review its ban and bring its measures into conformity with the SPS Agreement.

60. The representative of India stated that the ban was a temporary measure which was enforced due to the outbreak of avian influenza throughout the world. The prevalence of the family-based poultry industry and the significant numbers involved in the industry would make it impossible to control the disease if it spread to India. The situation had been under constant review since the imposition of the ban in February 2004. The ban on imports of poultry with vaccination and specific pathogen free eggs was lifted in July 2004. A subsequent review by an expert group resulted in the continuation of the ban on imports of certain products such as live and raw poultry and pig meat. Processed products from HPAI infected countries were allowed into India, however, and the situation continued to be monitored.

(c) Consideration of Specific Notifications Received

*EC regulation on Ochratoxin A in coffee (G/SPS/N/EEC/247)*

61. The representative of Colombia reported that the European Communities had responded to Colombia's questions in G/SPS/GEN/475. The EC response was contained in G/SPS/GEN/490 and explained that Germany was able to set maximum levels of Ochratoxin A (OTA) in roasted and soluble coffee as harmonized EC standards were not yet established. On 1 September 2004, the European Communities issued G/SPS/N/EEC/247, notifying Members of the EC proposal to establish levels for OTA in roasted and soluble coffee.

62. Colombia continued to be concerned about the impact of the measures on the marketing of coffee in Europe and had raised several questions as outlined in G/SPS/GEN/515. The European Communities were asked to explain why OTA levels were set for coffee when coffee contributed only 8 per cent of the intake of OTA in the European diet compared with cereals and cereal products which contributed 50 per cent of the intake of OTA. Scientific justification for the levels of OTA set for coffee was requested from the European Communities, as well as an explanation of the method used to determine the OTA levels. The European Communities were also requested to explain why the OTA levels for coffee and cereals and cereal products were the same when the intake of OTA was higher in cereals and cereal products than in coffee. Moreover, if the OTA levels for beer were indirectly controlled by its main input, malt, why were not the OTA levels for soluble coffee indirectly controlled by its main input, roasted coffee. Finally, the European Communities were asked to explain why there was a need to protect public health with regards to coffee and not beer.

63. The representative from Colombia suggested that the European Communities consult studies on OTA toxicology as a starting point in establishing maximum OTA levels in green coffee. The entire production chain would need to be regulated when establishing maximum levels of OTA for green coffee which would be both impractical and counterproductive as additional infrastructure and storage facilities would be needed. Furthermore, the risks of formation of mycotoxins were increased during prolonged periods of storage due to the condensation and re-humidification process in the beans. OTA levels should not be set until there was scientific justification. The representative of Colombia called on the Codex Alimentarius to consider the issue of maximum levels of OTA in coffee in the joint FAO/WHO Expert Committee on Food Additives (JECFA).

64. The representatives of Bolivia, Brazil, Chile, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Kenya and Peru supported the statements made by Colombia and requested a copy of the EC response to the questions posed by Colombia. The representative of Chile stated that the Committee should include this issue under the procedure to monitor the use of international standards.

65. The representative of the Codex Alimentarius reported that little progress had been made on this issue in Codex since the March meeting of the SPS Committee. Codex had not established Maximum Residue Levels (MRLs) for green and roasted coffee but had been working to establish MRLs in cereals for several years. However, this was still at the elaboration stage due to the lack of

consensus on the numerical limits. The Codex Committee for Food Additives and Contaminants (CCFAC) had requested JECFA to include the risk assessments on OTA for evaluation by 2006. At the last meeting of the CCFAC, a suggestion was made to include new work in Codex on the development of a code of practice to reduce mycotoxin contamination in coffee and cocoa. This proposal will be discussed at the next CCFAC meeting in April 2005.

66. The representative of the European Communities explained that once EC harmonized standards were established, national standards ceased to be effective. From the perspective of the exporting country, the EC harmonized standards had the advantage of being lower than the national standards of many member States. The European Communities would make available its response to Colombia's questions through the Secretariat and the European Commission's website contained information on the methodology used to determine the level of OTA in coffee.

67. The EC draft regulation covered ground and roasted coffee but not green and soluble coffee. MRLs for OTA had already been established for grains and its by-products and raisins. Furthermore, MRLs for OTAs for wine and wine based beverages had been proposed. While studies had concluded that cereals and cereal-based products were the main sources of consumer exposure to OTA, wine, grape juice and roasted and soluble coffee also contributed significantly to consumer exposure. The European Communities would reassess its decision on the basis of the results of the toxicology studies on OTA that would be available in 2006.

*EC's regulation on aflatoxins and Ochratoxin A in foods for infants and young children (G/SPS/N/EEC/223/Add.1)*

68. The representative of China raised concerns over EC notification G/SPS/N/EEC/223 and addendum on aflatoxins and OTA in foods for infants and young children. Studies conducted by JECFA concluded that the acceptable level of risk was the same when the level of aflatoxin B1 was reduced from 20 to 10 mg/kg and when the level of aflatoxin M1 was reduced from 0.5 to 0.05 mg/kg. Any further reductions of the levels of aflatoxins B1 and M1 would have no significant impact on public health safety. Furthermore, JECFA, in its 37<sup>th</sup> Session, had established a weekly intake of OTA of 112 mg/kg. This minimum intake was subsequently lowered to 100 mg/kg at the 44<sup>th</sup> Session of JECFA and remained unchanged in the 56<sup>th</sup> Session based on results of risk assessments carried out on OTA levels in cereals and cereal based products. The European Communities was requested to provide scientific justification for its measures and to consider the impact of the measures on international trade.

69. The representative of the European Communities stated that the EC regulation amending Commission regulation 466/2001 concerning aflatoxins and OTA in foods for infants and young children applied to products placed in EC markets and was effective from 1 November 2004. China had not submitted comments during the comment period, nevertheless, China's comments would be taken into account and a written response would be provided. The JECFA studies referenced above were based on intake levels of adults, rather than on intake levels of infants. The European Communities had therefore considered it necessary to establish maximum levels of aflatoxins of B1, M1 and OTA for infants and young children. These maximum levels were achievable and substantiated by data. Furthermore they had little trade implications, as finished foods for infants and young children were not traded in significant amounts.

*Japan's standards and specifications for food additives (G/SPS/N/JPN/121)*

70. The representative of China drew attention to Japan's notification G/SPS/N/JPN/121 on proposed MRLs for the fungicide boscalid. The products affected by the proposed MRL included products of animal origin although the use of boscalid was applicable to only a few products such as soybean and fruits. Furthermore, MRLs for boscalid varied for different products, e.g., the MRL for strawberries was 15 ppm while the MRL for other products was 3.5 ppm. The representative of China

requested Japan to explain these differences in MRLs and to provide scientific evidence to justify the establishment of MRLs for boscalid.

71. The representative of Japan stated that its measures were based, in part, on the standards adopted by the US Environment Protection Agency (EPA) for boscalid, including the products that were affected by the MRL. As boscalid was a newly registered agricultural chemical in Japan, MRLs needed to be established to ensure food safety. Domestic data was also taken into account in establishing the MRL and this explained why there were some differences in the MRLs between Japan and the United States.

*US rule on materials derived from cattle (G/SPS/N/USA/933) and record-keeping requirements (G/SPS/N/USA/934)*

72. The representative of Argentina stated that notification G/SPS/N/USA/933 and 934 were published as regular notifications but were of immediate and compulsory implementation despite giving a timeframe for comments. Furthermore, Argentina was recognized as free of BSE but had to comply with the same requirements imposed on countries affected with BSE. The United States was requested to recognize the different disease status of Members as required in Article 6 of the SPS Agreement.

73. The representative of China raised concerns over US measures notified in G/SPS/N/USA/933 and 934. The product description in the notification was too general and the HS tariff codes for the products covered by the two measures should be included. The notifications broadly included all trading partners exporting human food or cosmetics to the United States without taking into account the BSE status of different countries or regions. It was not necessary to restrict products from countries free of BSE nor should manufacturers be required to keep relevant records. These measures impeded international trade and the United States should provide scientific justification for its deviation from international standards and modify its measures accordingly.

74. The representative of the United States explained that notification G/SPS/N/USA/933 prohibited the use of materials derived from cattle in human food, including dietary supplements, and in cosmetics. Prohibited cattle materials included specified risk materials such as brain and spinal tissue, small intestine of all cattle, material from nonambulatory disabled cattle, material from cattle not inspected and passed for human consumption and mechanically separated beef. These restrictions were put in place to reduce the risk associated with BSE and the human disease variant Creutzfeldt-Jakob disease. The FDA issued an interim final rule effective immediately with a 90-day comment period ending on 12 October 2004 and would consider modifications on the final rule based on comments received. The requirements of prohibited cattle materials were imposed without exceptions to any products or ingredients of products manufactured in or imported into the United States. However, the United States recognized that a country's BSE status might merit consideration as the final rule was being developed. To this effect, the United States was seeking comments on the issue of equivalence as it related to BSE risk management requirements as well as on standards to apply when determining another country's BSE status, providing an exemption for BSE free countries. The FDA and USDA were working to develop a harmonized US position on exempting other countries from respective requirements related to BSE which might be based, at least in part, on a country's BSE status as determined by the OIE.

