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**Committee on Sanitary and Phytosanitary Measures**

**SUMMARY OF THE MEETING OF 20-21 OCTOBER 2010**

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

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<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.

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## **I. ADOPTION OF THE AGENDA**

1. The Committee on Sanitary and Phytosanitary Measures (the "Committee") held its forty-ninth regular meeting on 20-21 October 2010. The proposed agenda for the meeting was adopted with amendments (WTO/AIR/3631).

## **II. INFORMATION ON RELEVANT ACTIVITIES**

### **(a) Information from Members**

2. The representative of the European Union noted that due to a number of developments, including the enlargement of the European Union, various international agreements, and changes in scientific information, an evaluation of the EU Plant Health Regime was ongoing. Based on the evaluation report, a new Plant Health Law would be developed by the end of 2012. A background document providing more information had been circulated and the European Union would notify the proposed legislation at the appropriate time.

3. The representative of Morocco reported that a new sanitary and phytosanitary authority, the National Office for Food Safety (ONSSA) had been established. The ONSSA brought together the former bodies in charge of animal health, plant health and of monitoring food products and products intended for animal feed. The ONSSA was also responsible for international relations with all international organizations and SPS negotiations with all Members, and served as the SPS enquiry point. The ONSSA was a public agency with legal personality and financial autonomy attached to the Ministry of Agriculture and Marine Fisheries. The authority was operational since January 2010, and had a website where information related to legislation, certification, certification templates and import procedures could be found. Morocco thanked the European Union for the support provided, in particular in the development of a Food Law. More information was available in G/SPS/GEN/1039 and at <http://www.onssa.gov.ma>. The representatives of the European Union, Guinea and Mali congratulated Morocco for that initiative, and the latter representatives indicated that Morocco's experience might be helpful in their own efforts to create a single authority and develop an appropriate food law.

4. The representative of Argentina drew attention to a new pre-Phytosanitary Import Authorization (Pre-AFIDI) procedure. Senasa Resolution No. 569/2010 put into effect a new management system for products for propagation purposes (parts of plants or seeds) entering the country via Buenos Aires. Importers of such products or their representatives could print an application for a phytosanitary import authorization approved by Senasa's Plant Quarantine Directorate, and generate a pre-AFIDI that could be used for the upstream processing of phytosanitary certificates. The system would enable the certifying country to consult the data contained in a pre-AFIDI document on-line. The objective of the procedure was to facilitate the processing of the AFIDI for requesting import approval.

5. The representative of Korea reported that there had been no other outbreaks of foot-and-mouth disease (FMD) since the one in May 2010. In September 2010, the World Organization for Animal Health (OIE) had recognized Korea status as FMD-free without vaccination.

6. The representative of Japan provided updated information on the FMD outbreak in Japan. Since the confirmation of the first FMD case in April 2010, the Government of Japan had applied control measures based on the OIE Animal Health Code. The destruction of all vaccinated animals within 10 km of the infected farms had been completed, with the last cull in July 2010. No new case had been registered since that time and continuous surveillance was in place. On 6 October 2010, Japan had applied to the OIE for recognition of its regained FMD-free status. Japan thanked those

importers that had already resumed their imports of beef, and requested other Members to lift their suspensions.

(b) Information from Observer Organizations

7. The representative of the OIE provided an update of OIE's relevant activities (G/SPS/GEN/1043). The OIE was considering a proposal for OIE endorsement of national FMD control programmes for members that were working to improve their animal health status. OIE members had an obligation to report information on animal diseases in a transparent and timely manner, especially when there was a change in disease status, and new obligations were being introduced regarding reporting on OIE-listed diseases in wildlife. The representative of the OIE reminded Members that trade bans should not be imposed in response to the notification of diseases in wildlife. Information was also provided on OIE activities to support the veterinary services of the OIE members that chose to follow the OIE PVS pathway. The OIE had recently published two volumes of the OIE Scientific and Technical Review dedicated to the issue of invasive species.

8. The representative of the International Plant Protection Convention (IPPC) Secretariat presented a revised and more detailed report on IPPC activities during the period of March to October 2010 (G/SPS/GEN/1049). The report included: information about the Fifth Session of the Commission on Phytosanitary Measures (CPM-5) and the standards proposed for adoption in 2011; the general standard-setting work programme up to October 2010; information exchange matters covering information on countries' contact points to IPPC, the International Phytosanitary Portal, and pest reporting); the activation of the IPPC dispute settlement system following a first official request; the capacity building plan and activities; resource mobilization; and a list of all adopted International Standards for Phytosanitary Measures (ISPMs). Work on a phytosanitary standard for sea-containers was of great importance for many Members. Funding for an expert group meeting on that issue had been provided by New Zealand, to be held perhaps in September 2011. However, the sustainability of the IPPC's work programme was at risk due to a budget deficit of about \$1.2 million for 2011.

9. The representatives of Australia, the European Union, Senegal, South Africa and the United States expressed their appreciation for IPPC's work and their serious concern regarding its financial situation.

10. The representative of Senegal highlighted the importance of the IPPC Portal for information exchange, and indicated that Senegal required assistance in implementing IPPC standards. The representative of South Africa stated that South Africa faced problems with citrus fruit exports to the European Union, as approximately 40 per cent of its exports were restricted due to citrus black spot disease. South Africa considered the EU requirements to be more restrictive than justified by science, and had presented its assessment of the risks to the European Union.

11. The representative of Australia welcomed the IPPC's first implementation of its dispute settlement procedure. While Australia recognized the poor financial situation of the IPPC, it was concerned that restricting the IPPC standard-setting activities would create serious backlogs with negative impacts on all IPPC parties. Australia urged all SPS Committee delegates to express their concerns to the FAO to find a solution.

12. The representative of the European Union shared Australia's concerns regarding the IPPC standard-setting activities and encouraged other donors to also provide direct support to the IPPC. The representative of the United States also expressed concern for the financial situation of IPPC and encouraged all Members to bring this situation to the attention of their relevant authorities in order to find a solution to the problem.