75. Notification G/SPS/N/USA/934 was issued at the same time as G/SPS/N/USA/933 and required manufacturers and processors of human food and cosmetics that were manufactured from, processed with or otherwise contained material from cattle to establish and maintain records demonstrating that foods and cosmetics were in compliance with the interim final rule. The comment period of the proposed record-keeping rule ended on 13 August and the comments were currently being reviewed. The United States would notify the Committee of any changes incorporated in the

final rule. The United States would include the HS codes as requested by China via a corrigendum to the two notifications.

*EC proposed regulation on maximum residue levels of pesticides (G/SPS/N/EEC/196/Add.1)*

76. The representative of Argentina drew attention to EC notification G/SPS/N/EEC/196/Add 1 which aimed to consolidate and simplify existing EC directives on maximum residue levels of pesticides in products of plant and animal origin. The proposed rule would seriously affect developing countries' agri-food exports. Of particular concern was the EC default level of zero for maximum residue limits set for products that had not been authorized or when data was unavailable to demonstrate the safety of the residues. This requirement was implemented for economic reasons rather than for food safety considerations. Moreover, many of the maximum residue limits set by Codex had not been accepted by the European Communities, especially those set before 1990. The European Communities should provide scientific justification for deviations from international standards as well as consider the economic impact of the implementation of its proposed regulation on trading partners.

77. The representatives of Bolivia, Brazil, Chile, China, Colombia, Cuba, Honduras, Mexico, Paraguay, and Uruguay echoed the concerns raised by Argentina. The representatives of Chile and Cuba asked what methodology was used in setting the default detection limit.

78. The representative of the Philippines, on behalf of ASEAN countries, supported the statement made by Argentina and asked why the European Communities had not adopted relevant Codex standards. The European Communities should provide a risk assessment if a higher level of protection than that achieved by the relevant Codex standards was adopted. Furthermore, developing countries lacked the technological and analytical capability to comply with the new default approach and this could have adverse economic implications for them.

79. The representative of the European Communities explained that a listing of all available risk assessment documents on approved MRLs had been made, including those MRLs for pesticides approved many years ago. Some of the risk assessments were no longer relevant today and so a reassessment of the pesticides was needed. The industry was requested to supply the relevant scientific and technical data to carry out these risk assessments. However, the industry was no longer interested in marketing some of the older pesticides and were not keen to fund research. Therefore, these pesticides were withdrawn from the list and a residue default level was set for them. The European Communities would, however, allow the use of these pesticides if furnished with relevant risk assessments from interested trading partners. The representative of the European Communities requested Argentina to provide its questions in writing so that detailed written replies could be communicated to all interested Members.

*India's non-notification of various SPS measures*

80. The representative of the United States recalled that he had raised the issue on India's compliance with the transparency obligations in the Committee meetings earlier in the year. The United States remained concerned over the impact of India's non-notification of its measures on US exports. India's lack of transparency created uncertainty among exporters. India was requested to notify their SPS measures and to allow a reasonable period of time for comment.

81. The representative of the European Communities shared the concerns of the United States and at the same time urged all Members to notify their SPS measures. A bilateral meeting had been held with India and the European Communities were optimistic of improvements in India's transparency obligations.

82. The representative of India stated that India attached great importance to the transparency provisions of the SPS Agreement and would ensure that it complied with its obligations.

*Notification by Members of implementation of ISPM 15*

83. The representative of the European Communities stated that a number of Members had informed the Committee of their intentions to put in place wood packing requirements based on ISPM 15. These wood packing requirements would also cover wooden barrels and casks containing distilled spirits or other alcoholic beverages. Although ISPM 15 was not clear on the coverage of products, it provided guidance on products that might be excluded such as manufactured wood. The wooden barrels and casks typically used to contain distilled spirits and wine were subject to heat treatment at 100 degrees centigrade for 40 minutes, exceeding ISPM is guidelines of 56 centigrade for 30 minutes.

84. It was apparent that the drafters of ISPM 15 did not intend to cover wooden barrels used to contain alcoholic beverages such as spirits. Some countries had clearly indicated in their domestic legislation that ISPM 15 did not apply to wooden barrels containing spirits. The European Communities noted that the IPPC was organizing a global training workshop in 2005 to explain the application of ISPM 15 but requested the IPPC to clarify the matter as soon as possible in order to allow trade to continue.

(d) Information on Resolution of Issues

*EC export restrictions due to BSE*

85. The representative of the European Communities informed the Committee that several WTO Members had reviewed their bans on EC beef and small bovine ruminant products and replaced them with specific requirements in accordance with OIE standards. The European Communities urged all those Members who had not done so to align their regulations in accordance with OIE standards.

86. The representative of the United States noted that some Members were reviewing their import restrictions on US beef and also urged all those Members who had not done so to align their regulations in accordance with OIE standards.

*EC export restrictions due to classical swine fever*

87. The representative of the European Communities recalled that the European Communities had on previous occasions requested on Members to adhere to the principles of regionalization and to recognize the disease-free status of EC member States. Several Members had now removed their restrictions on some EC member States. The European Communities would provide all necessary information to demonstrate its disease-free status to any WTO Member.

*United States de-listing of France from authorization to export certain meat and meat products*

88. The representative of the European Communities reported that the USDA had carried out inspections in France and concluded that the French regulatory system met US requirements and was eligible to export meat-based products to the United States. The European Communities looked forward to continued good relations with the United States so that in future measures more restrictive than necessary were not adopted.

89. The representative of the United States stated that a follow-up audit of the headquarters of the French Inspection Service, three local offices and four establishments was conducted in September and October. The audit concluded that French establishments met the US requirements and the suspension on French meat-based products was lifted on 15 October 2004.

*Switzerland's import requirements on meat and eggs*

90. The representative of Switzerland informed the Committee that item number 150 of document G/SPS/GEN/204/Rev.4 on Switzerland's import requirements on meat and eggs had been resolved. This trade concern had been raised by the United States and substantial changes had been made to the regulation to take into account comments received during the public consultation process. These changes were notified to the TBT Committee in 1999 and were no longer considered SPS issues. The representative of the United States concurred that the issue was resolved.

*Switzerland's measures on wheat, rye and triticale (G/SPS/N/CHE/5)*

91. The representative of Switzerland stated that item number 151 of document G/SPS/GEN/204/Rev.4 on Switzerland's measures on wheat, rye and triticale was raised by Argentina in 1997. This issue was now resolved as Argentina was free from *triticale indica* and therefore the measure did not apply to them. The representative of Argentina concurred that the issue was resolved.

#### **IV. OPERATION OF TRANSPARENCY PROVISIONS**

92. The Chairman drew Member's attention to the documents circulated by the Secretariat to enhance transparency within the context of the SPS Agreement. These included the list of National Notification Authorities (G/SPS/NNA/7), the list of SPS Enquiry Points (G/SPS/ENQ/17), an update of implementation of transparency obligations (G/SPS/GEN/27/Rev.13), and the monthly summaries of SPS notifications (G/SPS/GEN/507, 509, 511 and 516).

93. The Secretariat informed Members that eight supplements on unofficial translations were received from Members during the year. Although the number of notifications to the WTO were steadily increasing there were still many Members who had not yet notified the WTO of changes in their regulations. Members were therefore urged to comply with their obligations to enhance transparency.

94. In response to a query from the representative of Kenya as to why a large number of countries were not complying with their transparency obligations, the Chairman recalled that a special meeting on the operation of enquiry points held last October highlighted some of the issues and problems regarding the transparency provisions of the SPS Agreement. In addition, there were numerous technical assistance activities undertaken by the Secretariat since 1995 that covered the transparency provisions. If these activities were not effective in assisting Members to comply with their transparency obligations, then the Committee might need to consider other solutions.

95. The Secretariat stated that it was Members' responsibility to ensure the implementation of the transparency provisions of the SPS Agreement. A handbook and CD-ROM on how to apply the transparency provisions was available to assist Members to meet their transparency obligations. In addition, the Joint Technical Assistance Program (JITAP) would provide training to sixteen African countries on the operation of SPS Enquiry Points in 2005.

96. The representative of Mauritius stated that it was important for developing countries to exchange information and experiences on the implementation of the transparency provisions with other developing countries. To this effect, Mauritius had participated in workshops in several Caribbean and African countries on the transparency provisions, in addition to a video conference with several Asian countries.