13. The representative of the IPPC thanked Members for their support, and in particular, the European Union for its financial support. IPPC members had repeatedly sought increased contributions, but as this was not forthcoming, expenditures on many activities would have to come from extra-budgetary sources.

14. The representative of Codex reported on the outcome of the Codex Alimentarius Commission's meeting of 5-9 July 2010 and drew attention to forthcoming Codex meetings (G/SPS/GEN/1054). Codex also provided a list of standards and related texts that had been adopted by the 33<sup>rd</sup> session of the Codex Alimentarius Commission.

### **III. SPECIFIC TRADE CONCERNS**

(a) New Issues

(i) *Indonesia's Import Restrictions on Beef and Recognition of the Principle of Regionalization - Concerns of Brazil*

15. The representative of Brazil expressed concerns over Indonesia's Regulation 82/200, which did not seem to comply with Article 6 of the SPS Agreement. Indonesia had notified revisions to the law which would have permitted recognition of disease-free regions, and the authorities had engaged in bilateral discussions regarding imports of meat from Brazil. In August 2010, however, the Indonesian courts had annulled that aspect of the legislation. Brazil expected the Indonesian authorities to take all necessary measures to revise the law, and to notify this to the WTO. Brazil already had OIE recognition of its FMD-free status.

16. The representative of Indonesia observed that the country had about 7,000 islands, and it had taken Indonesia almost 100 years to eradicate FMD. The Government had sought to develop regulations that were consistent with international standards, but these had been challenged in the constitutional court. Imports from regions where FMD had not been completely eradicated were therefore prohibited.

(ii) *EU Maximum Residue Levels of Pesticides - Concerns of India*

17. The representative of India referred to three EU notifications on the adoption of MRLs for certain pesticides (G/SPS/N/EEC/196/Add.2, G/SPS/N/EEC/196/Add.10 and G/SPS/N/EEC/382) within the framework of the EU Revised Plant Protection Regulation 1107/2009. EC Regulation 396/2005 established the legislative framework for MRLs of pesticides in or on food and feed of plant and animal origin, which was notified by the European Commission in April 2005. India was concerned that the MRLs for a number of chemicals were set at the "limit of detection" (LOD). This was the residue limit which could be detected using analytical methods/testing procedures available in Europe. Different climatic conditions in India required a different use of pesticides in agricultural production. No scientific evidence had been provided to justify the setting of the MRL at the LOD, especially for imported products. For some substances, the MRLs in EU cereals was much higher than the approved level of the same substance in rice. The setting of MRLs at the LOD had impacted India's exports of agricultural products to the European Union, and India requested the European Union to provide the validated testing methods it used to arrive at the LOD as well as the scientific basis and risk assessment for the MRLs. India considered that the EU MRLs resulted in the violation of Articles 2.2, 2.3, 3.1, 5.1 and 5.4 of the SPS Agreement.

18. The representative of Thailand shared India's concerns, observing that in the recent EU notifications the proposed MRLs for some chemicals were much lower than the levels set by Codex. The representatives of Brazil and Pakistan also shared India's concerns about the EU procedure for establishing MRLs.

19. The representative of the European Union explained that the new legislation on pesticide residues was in place since 1 September 2008. MRLs had undergone a common EU consumer intake assessment carried out by the European Food Safety Authority (EFSA) to make sure that all classes of consumers, including vulnerable ones such as babies and children, were sufficiently protected. The validated analytical methods used by the European Union could be found on the website of the EU Reference Laboratories for Residues of Pesticides. The model used for estimating the dietary intake of 27 EU consumer groups was available on the EFSA website. The risk assessment methodology used for setting the MRLs came from the framework established by the Codex Alimentarius, as described by a 2002 Joint FAO/WHO Meeting on Pesticide Residues' (JMPR) report. An LOD was set when there was a safety concern for consumers from the use of a pesticide at high levels or when there was no authorized use on a specific crop within the European Union or third countries. The proposed revision of the EU MRLs had been notified to the WTO in 2003, 2005 and 2007, and all WTO Members and stakeholders had also been informed about all the individual values that were proposed. The MRLs were fixed and published in the Official Journal if no reaction to the notifications had been received. Nevertheless, applicants in and outside the European Union could apply to have import tolerances set for higher MRLs in specific cases. Although the European Union was aware of the different geo-climatic conditions in India, data on the safety of imported products was still necessary.

*(iii) Japan's Prohibition of Certain Food Additives - Concerns of India*

20. The representative of India expressed concerns over Japan's proposed withdrawal of 80 food additives in May 2011, which had been notified to the WTO in July (G/SPS/N/JPN/255). The decision to prohibit the use of these additives was apparently based on a survey and the analysis of public comments. The survey considered the sale, manufacturing, import, processing, use, storage and display of such substances in Japan's market. India was concerned that the requirements of Article 2 of the SPS Agreement had not been fully considered, as the survey did not provide any indications that the additives were hazardous to human health, nor had a risk assessment been undertaken by the Japanese authorities, and international standards had not been followed. Of the 80 food additives to be withdrawn, at least 33 substances were allowed in other countries, including Korea and the United States, in line with Codex or country specific standards. India urged Japan to follow the provisions of the SPS Agreement before deciding to prohibit the use of the food additives, and suggested that Codex could be requested to examine the risks associated with those food additives.

21. The representative of Japan recalled that according to the revision of the Japanese Food Sanitation Law in 1995, natural additives became subject to prior approval by the Ministry of Health, Labour and Welfare. Therefore, whether natural or synthetic, no additive could be used unless it was approved by the Ministry. The concept of "existing food additives" was established in 1995 and referred to substances that were derived from natural origin and that had been used before 1995 without prior approval. However, their safety had not been verified or examined based on a safety assessment, and Japan would be systematically verifying the safety of existing food additives. Japan considered that it was justifiable to eliminate those substances for which there was no actual use or distribution in Japan, and hence not lead to any restriction of trade. Japan had previously directly contacted embassies and trade groups in response to requests received on this issue. In 2009, Japan had carried out a survey on 125 substances and, based on the survey results, had prohibited these 80 additives since they were no longer in use in the domestic market. Should Members nevertheless have further comments on this notification, these should be submitted by 17 November 2010 at the latest.