97. In response to a question from the representative of Antigua and Barbuda as to when was it appropriate for a country to notify its measures to the WTO, the Secretariat replied that this should be



done as early as possible when the draft text of the regulation was available, so that amendments could be incorporated in the draft on the basis on comments received from trading partners.

## **V. IMPLEMENTATION OF THE PROVISIONS FOR SPECIAL AND DIFFERENTIAL (S&D) TREATMENT**

### *Chairman's report on the informal meeting*

98. The Chairman reported that the Committee had discussed four items during the meeting: (1) the elaboration of the procedure to enhance transparency of special and differential treatment in favour of developing country Members; (2) the proposals on special and differential treatment referred to the SPS Committee by the General Council; (3) other special and differential treatment proposals; and (4) plans for an SPS notifications/specific trade concerns database.

99. With respect to the procedure to enhance transparency of special and differential treatment, the Committee had considered two new proposals. The representative of Antigua and Barbuda had suggested a revision to Step 7 of the Secretariat's elaboration of the procedure (G/SPS/W/156), while Canada had submitted a revised proposal based on discussions held with Malaysia in response to the concerns they had raised at the June meeting (G/SPS/W/155).

100. A number of delegates had noted that they could support the changes proposed by Antigua and Barbuda, but that this did not substantively alter the content of the procedure. Many delegates recalled that the Committee had been discussing the document for over two years and that they did not wish to delay its adoption any longer. The representative of Antigua and Barbuda emphasized that their primary objective was to facilitate adoption of the procedure, and they were prepared to adopt the text as proposed by Canada. A number of other delegates also indicated that they were ready to adopt the text as proposed by Canada.

101. The representative of Egypt had stated that his country supported adoption of the elaboration as proposed by Canada, and noted that this was without prejudice to the rights and obligations of Members under Article 10.1 of the SPS Agreement. Furthermore, in adopting the Canadian proposal, Members reaffirmed that in the preparation and application of SPS measures, Members shall take account of the special needs of developing country Members and in particular of the least-developed country Members.

102. The Chairman reported that under the second item, the Committee had discussed the five special and differential treatment proposals referred to the Committee by the General Council. The discussions were structured according to the provision of the SPS Agreement which the proposals addressed, as described in the Attachment to document (G/SPS/W/135).

103. The representative of Mexico had recalled that these proposals on special and differential treatment had been discussed in the past within the context of discussions in the CTD and in an informal joint CTD/SPS session. In this regard, the representative of Mexico noted that it might be useful for the Committee to review the previous discussions held in order for it to be in better position to achieve progress on some of these issues.

104. The representative of Canada had noted that the Committee could report modest but positive progress to the General Council on various aspects of the special and differential treatment proposals being discussed. Concerning the proposal put forward by the African Group, which suggested the creation of a facility within the Global Trust Fund, the representative of Canada had recalled that the Standards and Trade Development Facility (STDF) had been established in September 2002 following the commitment made by the Heads of the WHO, the FAO, the WTO, the OIE and the World Bank at the Doha Ministerial Conference to enhance the capacity of developing countries in the standards area through cooperation between the relevant institutions in SPS-related activities.

105. The representative of Canada had noted that several other proposals addressed implementation of Article 10.4 of the SPS Agreement, which stated that "Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations". In this context, a number of Trust Funds had been set up and were being implemented by the international standard-setting organizations referenced in the SPS Agreement to finance the participation of delegates from least-developed and developing country Members to participate in standard-setting activities. Furthermore, the representative of Canada had noted that the USDA had contributed to the IICA project that financed the participation of delegates from the Latin America and Caribbean region to attend the SPS Committee meetings. The representative of the European Communities had concurred that progress could be reported as a result of the financial contributions of Members, including the European Communities, to the Codex Trust Fund and other similar funds.

106. The Chairman had proposed that the Committee continue discussion on these proposals at an informal meeting just prior to the March meeting, considering the proposals according to the SPS provisions to which they related and taking note of past discussions.

107. There was no substantive discussion on item 3 concerning other special and differential treatment proposals in the informal meeting.

108. The Chairman reported that on item 4, the Committee had exchanged views on a possible SPS notifications/specific trade concerns database project which could be made available on the WTO website.

109. While recognizing the importance of creating an SPS notifications database, the representatives of Ecuador and Mexico had noted that all Members had to comply first with their transparency obligations and that efforts needed to be undertaken to ensure that Members notified their proposed SPS regulations. This would ensure that the information presented in the database would be as complete as possible. The representative of Jamaica had indicated that the creation of such a database would serve as an information tool for developing countries and could help them meet their obligations to notify proposed SPS measures. The representative of New Zealand had noted that it might be useful to undertake a cost/benefit analysis of the advantages of creating an SPS notifications database.

110. The Secretariat had clarified that the SPS notifications/specific trade concerns database would be designed to help the Secretariat better manage the number of notifications and also to link these with specific trade concerns raised. The objective of the consultations had been to seek Members', and particularly developing country Members' views on how such a database could best assist Members in managing their SPS-related work.

111. Following the Chairman's report, the representative of Kenya remarked that the mandate of special and differential treatment had not been fulfilled and therefore the SPS Committee could not report on any progress made on this issue to the General Council. The Chairman recalled that his report clearly reflected that certain Members felt that they could report positive progress. This did not in any way suggest that the Committee had agreed that positive progress could be reported to the General Council. The representative of Canada stated that he had clearly indicated that modest progress could be reported in a limited number of areas, particularly with respect to the specific elements of the proposal by the African Group.

(a) *Elaboration of the proposal by Canada (G/SPS/W/155)*

112. The Chairman proposed that the Committee adopt the elaboration of the procedure to improve the transparency of special and differential treatment on the basis of Canada's revised proposal.

113. The representatives of the European Communities, India, Jamaica and Honduras on behalf of the Central American region, were in favour of the adoption.

114. There were no objections and **the proposal was adopted by the Committee.**

(b) *Issues referred by the General Council*

115. The representative of India recalled that these issues were submitted by developing countries within the context of the Doha mandate to make the special and differential provisions more precise, effective and operational. The Committee should endeavour to fulfil this mandate and it would not be appropriate to report that progress has been made on these issues at this point in time. Further discussions on this issue should continue in another informal meeting.

116. The Chairman stated that an informal meeting next March would be useful and invited specific ideas from Members on how to move forward on this issue.

## **VI. EQUIVALENCE (ARTICLE 4)**

(a) Information from Members on their Experiences

117. No information on Member's experiences was provided under this agenda item.

(b) Information from Relevant Observer Organizations

118. The representative of the Codex Alimentarius Commission (Codex) summarized the work relating to the Guidelines adopted in 2003, and on the judgement of equivalence of sanitary measures associated with food inspection and certification systems that the Codex Commission had agreed to undertake. This work would take the form of appendices and cover: (i) an assessment of which measures were to be the subject of an equivalence determination; (ii) the documentation needed for the evaluation of submissions of requests for equivalence determinations; (iii) the terms and conditions for on-site visits by importing countries' authorities undertaking a determination of equivalence; (iv) the determination for "an objective basis of comparison"; (v) more detail on the process of judging equivalence; and (vi) information relating to technical assistance to be provided by importing countries to exporting countries. Work on the new appendices would be discussed at the Codex Committee on Food Import and Inspection Certification System (CCFICS) in Melbourne, in December 2004.

119. The representative of the International Plant Protection Convention (IPPC) reported that the IPPC had drafted a standard on Guidelines on the concept of equivalence of phytosanitary measures and its application in international trade. The standard had been submitted to all FAO Members for comments on 15 June 2004. The Standards Committee would consider the text and the comments made during the month of November and, where appropriate, amendments would be introduced. The Standards Committee would then decide whether to submit the standard to the next session of the Interim Commission on Phytosanitary Measures (ICPM) for consideration and adoption. The forthcoming session of the ICPM was scheduled to take place in April 2005.

## **VII. PEST AND DISEASE-FREE AREAS (ARTICLE 6)**

(a) Report of Informal Meeting

120. The Chairman reported that at the informal meeting on the clarification of Article 6, the Committee's discussions had centred around the issues raised in three specific proposals that had been put forth by Chile (G/SPS/W/164), New Zealand (G/SPS/W/151) and Peru (G/SPS/W/148) and on the Chairman's questions that had been circulated to Members in advance of the informal meeting.

121. The representative of Peru had observed that many Members encountered implementation difficulties in the application of Article 6 and proposed, along with other Members, that the Committee work on developing clear guidelines on procedures and specific timeframes to address this issue. At the same time, the Committee should, in Peru's view, encourage the OIE and IPPC to pursue complementary work in their respective areas of expertise.