(iv) *Brazil's Restrictions on Bovines and Bubalines for Reproduction - Concerns of Colombia*

22. The representative of Colombia expressed concern that the entry into force of Brazil's new Ministry of Agriculture, Livestock and Supply (MAPA) standard 46 would nullify the 2003 Memorandum of Understanding regarding bovines and bubalines and semen of bubalines from Colombia. Brazil's recognition of the FMD-free status of Colombia was not forthcoming. The Brazilian authorities had requested more information following the 2003 and 2006 recognition of the FMD-free status of Colombia. This information had been sent and discussed in bilateral meetings in 2007. In 2008, MAPA had indicated a need for a new verification visit, but had failed to carry out this visit. In bilateral meetings held in the margins of this SPS Committee meeting, Brazil had proposed a new quarantine procedure which Colombia hoped would lead to the resolution of this problem.

23. The representative of Brazil indicated that the bilateral meeting had been a useful opportunity to clarify some issues and resume discussions. Brazilian sanitary authorities had concluded that the new quarantine station on the Island of Cananea in the state of Sao Paulo, which had recently started its operations, could provide additional guarantees as regarded the sanitary controls for Colombia's exports to Brazil. If Colombia's exports of live cattle and buffalos were subject to certain procedures at that station, it would facilitate the solution of the matter. Brazil's requirements were due to the existence in Colombia of a certain strain of the vesicular stomatitis virus which affected bovines. This virus was exotic to Brazil, and of major concern in the Mercosur region.

(b) *Issues Previously Raised*

(i) *General Import Restrictions due to BSE - Concerns of the European Union*

24. The representative of the European Union noted that restrictions of imports due to BSE remained of great concern and urged Members to lift any unnecessary, disproportionate and discriminatory restrictions. A number of WTO Members continued to impose unjustified import restrictions, such as allowing imports only from countries that had a negligible risk status according to the OIE classification or where no cases of BSE had been notified at all. There had been, however, some positive developments. The Philippines had announced the lifting of import restrictions on beef from most of EU member States, and Egypt was now allowing imports of de-boned beef from animals younger than 48 months. The European Union urged Members to quickly align their requirements with the OIE standards, and to establish fair, non-discriminatory, transparent and scientifically sound import requirements.

(ii) *India's Restrictions due to Avian Influenza - Concerns of the United States*

25. The representative of the United States indicated that India stood alone among the world's leading trading partners with respect to the scope of the bans it imposed and the severity of its avian influenza (AI)-related import requirements. India's bans and import requirements were not in keeping with the OIE established standards. India continued to maintain the AI bans as emergency measures, and prohibited the import of live pigs and a wide range of avian species and products without providing a scientific justification for exceeding the international standards. Despite repeated requests, India had not provided its risk assessment until the October 2010 SPS Committee meeting. Moreover, India had failed repeatedly to notify its AI-related import restrictions in a timely manner. In March 2010, India had announced a new extension of its emergency measures, and also that products from countries reporting any notifiable AI in domesticated or wild birds would be banned. Those new measures had not been notified to the WTO.

26. The representative of the European Union shared the US concerns about the emergency measures taken by India and the lack of transparency. India had failed to provide an opportunity for

WTO Members to comment before measures were put in place. India had not made public the outcome of the last review of its import conditions on AI, although it had reported to the SPS Committee that this took place every six months. The European Union called on India to share its risk assessment or other scientific justification for its import measures, and to recognise the principle of regionalization as foreseen under the SPS Agreement.

27. The representative of India recalled that it had continuously explained the reasons for its measures, and changes to these. At the last Committee meeting, India had reported on the lifting of the ban on imports of pork products, although imports of live pig was still prohibited from AI positive countries. Processed poultry and poultry meat products were allowed from AI positive countries subject to certain conformity assessment requirements, thereby facilitating trade while continuing to protect human and animal health. India remained concerned that low pathogenic avian influenza (LPAI) had the potential to mutate into highly pathogenic strains. India noted that Article 10.4.1 of the OIE Terrestrial Animal Health Code prohibited trade in poultry and its products from LPAI positive countries. India had provided its risk assessment on avian influenza directly to the United States, and was willing to share it with other Members upon request.

28. The representative of the OIE expressed an interest in receiving India's risk assessment. She stressed that the OIE standards did not justify trade restrictions on the basis of reports of LPAI in wild birds. AI was widespread in wild birds and the OIE requested that this be notified so as to provide valuable data, but did not recommend any trade restrictions on this basis.

(iii) *Venezuelan Suspension of Inspection and of Emission of Phyto- and Zoo-Sanitary Certificates - Concerns of Colombia*

29. The representative of Colombia reported that the issue of sanitary restrictions had been discussed in a meeting between the Presidents of Venezuela and Colombia as part of the normalization of trade relations between the two countries. Colombia hoped that expeditious progress would be made, so that a resolution might be reported to the Committee in March 2011.

30. The representative of Venezuela confirmed that bilateral contacts had been established between the two countries and that reports would be provided on the progress made in resolving this issue.

(iv) *EC Regulation No. 1099/2009 of 24 September 2009 - Concerns of India*

31. The representative of India expressed concern that the EU regulation contained animal welfare requirements that would be trade restrictive, and as the slaughter of animals was a sanitary issue, this measure should be notified to the WTO. Although the regulation was based on OIE standards, only those OIE standards that had the objective to control animal health, including ante- and post- mortem inspections, fell within the scope of the SPS Agreement. The new regulation introduced animal welfare requirements beyond those that had been in place since 1993, and therefore the European Union should notify the regulation to the WTO and give Members time to submit comments. India asked: how trade issues would be linked with animal welfare issues; how equivalence of measures would be assessed; whether the provisions of Article 12 of the EU regulation were in line with any WTO agreements; and whether Article 5 of the regulation would require that all establishments exporting meat receive a prior clearance from the European Union.