122. The representative of New Zealand had suggested that a continuing and more precise identification of the problems faced by some Members on the implementation of Article 6 was an important first step which would facilitate identifying the most appropriate solutions. In this regard Members should exchange as much information as possible on their experiences with regionalization. However, New Zealand, and other Members, had considered that the development of technical standards should be left to the appropriate international standard-setting bodies. The representative of Japan and other Members had noted concerns with the idea of specific timeframes.

123. The representative of Chile had noted the importance of regionalization in facilitating trade and that duplication of work in the relevant standard-setting bodies needed to be avoided. The standard-setting bodies should focus on establishing technical and scientific guidelines while the Committee should focus on the administrative guidelines such as providing legal certainty for market access conditions and guidelines for timeframes.

124. The Chairman had reported that there was broad agreement that duplication of work by the SPS Committee and the standard-setting bodies needed to be avoided. Clearly some aspects of regionalization were technically oriented and best dealt with in the standard-setting bodies. However, there had been a divergence of views on whether or not the SPS Committee should establish procedural guidelines and timeframes similar to what had been done for equivalence. One view was that the Committee should deal with trade-related issues such as market access while the standard-setting bodies should deal with the development of technical standards.

125. Another view had taken on board the issue of the sequencing of discussions between the Committee and the standard-setting bodies. While some delegations suggested that these issues could be dealt with concurrently in the Committee and in the standard-setting bodies, others were of the view that the standard-setting bodies should review such procedural aspects first then the Committee could proceed. This could reduce any duplication.

126. Another concern had been the feasibility of developing general timeframes as suggested in some of the proposals.

127. Furthermore, it had been noted that many developing and least-developed countries lacked the skilled personnel and infrastructure to implement and benefit from the concept of regionalization, and these countries would require technical assistance.

128. The Chairman further reported that some Members had proposed to invite the OIE and the IPPC to clarify whether there was duplication of the work being undertaken in the Committee and to explain their areas of competence with respect to the Committee's discussions on regionalization. The Committee noted that these organizations had already been responsive to the requests and concerns of the Committee.

129. At the informal meeting, the OIE had informed the Committee of the work undertaken by the OIE with respect to regionalization or zoning and compartmentalization. A zone referred to a clearly defined part of a country while a compartment was defined as one or more establishments under a common biosecurity management system. The objectives of these two concepts were similar, i.e., the recognition of different animal health status. The OIE was currently working on expanding the chapters of the Animal Health Codes on the principles and procedures for recognition of disease-free areas. The draft text would be available after the OIE Code Committee meeting in January 2005. The

OIE sought information from its Members on their experiences with regionalization. The OIE officially verified and recognized the health status for four diseases. The OIE could include other diseases but this had significant financial resource implications. The OIE had adopted fast-track procedure for when there was a change in the status of a disease. The OIE General Session in May 2005 would discuss the issue of the recognition of regionalization.

130. The Chairman of the ICPM had informed the Committee at the informal meeting that two IPPC standards on regionalization had been developed: ISPM 4 on establishment of pest-free areas and ISPM 10 on pest-free areas of production. A third standard on low pest prevalence was expected to be adopted at the ICPM meeting in April 2005. Regionalization would be a prominent agenda item at the next ICPM meeting, and an open-ended working group on regionalization would be formed to also look into the development of pest-free protocols. The WTO Secretariat and the OIE were invited to participate in this open-ended working group.

131. In response to the Chairman's questions on roles and responsibilities, the representative of the European Communities had suggested that the standard-setting bodies should be responsible for establishing technical guidelines whereas the Committee should oversee the implementation of Article 6. However, the European Communities had concerns about proposals to establish timeframes which were in addition to the timeframes prescribed by the standard-setting bodies when developing technical standards. When the European Communities received a request for market access, an initial risk assessment was made and access given on that basis. In case of a disease or pest outbreak in the exporting country, temporary measures were imposed as a safeguard, but these measures were normally lifted automatically once the outbreak was under control.

132. At the informal meeting, one delegation noted that Members may have concerns over how a particular technical standard had been developed in the standard-setting body. Since the SPS Agreement allowed deviations from international standards, this pointed to another reason why the Committee should be involved in the issue of regionalization.

133. With regard to the Chairman's questions on timeframes, the OIE had clarified the differences between timeframes that were associated with the establishment of technical standards and those timeframes that were associated with the implementation of the standard. The OIE had developed timeframes for the implementation of technical standards.

134. In terms of the future work of the Committee, one suggestion had noted that the process for Monitoring the Use of International Standards provided an ideal forum to discuss the implementation issues relating to Article 6 and a means to recommend further work by the relevant standard-setting organizations on procedural issues. Another suggestion had been to maintain a specific agenda item on regionalization and for the Committee to address procedural issues with a view to the adoption of a decision on Article 6 similar to that which the Committee had taken on equivalence.

135. The Chairman concluded that widespread support had been expressed for the organization of a workshop to look in detail at the issues surrounding implementation of regionalization, with the participation of the OIE and IPPC. The Secretariat had noted the difficulties of organizing such a workshop for March 2005, and recalled that the IPPC and OIE would be advancing their work on regionalization in March and May 2005, respectively.

136. In response to the Chairman's report, several Members reiterated their different points of view as reflected in the report. One view recalled that the work being proposed in the Committee would deal with the trade-related issues, which were not currently being dealt with by the standard-setting bodies, who dealt solely with the development of technical standards in this area. These trade-related issues were considered to be directly related to the implementation of Article 6 of the Agreement. In this regard, Peru offered to work with interested delegations to develop a new proposal on guidelines related to procedures and timeframes. Some Members expressed interest in

knowing how many Members had responded to the questions on Article 6 put forth by the Chairman and requested the Secretariat to circulate the responses received.

137. Several Members reiterated the view that the development of technical standards should be left to the appropriate international standard-setting bodies.

## **VIII. UNDUE DELAYS**

138. The representative of Uruguay outlined a number of issues regarding undue delays that many exporting Members experienced in the recognition of equivalence and regionalization, specific entry conditions, and control, inspection and approval procedures (G/SPS/W/160). The difficulties that resulted (excessively long time-limits, exaggerated requests for information and non-transparent procedures) prevented exporting Members from planning and managing their production and export strategies in a predictable manner. Given the lack of specificity in the SPS Agreement with regard to these issues and the absence of relevant international standards, guidelines and recommendations, Uruguay proposed that the Committee develop general principles and guidelines on: time-limits; requests for information; and transparency. The representative of Uruguay urged the Committee to focus its discussions on analyzing the problem and identifying solutions rather than focusing on different ways of implementing solutions.

139. The representatives of Argentina, Brazil, Chile and Paraguay, shared the concerns expressed by Uruguay and supported the use of mechanisms within the Committee for resolving these issues. Chile supported the additions to paragraph 1 of Annex C of the SPS Agreement suggested by Uruguay.

140. The representatives of Canada, New Zealand and the Philippines noted that Uruguay had raised a number of interesting issues and suggested discussing them further at a later meeting. The representative of the United States noted that Uruguay had highlighted important issues related to the operation and implementation of the SPS Agreement including problems concerning the recognition of disease-free areas. The proposal could benefit from the views of both importing and exporting Members and it was important that standard-setting bodies participated in the discussions. The United States would review the contents of the document in more depth and offer further comments as the Committee discussed these issues in the future.

141. The representative of China shared and supported many of the concerns expressed by Uruguay in the document and noted that it had only been made available in Spanish. In response the representative of Uruguay indicated that the document had been finalized and submitted at the very last minute which explained why it had been made available only in Spanish.

142. The Chairman took note of the fact that the document had been made available to the Committee only in Spanish as well as of the desire expressed by Members to discuss it further at the next meeting.

## **IX. TECHNICAL ASSISTANCE AND COOPERATION**

### **(a) Information from the Secretariat**

143. The Secretariat introduced document G/SPS/GEN/521, which listed all SPS technical assistance (TA) and training activities undertaken by the Secretariat from 1 September 1994 to 31 August 2004. Activities listed in the table attached to the document included information regarding: the type of activity; the region, venue and dates; participating countries; the language used; as well as whether representatives from the Codex Alimentarius (Codex), the World Organization for Animal Health (OIE), and the International Plant Protection Convention (IPPC) had participated in the activity.

144. Altogether, 104 SPS technical assistance and training activities had been undertaken for the period under review. The Secretariat stated that the number of SPS technical assistance activities had increased significantly over time. Since 2002, over 20 technical assistance activities had been undertaken per year. Overall, 47 regional or sub-regional workshops, 34 national seminars and 23 "other" activities had been conducted. Eighteen per cent of the beneficiaries of all SPS TA and training activities provided by the Secretariat had been from least-developed countries (LDCs), 77 per cent from developing countries, and 5 per cent from developed countries. Since 1994, representatives from the international standard-setting organizations had actively participated in the delivery of SPS regional workshops undertaken by the Secretariat (Codex had participated in 37, OIE in 34 and the IPPC in 32 regional workshops). The Secretariat thanked the Codex, OIE and IPPC for contributing expertise to these TA regional activities.