32. The representative of Viet Nam noted that it shared India's concerns, in particular relating to fishery products.

33. The representative of the European Union indicated that the regulation was based on scientific findings, in particular two scientific opinions by the European Food Safety Authority in 2004 and



2006. These scientific opinions were publicly available and had been provided to India. As a major importer of meat products, and as a result of consumer preferences, the European Union required that certain animal welfare conditions be met at the time of slaughter. The measures contained in Article 12 of Regulation 1099/2009 were not more trade restrictive than those currently enforced. There was no obligation for countries to apply the same or identical measures, but measures that were equivalent in achieving the same aims were acceptable. The principle of equivalence had existed and been applied since 1993. The regulation took into account the international animal welfare standards on the slaughter of animals developed by the OIE. It was the role of the EU Food and Veterinary Office to evaluate the equivalence of measures implemented in countries exporting to the European Union. The European Union welcomed collaboration between experts on animal welfare, as in the ongoing bilateral agreement with India, to exchange technical knowledge and achieve a common understanding on equivalency.

(v) *Turkey's Restrictions on Products Derived from Biotechnology - Concerns of the United States*

34. The representative of the United States welcomed Turkey's notification of the implementation of its new biotech measures, however the development and implementation of the law had not been transparent nor timely. The United States appreciated the valuable trade in agricultural products with Turkey and wished to re-establish market access for the previously approved products without delay. The United States remained concerned that the system prohibited the presence of biotech products in products for infants and children, as well as the cultivation of biotechnology without reference to a risk assessment or scientific evidence. The United States sought clarifications on the process and criteria used to evaluate approval decisions, and encouraged Turkey to establish written procedures outlining those processes and criteria, as well as to confirm that they were based on science.

35. The representative of Argentina expressed concern that the Turkish standards were not consistent with the SPS Agreement or Codex standards, and were unfavourable to modern biotechnology products. The representative of Canada stated that the new law had to take into account scientific assessments and not be more trade restrictive than necessary. Canada also urged Turkey to consider delaying the implementation of the regulation for six months until at least February 26, 2011.

36. The representative of Turkey stated that Turkey had notified in 2009 and 2010 its legislation related to biosafety issues whose objectives were to establish a biosafety protection system for human, animal and plant health against risks emerging from GMOs and GMO-based products. Previous Turkish legislations and the Cartagena Protocol had been used as reference documents, as well as EU accession documents. There were around 12,000 protected species in Turkey, 3,700 of those being only endemic to Turkey. More than 700 agricultural products could be naturally grown in Turkey, therefore it was critical for Turkey to protect its rich biodiversity from the risks arising from biotech products. Turkey had endeavoured to address the concerns raised by various Members regarding its notifications, including issues caused by mistranslation. Turkey indicated that it would draft and notify secondary regulations to the WTO, to clarify misunderstandings. Turkey welcomed the opinions of its trading partners to improve its legislations. The representative of Turkey further asserted that the implementation of its legislation was science-based and fully complied with WTO and other international rules, as well as with the Cartagena Biosafety Protocol. In addition, Turkey expressed that no particular trade restriction had been reported during the preparation and adoption of the legislation or after its enforcement.

(vi) *Japan's Pesticide Maximum Residue Levels - Concerns of Ecuador*

37. The representative of Ecuador raised concerns over Japan's 2006 Food Health Act establishing new MRLs for food products of plant and animal origin, intended for human

consumption. Products with concentrations of residues above those limits could not be imported, processed, used or stored for sale in Japan. The Food Health Act established a list of 158 chemicals and their corresponding MRL for food, and substances. The establishment of such stringent limits had meant that shipments of Ecuadorian cocoa in which 24D was present had been rejected by Japan, causing significant costs to Ecuador cocoa exporters and producers. Despite constructive bilateral discussions, no solution had been found, and Ecuador requested more information on the process used by Japan to set its MRLs measures and asked for swift notification by Japan of anomalies or lack of compliance with cocoa exports regulations.

38. The representative of Japan stated that based on the Japanese Positive List System, the Ministry of Health, Labour and Welfare (MHLW) established individual MRLs in food commodities through safety evaluations and residue studies. Japan adopted Codex MRLs as Japanese MRLs where the necessary requirements were met. If Ecuador wanted Japan to establish MRLs for specific pesticides, an application had to be submitted to the MHLW. In addition, Japan would consider relevant applications for modifications and revise current MRLs as appropriate.

*(vii) EU Artificial Colour Warning Labels- Concerns of the United States*

39. The representative of the United States reiterated its concerns about EC Regulation 1333/2008 on food additives. Article 24 of the Regulation required warning statements on food products that contained one or more of six colour additives: Sunset Yellow (E110), Quinoline Yellow (E104), Carmoisine (E122), Allura Red (E129), Tartrazine (E102), and Ponceau 4R (E124). The United States continued to be concerned with the scientific basis of the regulation, its potential negative impact on international trade, and the transparency of its adoption. Most of these six colour additives were widely used by the food industry in products such as confectionaries and beverages. When the draft regulation was notified to the WTO (G/SPS/N/EEC/291), it did not contain the provision on warning statements, and the United States was not aware of an addendum to the original notification. Scientific evaluations from the University of Southampton in 2007 and the European Food Safety Authority (EFSA) in 2009 did not substantiate a link between the individual colours and possible behavioural effects in children. The United States was also concerned that even though EFSA was unable to substantiate a link, the European Union implemented the measure in July 2010, disregarding available pertinent information from relevant international organizations, such as the Joint FAO/WHO Expert Committee on Food Additives. The United States requested information from the European Union on any further expansion of the list of additives to be subjected to the warning labels.