145. The Secretariat described past and planned national and regional SPS TA activities. Since the last meeting the Secretariat had: provided training in four national seminars in Yemen, United Arab Emirates, Maldives and Turkey; conducted a regional workshop in collaboration with the Joint Vienna Institute for Central and Eastern Europe, Central Asia, and the Caucasus region in Vienna; participated in a regional workshop for francophone countries from Central and Eastern Africa in Madagascar; conducted a regional workshop for a number of South Asian countries in Bangladesh; participated in an OIE/FAO-regional workshop for Asia and the Pacific East in Chiang Mai; and participated in the WTO Trade Policy Courses held in Tunisia and Morocco and in a regional TBT workshop in Panama. The Secretariat had also provided training for a SIDA training course on Regulatory and Quality Infrastructure Development for Food Safety and Quality in Stockholm. The Secretariat would undertake a national seminar and a regional workshop before the end of the year. In 2005, the Secretariat had planned to organize a number of SPS regional workshops in conjunction with OIE reference centres within the framework of an STDF project that aimed to assist the OIE to train new delegates.

146. The Secretariat introduced document G/SPS/GEN/523 which described the adoption of the Standards and Trade Development Facility (STDF) Business Plan and a Call for Proposals. It was noted that the STDF was now fully open for business and reference was made to the 8 December 2004 deadline for the first cycle of STDF funding in 2005. Document G/SPS/GEN/523 also outlined on-going project activities. The Secretariat stated that it proposed to work with Members to ensure that their activities were fully reported in the STDF technical assistance database. The Secretariat also requested that Members submit lists of experts with particular expertise in SPS capacity building similar to that submitted by the European Communities in document G/SPS/GEN/69. Finally, the Secretariat made note of on-going technical assistance activities in the SPS area with UNIDO and within the Integrated Framework and the Joint Integrated Technical Assistance Programme, and committed to report more fully at the next Committee meeting.

147. The representative of the European Communities recalled that the Government of France had contributed Euro 100,000 to the STDF and that the United Kingdom and the Netherlands had both made funding pledges of £350,000 and Euro 300,000, respectively. The representative of Canada welcomed the effective establishment of the STDF and pledged to contribute US\$300,000 to this initiative.

148. The Secretariat thanked the Government of France for its financial contribution to the STDF and other Members for their pledges.

(b) Information from Members

149. The representative of Jamaica provided information on a workshop on the practical application of ISPM 15 planned to take place in Vancouver, Canada, in February 2005. The objective of the workshop would be to facilitate the understanding of ISPM 15 among countries so as to ensure implementation of the standard while minimizing disruption to trade. Funding would be provided by

the Standards and Trade Development Facility (STDF) with additional contributions from Canada. The representative of the IPPC added that the IPPC had been working closely with Canada in the organization of the event.

150. The representative of Jamaica reported that the first regional workshop on the application of ISPM 15 had been hosted by the North American Plant Protection Organization (NAPPO) in Mexico City, Mexico on 22-25 September 2004. The workshop had been held to identify critical issues and to clarify the requirements for implementing ISPM 15 by producers, shippers and other industry stakeholders in Mexico and Central America.

151. The representative of Uruguay reported that the Regional Phytosanitary Committee of the Southern Cone (COSAVE), the North American Plant Protection Organization (NAPPO), and the US Animal and Plant Health Inspection Service (APHIS/USDA), in cooperation with the IICA offices in Canada and Argentina, were organizing a workshop on the analysis of international standards on 17-19 November 2004 in Buenos Aires, Argentina. She indicated that over 500 participants were expected to attend. During the workshop a number of presentations related to the implementation of ISPM 15 would take place and she urged Members to participate in these discussions.

152. The representative of China expressed appreciation for the technical assistance and capacity building activities undertaken by the Secretariat and thanked other Members, including Australia, Canada, the European Communities and the United States for providing further training to Chinese officials. China would host a training workshop on risk analysis for ASEAN officials in January 2005 and another one on the prevention and control of avian influenza.

153. The representative of the European Communities commented on a planned workshop on the implementation of ISPM 15 scheduled to take place 6-10 December 2004 in Saint Petersburg, Russian Federation. The workshop was being organized by the European and Mediterranean Plant Protection Organization (EPPO) and was intended for European countries, in particular Eastern European and former CIS countries.

154. The representative of Mauritius summarized the details related to their experience with the implementation of the SPS Agreement (G/SPS/GEN/526). He expressed appreciation for all the technical assistance activities organized in the African continent in order to familiarize the developing countries of the continent with the benefits of the SPS Agreement and on how to meet their obligations under this Agreement.

(c) Information from Observers

155. The representative of the World Bank summarized the details of their analytical and support programme in the SPS area (G/SPS/GEN/520). The World Bank's increasing work on trade in developing countries emphasized "behind the border" constraints, especially those relating to standards. He indicated that the Bank had been drawing lessons from its current research to improve their understanding of the SPS challenges and opportunities associated with the food and agriculture trade of developing countries. He indicated that he would present the results of the World Bank's project on Mainstreaming Standards and Trade at the next SPS Committee meeting.

156. The representative of IICA highlighted information provided in document G/SPS/GEN/518 on IICA's actions aimed at implementing the SPS Agreement in the Americas.

157. The representative of the OIE stated its full support for the regional workshops organized by the SPS Secretariat.

158. The representative of the IPPC reiterated that draft phytosanitary standards had been sent for country consultations. The IPPC, in cooperation with regional plant protection organizations and



other regional organizations, had organized a number of regional workshops to discuss these draft standards. He indicated that the IPPC continued to support the implementation of technical assistance projects funded by FAO aimed at establishing and evaluating the phytosanitary capacities of developing countries and reiterated the IPPC's willingness to participate in the SPS regional workshops.

159. The representative of the Codex provided a report on the FAO/WHO capacity building activities for food standards and regulations (G/SPS/GEN/525). He highlighted that the FAO and WHO were in the process of finalizing a CD-ROM training package that provided guidance to Member countries on how to implement risk analysis principles in relation to food safety. A second CD-ROM which included educational material on how to enhance the participation of Members in Codex work was also being finalized. He indicated that the FAO/WHO trust fund to enhance the participation of developing countries in the work of Codex had become operational in April 2004. This trust fund had enabled a number of developing countries to participate in several Codex meetings, including the 27<sup>th</sup> Commission Session held in July 2004. The deadline for application of the trust fund for 2005 was 31 October, and he urged eligible developing country Members to submit their application to the WHO Secretariat through their Codex Contact Point as soon as possible. He thanked donor countries for their financial contributions to the Trust Fund and called upon those donor Members that had not yet contributed to do so in the future. The representative of the European Communities indicated the European Communities' intention to renew their contribution to the FAO/WHO Trust Fund in 2005.

## **X. MONITORING THE USE OF INTERNATIONAL STANDARDS**

### **(a) New Issues**

160. The Chairman recalled that according to the agreed procedures, Members were to submit, at least 30 days in advance of each regular meeting, examples of what they considered to be problems with significant trade impact which they believed were related to the use or non-use of relevant international standards, guidelines and recommendations. New Zealand had submitted a proposal on regionalization to be considered under this agenda item (G/SPS/W/151). The Chairman recalled that this proposal had been thoroughly discussed during the informal meeting on regionalization. The representative of New Zealand indicated that their proposal had been well discussed. She reiterated New Zealand's suggestion that the issue be referred to the standard-setting bodies.

161. The representative of Chile emphasized that the fact that the Committee had been discussing the issue of regionalization under another agenda item did not mean that it could not be dealt with under the agenda item related to the monitoring the use of international standards. The representative of Mexico supported Chile and noted that regionalization had various implications. He stated that while the proposal by New Zealand had been a good starting point, it only dealt with one of the points related to the issue of regionalization.

162. The representative of Canada suggested that the Committee submit a request to the standard-setting bodies at the next meeting once the exact wording had been agreed along the lines of the contents of the New Zealand proposal. According to Canada's understanding the Committee had not opposed the idea of sending work to the standard-setting bodies, rather the issue under discussion revolved around the work that the Committee would be doing in the meantime.

163. The Chairman noted that there was merit in considering the suggestion made by Canada given the inherent nature of the proposal put forward by New Zealand. The first step would be for Members to further identify and clarify specific areas and questions that might be sent to the standard-setting bodies. With the Committee approval, the Chairman indicated that he would follow this approach without prejudice to the various views held by Members and while discussions continued on the work that might be pursued within the Committee.

164. The representative of China summarized a number of concerns related to specific aspects concerning the implementation of ISPM 15 on wood packaging. The Chairman noted China's intention to raise concerns relating to the implementation of ISPM 15, as a particular standard to be reviewed under this agenda item, at the next SPS Committee meeting.

(b) Issues Previously Raised

165. The representative of Canada recalled that in the June 2003 meeting the Secretariat had suggested a reduction in the deadline for identifying issues to be discussed under this agenda item. The agreed procedures for monitoring the use of international standards (G/SPS/11) required that issues be identified 30 days in advance of a meeting; the Secretariat had suggested this be reduced to ten days. He noted that this issue had also been brought up at the June 2004 meeting and suggested that the Committee agree to this reduction in order to allow Members to better benefit from this procedure.

166. The Chairman recalled that the Committee had previously discussed the issue of harmonizing the dates. The Committee agreed to modify the deadline for identifying issues as established in the agreed procedures, from 30 days to ten days.

## **XI. REVIEW OF THE OPERATION OF THE SPS AGREEMENT**

(a) Report of Informal Meeting

167. The Chairman reported that at the first informal meeting on the Review of the SPS Agreement, the Committee's discussion had benefited from written submissions by Canada, China, the European Communities, New Zealand, Chinese Taipei and the United States. In a general discussion of issues related to the Review, the United States had suggested that document G/SPS/GEN/510 could serve as the basis for the final Review report produced by the Committee. The United States had proposed that a discussion of specific trade concerns and a description of the work programme that the Committee intended to address at future meetings would provide valuable additions to the final Review document. The Chairman noted in response to questions that G/SPS/GEN/510 suggested that the Review could incorporate a review of the Consistency Guidelines (G/SPS/15). This might essentially be to report that no Member had raised any concerns regarding these guidelines since their adoption.

168. The Committee had then discussed the issue of transparency which Canada, China, the European Communities and New Zealand had raised in their written submissions. Delegates discussed expanding current recommended notification procedures to enhance transparency, including the EC proposal that Members notify the adoption of the final text of SPS regulations. Argentina had suggested that Members could use addenda to notifications to indicate comments provided on the draft regulation text.

169. The Chairman further reported that Canada, the European Communities and New Zealand had proposed that all measures that had a significant impact on trade, including those based on international standards, should be notified. They highlighted the potential trade disruption associated with the implementation of international standards, such as ISPM 15, and reasoned that notification of measures based on such standards would provide useful information to Members. Such information was not available from the international standard-setting bodies. The Committee had also discussed concerns about expanding notification responsibilities when, at the same time, Members were not yet adequately fulfilling their existing notification obligations. The Secretariat had noted that recommended procedures did not constitute legal obligations and that full implementation of existing recommendations for notifications would greatly enhance the benefits associated with transparency, particularly for developing country Members.

170. In the informal meeting, the representative of New Zealand had drawn attention to their proposal for the development of an SPS database to facilitate information management by Members and the Secretariat. The Secretariat had noted that a database would be developed for the Secretariat's use and encouraged delegates to engage in productive discussions about how the database could be structured to also address Members' information needs.

171. The representative of Canada had noted that the body of the Agreement, including Article 7, referred to "measures", whereas Annex B required the notification of "regulations", and suggested that the Committee might wish to clarify this situation. The representative of China had emphasized the need to develop a common understanding of notification timelines. The representative of Egypt had expressed a desire to continue exploring the possibility of *ex-ante* notification of special and differential treatment. Other delegates had highlighted the resource requirements faced by Members who needed to translate regulatory texts into languages other than English, French and Spanish.

172. The Committee had then discussed the relationship between the SPS Committee and international standard-setting bodies, an issue that had been raised by Canada, New Zealand and Chinese Taipei in their written submissions. The representative of Chinese Taipei had suggested mechanisms for improving Members' awareness of, and participation in, the work of the international standard-setting bodies. The representative of Canada had noted that such mechanisms to enhance Members' participation in the international standard-setting bodies had been put in place and encouraged their use. Many issues related to this item had been discussed previously in the informal meeting on Regionalization.

173. Regarding the administration of the implementation of the Agreement, the representative of New Zealand had suggested that the good offices of the Chairman could be a cost-effective way of resolving issues, particularly for developing countries. Moreover, positive results had been reported in most cases where issues had been referred to the Chairman. The United States had also suggested expanded use of Article 12.2 of the Agreement, perhaps through increased use of the Committee for technical consultations.

174. The Chairman further reported that although regionalization had been discussed in a separate informal meeting, delegates had highlighted the inter-relationship between existing knowledge of, and confidence in, trading partners' regulatory systems and the speed with which recognition of pest- or disease-free places of production could be re-established after a pest or disease outbreak.

175. The representative of the European Communities had suggested that a discussion on issues related to implementation of control measures (Article 8) would be useful, in particular to clarify ambiguity regarding who should bear the cost of Members' inspections. Attention was drawn to the increasing number of requests for inspection visits and the resource intensive nature of these visits.

176. The representative of the United States had suggested that the Committee would benefit from an in-depth examination of the inter-relationship between Articles 2.1 and 5.6 in the application of the Agreement by Members. Another Member had proposed that the discussion be broadened to include Articles 2.2, 2.3, 3.4 and 5.4 and the issue of good regulatory practice in general.

177. In response to the Chairman's report, several Members reiterated their points of view as reflected in the report. In particular, the representative of Egypt reiterated their desire to continue exploring the possibility of *ex-ante* notification of special and differential treatment and expressed their concerns regarding the recommendation made by a number of Members related to the voluntary notification of all SPS regulations, including those that conform to international standards, guidelines or recommendations.

178. The representative of Malaysia welcomed the adoption of the Canadian proposal to enhance transparency of special and differential treatment in favour of developing countries. Special and

differential treatment had been considered a vital aspect of the SPS Agreement. The Canadian proposal demonstrated that there were ways to address the needs and concerns of developing countries and Malaysia hoped that other decisions related to special and differential treatment would be taken in the future.

179. The Chairman reminded Members that an informal meeting on the Review of the Operation of the SPS Agreement would be scheduled just prior to the March meeting. He invited Members to comment on the proposals made in writing related to the Review by 19 December 2004.

## **XII. TRANSITIONAL REVIEW UNDER PARAGRAPH 18 OF THE PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA**

180. The Chairman recalled that in accordance with Paragraph 18 of the Protocol of Accession of the People's Republic of China, the SPS Committee had to undertake an annual review for eight years of the implementation by China of the SPS Agreement. He opened the floor for comments or questions from Members.

181. The representative of the European Communities thanked the Chinese authorities for their positive move to lift the embargo for some bovine and dairy-based products, such as bovine semen, bovine embryo and other protein derivatives from bovine. Therefore, in the document for the Transitional Review of China submitted by the European Communities (G/SPS/W/154), some of the points or comments were no longer up to date. The representative of the European Communities indicated that he would make a written correction in the form of an addendum to the document submitted and the positive moves on these issues would accordingly be updated in this document.

182. The representative of the United States stated that in response to this item, that was announced and placed on the agenda as of the last meeting, the United States had submitted a paper (G/SPS/W/153) dated 4 October, which provided some information on issues that they had raised with China in a number of different fora, including at meetings of this Committee. The United States considered that the Transitional Review Mechanism was a useful exercise to gain an improved understanding and to clarify important aspects of China's implementations of its obligations under the SPS Agreement. It was also important to take note, as was done in the opening sentences of paragraph 1 of the US paper, that in the view of the United States, China's implementation had markedly improved since the last time the Committee conducted this review.

183. The representative of the United States indicated that he was not going to go into details of all the issues that were presented in the paper, but would highlight a few. In many cases China had promulgated and implemented laws without notification to the WTO. One example of this problem was AQSIQ Decree 73, and in the transitional review conducted by the Committee on Agriculture, the United States had submitted document G/AG/W/64 and Add. 1 to that document, which provided written questions concerning a number of decrees, including AQSIQ 73. At the 23 September 2004 Committee on Agriculture transitional review discussion, the Chinese delegation indicated that they would address the issues and questions that the United States had presented regarding Decree 73 in this Committee. In paragraphs 11-13 of its paper, the United States had again presented those questions for a response from the Chinese delegation.

184. The representative of the United States further noted that his country was interested in continuing discussions with China on its SPS programmes. As was noted earlier by the Chinese delegation, the United States had an on-going technical assistance programme with China and looked forward to productive discussions and enhanced understanding of their implementation of their SPS obligations.

185. The representative of Chinese Taipei commended China on its effort to meet its accession commitment. Chinese Taipei also wanted to take this opportunity to express concern regarding

China's SPS measures and had raised questions in document G/S/SPS/W/152, which was circulated 1 October 2004. Chinese Taipei looked forward to receive a response from China.