40. The representative of the European Union clarified that the new EU regulatory regime on artificial colorants used in food products was not an import ban but only introduced certain specific labelling provisions. The labelling requirements had entered into force in July 2010 and had not shown any noticeable effect on trade. A transitional period of 18 months for implementation had been provided, allowing industry time to comply. The European Union would continue the evaluation, through EFSA, of all food additives to avoid any unnecessary trade disruption. The representative of the European union pointed out that at its March 2010 session, the Codex Alimentarius Commission had postponed the decision to adopt new provisions for one of the Southampton colours, Ponceau 4R in soybean-based beverages due to safety concerns. Until new elements demonstrated the absence of adverse effects of Southampton colorants, the European Union's position would remain unchanged.

(c) Consideration of Specific Notifications Received

(i) *Brazil's Notification on Labelling of Products of Animal Origin (G/SPS/N/BRA/654)- Concerns of the European Union*

41. The representative of the European Union welcomed the postponement till January 2011 of the entry into force of Brazil's labelling provisions, but noted that the new labelling requirements were not based on science, and could affect a wide range of products exported to Brazil. The European Union sought clarifications from Brazil on the sanitary risks the labelling requirements intended to address.

42. The representative of Brazil stated that the draft legislation on labelling requirements for imported products of animal origin reflected requirements that had been in place since 1998. Due to the high number of comments received on the draft legislation, Brazil had extended the deadline for comments until November 2010. The draft legislation was supposed to enter into force in January 2011. Brazil hoped that further bilateral technical exchanges of information would successfully address the European Union concerns.

(ii) *Brazil's Measures on Canned Sardines (G/SPS/N/BRA/666)- Concerns of Morocco*

43. The representative of Morocco stressed the importance of the fish sector for Morocco's economy, and in particular canned sardines which represented 94 per cent of their canned fish. Although Brazil's notification did not identify health concerns, in Morocco's view the notified measure was more restrictive of trade than necessary. The notified measure was also in contradiction with the Codex's principle of identification of sardines species, and Codex had to be referred to when adopting measures. Brazil's notified measure could seriously restrict canned sardine exports from Morocco and constituted unfair competition at the global level. Morocco also considered that the measure was in contradiction with Articles 3.5 and 12.4 of the SPS Agreement and sought reactions from other Members, especially from the European Union as a major importer of canned sardines.

44. The representative of the European Union supported the concerns of Morocco, and noted that Brazil's deadline for comments was 40 days and not the recommended 60 days. Brazil's requirements were not in line with the relevant Codex standards and the European Union urged Brazil to align its measures with the relevant international standards.

45. The representative of Brazil reported that the draft legislation had been also notified to the TBT Committee. All comments received would be duly taken into account and Brazil was willing to hold any technical meetings considered necessary by Morocco. Brazil did not understand how a measure that would be less trade restrictive than one based on an international measure could be considered to be a barrier to trade. While Brazil's list of species that could be used for canned sardines was shorter than the Codex list, according to Article 5 of the draft legislation the Brazilian list was not exhaustive.

46. The representative of Peru recalled that there had been a previous case between Peru and the European Union on the denomination of sardines which had also involved Codex standards.

(d) Information on Resolution of Issues

47. The representative of the European Union presented an updated list on specific trade concerns raised in the SPS Committee (G/SPS/GEN/1051). The updated list contained 14 issues that the European Union considered as having been resolved. The European Union encouraged Members to update the list of specific trade concerns raised in the Committee, and congratulated its trading partners on the cooperation on those issues. The Chairman urged other Members to systematically go

through all the specific trade concerns raised in the Committee to identify those they considered as having been settled.

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

48. The Chairman indicated that notifications received since the last meeting of the SPS Committee were summarized on a monthly basis in G/SPS/GEN/1036, G/SPS/GEN/1037, G/SPS/GEN/1040 and G/SPS/GEN/1042.

49. The Secretariat reminded the Committee that the paper copies of the National Notification Authorities and of National Enquiry Points were updated only once every year, but that the electronic lists were constantly updated and available through the SPS Information Management System (SPS IMS). The Secretariat invited Members to submit the most recent contact information so that it could be included in the SPS IMS.

##### **(a) Interim Report on Workshop on Transparency Provisions**

50. The Chairman reported that the first day of the Workshop on Transparency took place on Monday, 18 October and had followed the programme contained in G/SPS/GEN/1021/Rev.1. Thanks to various funding arrangements and special projects, there had been a high level of participation from developing countries and LDCs. The second part of the workshop would continue on Friday with hand-on training on the SPS IMS, as well as on a demo version of the new system for online submission of SPS notifications.

51. During Monday's session, the Secretariat had presented an overview of the implementation of the transparency provisions (G/SPS/GEN/804.Rev.3) as well as information on available tools such as the mentoring mechanism, the SPS IMS and the new online system. Nineteen Members were currently matched up with nine mentors, and all had received a questionnaire on how the mechanism was functioning. Recommendations had included the need for setting concrete objectives and timetables, and that Members receiving mentoring should be more proactive in identifying their needs. The Secretariat had noted that the online notification submission system would be launched at the beginning of next year.

52. Seven Members had presented their experiences in relation to the transparency provisions, addressing topics such as the importance of notifying, tracking notifications, national coordination mechanisms, awareness raising and bilateral technical assistance projects. The importance of information exchange between the public and private sector to help promote transparency had been underlined. Examples of SPS Notification Alert systems had also been showcased. One presentation had highlighted the assistance one Member had received from another on the establishment of a National Notification Authority and Enquiry point. The proactive stance that the Member had taken in identifying needs and in seeking assistance had been highlighted as a key component in the success of the bilateral project.

53. Morocco and the European Union had presented documents G/SPS/GEN/1047 and G/SPS/GEN/1044, respectively. Morocco had described several of the recent measures they had taken to implement the SPS transparency obligations, while the European Union had shared its analysis regarding the use of the 2008 transparency formats. In that regard, the European Union had suggested that Members increase their efforts to identify the appropriate international standard relevant to the measure being notified, and to give a clear explanation of any deviation from the international standard.

54. The STDF Secretariat had also given a brief update on projects that aimed to improve SPS coordination at the national and regional level, as well as to improve coordination between government agencies and the private sector.

55. During the question and answer session, some delegates had suggested that Members with limited financial resources could optimize resources if the national notification authority and the enquiry point were the same body. It had also been highlighted that one could run a successful SPS contact point with as little as one staff member with a computer and reliable internet connections.

56. During the afternoon breakout sessions, Members had identified possible solutions to common concerns regarding the implementation of the transparency provisions.

57. The recommendations arising from the breakout sessions had included:

- (i) The development of a best practices guide on the implementation of the transparency provisions, such as national coordination mechanisms and the operation of NNAs and Enquiry Points. Some suggested that that could be preceded by a questionnaire and/or a meeting on the margins of the SPS Committee to identify themes to include in the guide;
- (ii) Further training on the SPS Information Management System;
- (iii) Encourage Members to provide the text of regulations through the Secretariat's facility for uploading PDF files;
- (iv) Encourage Members to circulate translations of regulations;
- (v) Members should make better use of the mentoring mechanism by using the SPS Committee meetings to have face-to-face meetings with their partners to discuss concrete timelines and project proposals;
- (vi) Members should not be overambitious, but would benefit from taking small simple steps when creating a well-functioning national transparency mechanism;
- (vii) SPS Contact points should better filter incoming notifications, for example on the basis of product lists, in order to have a more targeted distribution to relevant stakeholders; and
- (viii) The step-by-step procedural manual was very useful and could be more widely disseminated, perhaps by emailing an electronic version to every SPS Enquiry Point.

58. In concluding his summary, the Chairman noted that the workshop would continue on Friday, 22 October and that the Secretariat would prepare a full report on the workshop (G/SPS/R/60). The presentations would be made available on the WTO SPS Gateway site.

59. The Secretariat noted that the Friday session of the workshop would focus on hand-on training, including on the submission of on line notifications and on the use of the SPS IMS.

60. The representative of Chile expressed concern with emergency measures that remained "permanent". The European Union document G/SPS/GEN/1044 represented a good basis for discussion of box 8 of the notification form. Chile noted that document G/SPS/GEN/1044 showed that more than a half of notifications had not complied with an international standard. Chile stressed the need for better information on the use of international standards and on reasons for deviation from international standards.

## **V. IMPLEMENTATION OF SPECIAL AND DIFFERENTIAL TREATMENT**

### **(a) Chairman's Report on Transfer of Technology**

61. The Chairman drew the Committee's attention to a request he had received from the Chairman of the Working Group on Trade and Transfer of Technology for information regarding any consideration of that issue by the SPS Committee. In his response, the Chairman had noted that although there had been no explicit discussions of that in the SPS Committee, there was ample opportunity for Members to raise trade problems that related to technology transfer, both with respect to trade concerns and in the context of technical assistance. Copies of both letters were available in the package of documents Members had received for the meeting.

62. The representative of Cuba noted that the consideration of special and differential treatment, and of technology transfer, was not sufficiently discussed in the SPS Committee. Cuba valued the technical assistance it received bilaterally or from international organizations and Cuba hoped to receive more technical assistance relating to technology transfer. Cuba recalled that in its proposal TN/CTD/W/32 it had suggested that technology transfer be provided to help developing countries deal with the TBT and SPS restrictions on their exports. Cuba supported all possible actions or initiatives in the provision of special and differential treatment, in the widest possible sense, in light of the need for adequate resources to carry out appropriate technical tests.

## **VI. EQUIVALENCE – ARTICLE 4**

### **(a) Information from Members on their Experiences**

63. No Member provided any information under this agenda item.

### **(b) Information from Relevant Observer Organizations**

64. No observer organization provided any information under this agenda item.

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

### **(a) Information from Members on their Pest or Disease Status**

65. No Member provided any information under this agenda item.

### **(b) Information from Members on their Experiences in Recognition of Pest- or Disease-free Areas**

66. No Member provided any information under this agenda item.

### **(c) Information from Relevant Observer Organizations**

67. The IPPC representative reported that IPPC was collecting information on pest free areas via the IPP (International Phytosanitary Portal). A number of countries had already provided that information, and IPPC encouraged countries to provide information on their pest lists.

68. The representative of the OIE reported that OIE had started work on granting an official recognition status from a fifth disease, namely African Horse Sickness, that could be important in the international movement of horses and competitions. The OIE also reported on a new pathway for recognition of national FMD control programmes.

### VIII. TECHNICAL ASSISTANCE AND COOPERATION

(a) Information from the Secretariat

(i) *WTO SPS Activities*

69. The Secretariat referred Members to document G/SPS/GEN/997 presented at the March 2010 meeting of the Committee, which included the new procedures for dissemination of and information on the Secretariat's technical assistance activities. The Secretariat noted the positive outcome of that process, with around 400 applications received by the deadline from 98 countries and a total of 420 participants registered in the e-learning courses. The Secretariat also drew Members attention to the Advanced SPS Course currently underway, and to two upcoming Regional SPS Seminars scheduled for November: (i) for Latin American countries to be held in Peru in collaboration with the Inter-American Development Bank and IICA; and (ii) for Asia, Pacific, Central Asia and Central Europe countries to be held in Sri Lanka.

70. Since the last SPS Committee meeting, the Secretariat had delivered four national seminars in Argentina, China, Nigeria, and Samoa. The Secretariat also announced that the SPS e-learning course would be available throughout the year, starting in 2011.

71. The representatives of Argentina, China, and El Salvador thanked the Secretariat for the national seminars organized in their respective countries.