186. The representative of Australia noted that Australia valued its strong relationship with China and continued to make efforts to strengthen communication and cooperation with China on SPS matters. Australia appreciated China's efforts to develop and improve its quarantine and inspection systems to ensure that quarantine procedures were based on sound scientific evidence and implemented with appropriate risk management. While Australia understood the challenges China faced, it continued to encourage China to bring its systems fully into compliance with the SPS Agreement as quickly as possible, including ensuring consistency and transparency in its development and administration of SPS measures, at both a national and provincial level, as well as conformity with notification obligations under the SPS Agreement. This would benefit China and all WTO Members.

187. The representative of Australia further observed that Australia had been pleased to offer a significant amount of technical assistance to China, to assist development of its SPS capabilities and systems and would continue to do so. Australia was continuing to pursue a number of bilateral SPS issues with China, some of a long-standing nature. The Australian delegation held a constructive meeting with the Chinese delegation during the course of the week, and had clarified a number of market access issues with the Chinese delegation at that time. Australia looked forward to early resolution of these issues to allow bilateral trade to expand to the mutual benefit of China and Australia.

188. The Chairman asked if any other delegation wished to take the floor. He recalled that in accordance with paragraph 18 of the Protocol of Accession of the People's Republic of China, this was simply an opportunity for discussion, and certainly there were no questions being posed directly to any Member here.

189. The representative of China stated that China felt obliged to remind Members that since the deletion of the three bullet points under agenda Item 11 had been adopted by all Members at the very beginning of the meeting, it was obviously inappropriate to make reference to documents invalid under this agenda item. He then invited his colleague to give some responses to some questions raised by Members.

190. The representative of China noted that since animal and plant epidemics and their spread frequently changed, China's quarantine requirements mainly reflected the situation through quarantine permits issued to importers. Once an importer obtained a quarantine permit, if there was no import within the validity period or the export country epidemic situation had undergone a major change, then the importer was required to re-apply for a new permit. Importers could return the original permits to AQSIQ and apply to exchange it for another new permit.

191. According to the regulations of the Border Animal and Plant Quarantine Law of the People's Republic of China, importers should gather import quarantine permit before signing import contracts. Exporters could identify China import quarantine requirements in the trading contracts. Thus China allowed the quarantine authority of an exporting country or Member to implement quarantine measures and to produce quarantine certifications against China's quarantine requirements as written in the contract in order to prevent products that did not meet with China's quarantine requirement from being exported to China. This would also be beneficial to preventing importers from suffering unnecessary losses.

192. Regarding the bullet point in AQSIQ Decree 73, the representative of China stated that his regulation reiterated the requirements stated in Article 11 of the Border Animal and Plant Quarantine Law which had been in effect since 1 April 1992, and had been notified to the WTO. This was definitely not a new regulation and the purpose of the formulation of this definition of this regulation

had been described in his previous response and was not the meaning understood by some of the Members. Since this regulation's first implementation twelve years ago, the fact was that this law had not received any complaints or concerns from importers or exporters which included those from the Members which had just raised the oral questions.

193. The representative of China added a few words about the initial response his colleague had just given. First he expressed his thanks to the delegations that had just taken the floor, and that had just made interventions, for their interests in China's policies. China was grateful to the technical assistance efforts provided by the United States and Australia to China in this regard. As a new Member China believed efforts of this kind were very useful and very welcome. He believed that with the technical assistance continuing to be provided by those Members, China's regulatory regime for SPS-related measures would continue to improve.

194. The representative of China further noted that some Member's intervention referred to some documents that he thought the Committee had agreed at the beginning of this session to delete, and so he wondered what was the validity of those documents being mentioned here and being included in a deliberation or consideration by this Committee for this session. He said it was difficult for his delegation to consider how to form appropriate responses at this moment to those invalid documents that were not supposed to be included in the deliberations of this session. He noted that in the intervention by the United States the representative of the United States referred to the discussion in the Committee on Agriculture which took place last month, and of course China later on had taken every opportunity, bilaterally and multilaterally at various levels, at national, ministerial, departmental and divisional levels to try to exchange views with their US colleagues on those issues. The representative of China took this opportunity to report to the Committee that just prior to this session China had held SPS bilateral consultations with the United States, and he believed that the discussions in that session had already covered some of the concerns and questions on issues raised by the United States. The representative of China said further that his country was prepared to continue to have this dialogue and exchange of information with their US colleagues on a continuous basis to further explore the ways of how to enhance mutual understanding and how to deepen clarification on understanding of certain issues and regulations. He promised that his delegation was prepared to work as closely as before with the US delegation in this regard.

195. The representative of China concluded by expressing his deep and special thanks to the Chairman and the Secretariat staff for their great efforts in preparations for this session. He said he was deeply impressed by the Chairman's professional competence and dedication and hard work and wished him good luck in most successfully chairing this session.

196. The Chairman thanked the representative of China and asked whether he wanted the Chairman to expand on the question that had been posed. He queried whether it had been a question to the Chairman or just a rhetorical question that could be left in the air in terms of the procedural aspects. The Chairman indicated that he was in the hands of the representative of China regarding how he would like that handled.

197. The representative of China indicated that it could be understood either way, but to save labour, one could assume that it could be deemed to be a rhetorical question.

198. The Chairman noted that he was trying to work as carefully as possible to assure that things were well understood. He asked if any other delegation wished to take the floor.

199. The representative of the United States thanked the Chinese delegation for the information that they had just provided, and noted that his country too looked forward to continuing to build and enhance their SPS relationships and to develop a deeper understanding of China's implementation of its SPS obligations. The United States took note that some of the issues that were in their paper, some of the questions, the rather specific questions, in their paper had not been addressed and that it would

be the intention of the United States to continue to work with China to understand the response that the Chinese government had to these particular questions. Many of these issues would be more fully developed and addressed through the on-going dialogue and the United States would continue in that matter.

200. The representative of China said that he appreciated very much the intervention just made by the delegate of the United States. He believed that besides this TRM exercise, other avenues of dialogue were also open and China was, like the United States, ready to continue this dialogue and exchange on all those issues of concern to the United States. The representative of China made it clear that some of those issues raised in the US paper China believed were legitimate, were understandable. China was prepared to work through dialogue with the United States to be able to get clearer answers and improve upon China's practice where necessary. China was determined to make efforts in that direction.

201. The Chairman stated that he would make a short factual report on the transitional review to the Council for Trade in Goods (circulated as G/SPS/34).

### **XIII. MATTERS OF INTEREST ARISING FROM THE WORK OF OBSERVER ORGANIZATIONS**

202. The Chairman indicated that an updated list of the relevant international standards of the OIE (G/SPS/GEN/512), IPPC (G/SPS/GEN/513), and Codex (G/SPS/GEN/514) had been circulated for the consideration of the Committee.

#### **(a) Information from Codex**

203. The representative of Codex highlighted a number of issues related to the activities of the Codex Alimentarius Commission (G/SPS/GEN/519). He indicated that the 27<sup>th</sup> Session of the Codex Commission held in Geneva in July 2004 had adopted 20 new standards (listed in Appendix I of G/SPS/GEN/519). In addition, the Commission had agreed to commence work on a number of issues, including: (i) principles for electronic certification; (ii) guidelines for risk-based inspection of imported foods; (iii) sampling plans for aflatoxins in almonds, Brazil nuts, hazel nuts and pistachios; and (iv) a revision of the existing Code of Practice for Foods for Infants and Children. He listed the forthcoming Codex meetings and recalled that within the framework of the 21<sup>st</sup> Session of the Codex Committee on General Principles (8-12 November in Paris), an informal working group meeting would be held on 7 November to discuss the draft Codex Guideline on risk analysis principles. He indicated that the issue of acceptance of Codex standards would also be considered during the General Principles meeting. Finally, he informed that Ukraine had become the 171<sup>st</sup> Member of the Codex Alimentarius Commission.

#### **(b) Information from IPPC**

204. The representative of the IPPC reported on activities undertaken by the IPPC since the last Committee meeting. Four expert groups had met on various standards and guidelines for pest risk analysis, efficacy of measures, the Glossary and review of ISPM 1. Two new technical groups with longer life spans were also formed for diagnostics and fruit flies. Five standards had been sent for country consultations, in addition to the IPPC Glossary – these were: consignments in transit, inspection, revision of ISPM 3, guidelines on equivalence and requirements for the establishment, maintenance and verification of areas of low pest prevalence. Comments received would be considered next month and the Standards Committee would make recommendations on the adoption of the standards to the Interim Commission in April 2005.

205. In addition to these activities, a new version of the international phytosanitary portal was launched in June. The strategic direction and business plan of the IPPC were also discussed in July, and in October an informal working group met to discuss the strategic planning and technical assistance activities of the IPPC. The informal working group also made recommendations on the role of the IPPC in relation to regionalization. The IPPC had also established a Trust Fund to enhance the participation of developing countries in its standard-setting activities. Canada, New Zealand and the European Communities had contributed funds making it possible for many developing countries to participate in the last session of the IPCM. Furthermore, the United States and Japan contributed their expertise to developing countries.