(ii) *Standards and Trade Development Facility (STDF)*

72. The Secretariat provided an update on the operation of the Standards and Trade Development Facility (STDF) (G/SPS/GEN/1046). The STDF Secretariat indicated that work had started on SPS indicators to support the identification and application of indicators to measure the performance of national SPS systems. That work had three main objectives: (i) to sensitize the SPS community about the importance of managing for results and, more specifically, about the value and role of indicators; (ii) to identify, pilot test and refine a representative set of indicators to measure the performance of a national SPS system; and (iii) to develop guidance materials to promote the use of indicators within results-based management frameworks for national SPS systems.

73. The Secretariat reported on the technical working meeting on SPS indicators the STDF held in Geneva on 1 July 2010, in collaboration with the Organisation for Economic Cooperation and Development (OECD). Over 80 participants attended the meeting, including 16 experts from developing countries whose participation was funded by the STDF. Participants discussed a draft STDF/OECD working paper on the topic and, in particular, a preliminary set of indicators.

74. The Secretariat underlined that the STDF work on SPS indicators was "work-in-progress". The draft working paper had been revised on the basis of discussions at the technical meeting and was available on the STDF website. A proposal to carry out pilot testing work on SPS indicators at country level would be discussed by the Working Group on 22 October. SPS agencies in developing countries that were interested to participate in this exercise were encouraged to contact the STDF Secretariat.

75. The Secretariat reported on the 4-5 October 2010, STDF workshop in the Hague, on the role of Public-Private Partnerships (PPPs) in enhancing SPS capacity, in collaboration with the Netherlands Ministry of Agriculture, Nature and Food Quality (LNV) and the World Bank Institute. Over 100 representatives from government agencies, international and regional organizations, donors, research institutes and the private sector had participated in the workshop. Thirty-one representatives from developing countries were funded by the STDF. The STDF was preparing a two-page briefing

on the conclusions and recommendations of the workshop as part of its regular series of STDF Briefing Notes and that all the presentations made at the workshop were available on the STDF website.

76. The Secretariat drew attention to the STDF pilot testing work initiated on the use of the multi-criteria decision analysis (MCDA) approach to inform decision-making on SPS capacity building and resource allocation. That work was to be first implemented in two African developing countries. In 2011, one developing country in Asia and one in Latin America were to be included. The Secretariat also indicated that the STDF had published a scoping study at the request of the African Union Commission (AUC), in a first attempt to identify and assess the myriad of regional SPS policy frameworks and strategies in Africa and guide future work in that area. The study was available on the STDF website. A parallel scoping study on the establishment and functioning of national SPS coordination mechanisms in Africa was underway and scheduled to be completed in 2011.

77. The Secretariat indicated that the STDF website had been redesigned, giving it a more contemporary look and making it more user-friendly. Translation in French and in Spanish would be available by November 2010. Likewise, the STDF film, "Trading Safely", was being translated in Russian, Arabic and Chinese and would be available by the end of 2010.

78. The Secretariat also reported that at the STDF Working Group meeting on 2 July 2010, two Project Preparation Grants had been approved and three new projects had been approved for funding by the STDF. The next deadline for the submission of applications for STDF projects was 7 January 2011. Applicants were strongly encouraged to read the "Guidance Note for Applicants" available on the STDF website.

79. Brazil thanked the STDF for the Workshop on Public-Private Partnership and for the useful exchange of experience and the examples shared on the issue of capacity building in the area of SPS.

(b) Information from Members

(i) *Technical Assistance Activities of the European Union*

80. The representative of the European Union highlighted the importance of the ongoing work by the three International Standard-Setting Bodies to further harmonize SPS measures, and invited all Members to be actively engaged in the ISSBs. The European Union had contributed for many years to the OIE, Codex and IPPC Trust Funds to support specifically the participation of developing countries, and would continue to provide such financial support. The European Union planned to contribute 3,6 million euros to two projects: (i) IPPC's Implementation Review and Support System; and (ii) a pilot study under the Codex Trust Fund to enhance the scientific/technical data from developing countries and countries with economies in transition in support of the standard-setting process. In that regard, the European Union called on other possible donors to support both the work of the IPPC and that of the Codex.

81. The representative of Guinea thanked the European Union for the technical assistance it provided through the three Sisters, and encouraged other Members to support capacity building for developing countries.

(ii) *Cooperation provided by Brazil to Cape Verde's Agency for Regulation of Food and Pharmaceuticals (ARFP)*

82. The representative of Brazil reported on a two-year cooperation project aimed at strengthening ARFP's institutional capacity as a national regulator of the pharmaceutical and food sectors in Cape Verde. The cooperation project was a fruitful opportunity to consolidate relations



between Brazil and Cape Verde and Brazil expressed its satisfaction regarding the implementation and the results of the project.

(iii) *Technical Assistance Activities of Chile in the Area of Horizontal Cooperation for Cattle and Health*

83. The representative of Chile reported on horizontal cooperation for cattle and health, and noted that a document and a web page were also available on that issue. Some activities had taken place in Santiago de Chile and in Costa Rica since the last meeting of the Committee. Work with El Salvador on a food safety programme had also begun. Finally, the representative of Chile reported on the support it had received from the FAO on capacity building for food safety.

(iv) *Technical Assistance Activities of Australia*

84. The representative of Australia provided an update on SPS-related technical assistance and cooperation delivered to developing countries between January 2008 and June 2009 (G/SPS/GEN/717/Add.2). Australia had offered assistance offered to 31 countries mainly in the Asia-Pacific Region and also in Africa and the Middle East, through 163 projects amounting to over 82 million dollars. In addition to assisting WTO Members to comply with SPS measures in their export markets and to enhance their capacity to implement their own science-based SPS risk assessment processes, Australia would continue supporting the work of International Standard-Setting Bodies. Australia noted that since the last reporting period, Australia had pursued its technical assistance activities, including, most recently, a Plant Pest Risk Analysis workshop in Viet Nam.