(c) Information from OIRSA

206. The representative of the International Regional Organization for Plant and Animal Health (OIRSA) highlighted its recent capacity building activities as listed in G/SPS/GEN/524. He drew attention to activities held on GAP, the stamping out of classical sine fever, low pest prevalence and zoning for fruit fly infestation in a number of central American countries.

(d) Information from WHO

207. The representative of the WHO summarized details regarding the revision of the International Health Regulations (IHRs) (G/SPS/GEN/522). The extensive consultation process in the elaboration of IHRs was approaching its conclusion with a further draft revision being submitted to the Intergovernmental Working Group in November 2004. It was hoped that a final draft would be ready in time for the World Health Assembly in May 2005. In addition to reporting where changes had been made to the draft IHRs, the WHO representative stated that a legal review of the IHRs had reported that there did not appear to be conflict with the SPS Agreement, but instead considerable synergy, notably with respect to the drafting of specific provisions of the IHRs.

(d) Information from OIE

208. The representative of the OIE recalled that the list of updated international OIE standards and their contents were in G/SPS/GEN/512. These standards were updated each year at the May General Session by all Members. At present, the OIE was reviewing standards on a number of animal diseases, including BSE and avian influenza, as well as some animal welfare standards. He indicated that the OIE had begun working on harmonizing standards between the Aquatic Animal Code and the Terrestrial Animal Code, to make it easier for Members to implement those standards. All countries had been invited to comment on all drafts of new or revised standards prior to the meetings of the technical commissions in January. He thanked the WHO for the opportunity to submit comments on the revision of International Health Regulations related to work of other intergovernmental organizations.

#### **XIV. OBSERVERS – REQUESTS FOR OBSERVER STATUS**

209. The Committee agreed to invite the organizations with current ad hoc observer status to participate in the next meeting of the Committee (ACP Group, EFTA, IICA, OECD, OIRSA and SELA). The Committee also invited all interested observer organizations to participate in the informal meetings to be held in connection with the next Committee meeting.

210. The Committee took no decision regarding the requests for observer status from the Office International de la Vigne et du Vin (OIV), the Asian and Pacific Coconut Community (APCC), and the Convention on Biodiversity (CBD).

211. The European Communities indicated their continued support for observer status of these three organizations.



## **XV. ANNUAL REPORT TO THE COUNCIL OF TRADE IN GOODS**

212. The Chairman announced his intention to make a brief, factual annual report on the activities of the SPS Committee in 2004 for consideration by the Council for Trade in Goods. The report would provide information on the main work undertaken at the meetings held in 2004. He indicated that he would draw attention to the adoption of the clarification on the Decision on Equivalence and of the final adoption of the procedure for transparency of special and differential treatment, the progress made on Pest- and Disease- Free Areas (Article 6), as well as the adoption of the procedures and timeline for the Review of the SPS Agreement. In addition, the report would mention the large number of specific trade concerns discussed, and provide an overview of discussions under other agenda items.

213. The Chairman indicated that copies of the draft report to the Council on Trade in Goods were available from the Secretariat, and asked interested delegations to submit their comments to the Secretariat by Tuesday, 2 November 2004. The report to the Council on Trade in Goods was circulated as G/L/709.

## **XVI. OTHER BUSINESS**

### *Paraguay – Information on new SPS agencies*

214. The representative of Paraguay informed the Committee of the establishment of two new public SPS agencies responsible for animal and plant health within the Ministry of Agriculture and Livestock. The National Service for Animal Quality and Health had been created by Law No. 2426 on 28 July 2004, and the National Service for Plant and Seed Quality and Health had been created by Law No. 2459 on 4 October 2004. These new agencies would be fully operational by February and April 2005, respectively. The text of both laws were available at the following website: <http://www.paraguaygobierno.gov.py>, and could also be obtained by request at the following e-mail addresses: [sseg\\_pct@teleseruf.com.py](mailto:sseg_pct@teleseruf.com.py) and [ddvsec@telesurf.com.py](mailto:ddvsec@telesurf.com.py).

### *Paraguay – FMD status*

215. The representative of Paraguay provided information on the national plan for eradication of FMD. He summarized details regarding the latest certified vaccinations of herds and informed that Paraguay had adopted new modalities for vaccination as part of a regional coordinated action to combat FMD. He indicated that according to the results of active and seriological surveillance there had been no further detections of FMD virus since the last outbreak in July 2003. Health authorities were preparing a request to the OIE to regain the status of a country free of FMD with vaccination.

### *Chile – Australia's restrictions on table grapes*

216. The representative of Chile stated that his government in 1998 had requested Australia to indicate their market access requirements for table grapes. Following initial meetings between the regulatory agencies, Chile understood that the import risk analysis would last approximately 12 months. A number of technical meetings had since taken place but despite having provided all the technical information required, no solution had been reached. The representative of Chile raised concerns regarding undue delays and changes in the procedures undertaken by Australia. The representative of Australia noted the concerns expressed by Chile and indicated their commitment to work with Chile to finalize their import risk analysis as quickly as possible.

### *Peru – FMD status*

217. The representative of Peru summarized details of the situation and control efforts relating to FMD in his country. Since the most recent outbreak of the type O virus in the Lima department on 11

June 2004, the health situation in Peru relating to FMD was the following: 97 per cent of the national territory was free of FMD without vaccination; 2.8 per cent was free of FMD with vaccination; and 0.2 per cent was in the process of regaining its condition as free of FMD with vaccination. This information had been provided to the OIE in June, as well as to the SPS Committee. The government had adopted comprehensive sanitary measures to control and eradicate the FMD virus. He indicated that in the last quarter of 2003, Peru had requested the OIE to recognize ten departments, constituting about 40 per cent of the national territory, as FMD disease-free areas and that this status was being assessed.

*Venezuela – Barbados's restrictions on citrus*

218. The representative of Venezuela informed the Committee that in the last two years Barbados had applied restrictions to shipments of citrus from his country without having undertaken inspection procedures demonstrating the existence of any pests or diseases. Several bilateral consultations had taken place but no solution had been reached. He requested Barbados to explain why these restrictions on citrus from Venezuela continued to be applied.

219. The representative of Barbados stated that the actions taken by his country were consistent with their Plant Pest and Disease Import Control Act and paragraph 3 of Article 6 of the SPS Agreement. He indicated his country's willingness to discuss the issue further bilaterally and within the framework of the Free Trade Agreement (FTA) negotiations between CARICOM and Venezuela. He noted that at the last meeting both parties had agreed to allow SPS experts to visit and inspect each other's countries and Venezuela had offered to cover part of the costs. The CARICOM secretariat had since informed Venezuela of the nominations it had received for the visit, but no arrangements had been put in place for this visit.

**XVII. DATE AND AGENDA OF NEXT MEETING**

220. The Chairman recalled the tentative calendar for Committee meetings in 2005.

<b>7-8 March</b>	Informals
<b>9-10 March</b>	SPS Committee meeting
<b>27-28 June</b>	Informals
<b>29-30 June</b>	SPS Committee meeting
<b>24-25 October</b>	Informals
<b>26-27 October</b>	SPS Committee meeting

221. The next regular meeting of the Committee was tentatively scheduled for **9-10 March 2005, with informal meetings scheduled for 7-8 March**. Informal meetings would be held on special and differential treatment, regionalization and on the Review of the Agreement. The Committee agreed on the following provisional agenda for its next meeting:

**AGENDA FOR MEETING OF 9-10 MARCH 2005**

1. Proposed agenda
  2. Election of the Chairperson
  3. Activities of Members
  4. Specific trade concerns
    - (a) New issues
    - (b) Issues previously raised
    - (c) Consideration of specific notifications received
    - (d) Information on resolution of issues in G/SPS/GEN/204/Rev.4
  5. Operation of transparency provisions
  6. Implementation of special and differential treatment
  7. Equivalence – Article 4
    - (a) Information from Members on their experiences
    - (b) Information from relevant observer organizations
  8. Pest- and Disease-free areas – Article 6
  9. Technical assistance and cooperation
    - (a) Information from the Secretariat
    - (b) Information from Members
    - (c) Information from observers
  10. Monitoring the use of international standards
    - (a) New issues
    - (b) Issues previously raised
  11. Review of the operation of the SPS Agreement
  12. Matters of interest arising from the work of observer organizations
  13. Observers - Requests for observer status
  14. Other business
  15. Date and agenda of next meeting
222. The following deadlines are relevant for the next meeting:
- (i) For sending comments in writing on the proposals made by Members in the context of the Review: **19 December 2004.**
  - (ii) For identifying new issues for consideration under the monitoring procedure: **24 February 2005.**
  - (iii) For requesting that items be put on the agenda: **24 February 2005.**
  - (iv) For the distribution of the airgram: **25 February 2005.**
-