(c) *Information from Observers*

85. The representative of Codex highlighted the work of the Codex Trust Fund relating to the participation of Members in standard-setting. Codex thanked all the countries which had contributed to the Trust Fund, and noted that at the last session of the Commission, the Mid Term Review had been presented, including the objectives, achievements and future perspectives of the Trust Fund. Codex also informed the Committee that a recent Workshop on Codex and Risk Analysis had been organised by the FAO, WHO, European union and the Government of Poland, in Poland. Codex drew attention to: a forthcoming Coordinating Committee for Asia, together with a three-day Workshop organised by FAO and WHO; and a Workshop for Latin America and the Caribbean planned for November 2010. The initiative of the WHO Office for Europe on Antimicrobial Resistance in food safety for Europe, was also highlighted by Codex.

86. The representative of the OIE informed the Committee on its technical assistance to veterinary services to comply with OIE standards and the SPS Agreement (G/SPS/GEN1043). The OIE indicated that 193 requests for missions relating to the PVS pathway had been registered as at 24 September 2010 and 136 missions had been carried out, including PVS evaluation, gap analysis and veterinary legislation. The OIE had amended the tool for the assessment of capacity of aquatic animal health services, and a Global Conference would be held in June 2011, in Panama, on the contribution of the aquatic animal health programme to food security.

87. The representative of Belize thanked the OIE for the application of the PVS tool and the Gap Analysis on the veterinary services in Belize. The report would assist Belize in identifying the key areas that needed further strengthening and in soliciting further assistance from Members.

88. The representative of the IPPC thanked the Secretariat for the cooperation in capacity building workshops and highlighted that an increasing number of countries had been working with IPPC in areas of common interest to build synergies. The IPPC observed that many technical assistance requests did not address identified capacity needs or priorities. The IPPC noted that the

Phyosanitary Capacity Evaluation Tool was the best way to ensure better coordinated and more sustainable technical assistance. The representative of the IPPC referred the Committee to document G/SPS/GEN/1049 which listed all of its technical assistance activities.

89. The representative of IICA provided information on IICA's SPS-related technical assistance activities (G/SPS/GEN/1045) and reported on the conclusion of the STDF 108 Project and on its main outcomes. It was also noted that IICA had begun using the audit manual for national notification systems in Costa Rica, Panama, Colombia, Peru and Paraguay, and would continue using that methodology in other countries when needed.

90. The representative of OIRSA provided information on specific projects and technical assistance activities and highlighted several of the OIRSA projects detailed in document G/SPS/GEN/1050.

91. The representative of the Dominican Republic thanked IICA and OIRSA for the technical cooperation activities held in the Dominican Republic and also for the cooperation of experts who had visited the region to manage certain pests.

92. The representative of SADC thanked the Committee for having granted SADC *ad hoc* observer status at the March 2010 meeting. The representative of SADC reported on the implementation of the Capacity Building in Residue Control Project funded by the European Union, and through which it had assisted most of the SADC member states set up national SPS committees. SADC would next look into the setting up of a regional SPS committee. SADC thanked the STDF Secretariat for its visit to the SADC Secretariat when several cooperation possibilities had been discussed.

93. The representative of ITC provided information on specific projects and technical assistance activities, and also highlighted several projects carried out in cooperation with other organizations (G/SPS/GEN/1053).

## **IX. REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE SPS AGREEMENT**

(a) Issues Arising from the Second Review

(i) *Use of Ad Hoc Consultations (G/SPS/W/243/Rev.3)*

94. The Chairman reported on the informal meeting on the recommended procedure to encourage and facilitate *ad hoc* consultations under Article 12.2 of the SPS Agreement, held on 19 October 2010.

95. He recalled that the use of the Good Offices of the SPS Chairman was included in the Committee's Working Procedures and it had been used in the past. While many Members wanted to establish a procedure that could assist in the resolution of SPS-related trade problems, some had proposed an SPS-specific process while others preferred to await the outcome of the ongoing negotiations in NAMA of a Horizontal Mechanism on non-tariff barriers.

96. During the informal meeting, the Committee had considered three issues: (i) a revised proposal for a specific mechanism on the use of the Good Offices of the SPS Chairman, contained in G/SPS/W/243/Rev.3; (ii) a non-paper by India, Norway, the Philippines and Switzerland, which was sent to Members via fax on 13 September 2010; and (iii) a document from Brazil that compared the proposed SPS mechanism, the NAMA Horizontal Mechanism, consideration of SPS Specific Trade Concerns, and bilateral meetings (G/SPS/GEN/1052).

97. The Chairman had encouraged Members to consider three questions during the discussions: (i) whether Members were discussing alternative mechanisms, complementary mechanisms, or sequential mechanisms; (ii) whether the adoption of a specific SPS mechanism would prejudice the ongoing negotiations on the NAMA Horizontal Mechanism; and (iii) whether the SPS mechanism on *ad hoc* consultations could be considered to be an interim procedure until the broader NAMA Horizontal Mechanism were adopted.

98. The Secretariat had introduced the third revision of the draft proposal of an SPS mechanism contained in G/SPS/W/243/Rev.3. The third revision included comments and suggestions provided by Members during the June meeting of the SPS Committee, in addition to written comments and suggestions submitted by Argentina, Canada and the United States. In addition, the introduction section had been modified to highlight the Committee's conclusions in the context of the three reviews of the operation and implementation of the SPS Agreement.

99. Switzerland, India, the Philippines and Norway had presented their non-paper and views during the informal meeting. They had stressed their willingness to engage in a constructive discussion aimed at achieving an effective and workable mechanism to solve SPS-related problems. In this respect, Switzerland had raised questions on: (i) the experience of Members that had utilized the Chairman's Good Offices in the past, including on the role of the Chairman in those procedures; (ii) the rationale for the procedure being confidential; (iii) whether there was any difference between "*ad hoc* consultations" and "Good Offices of the SPS Chairman"; (iv) what role was proposed for the Chairman in G/SPS/W/243/Rev.3; and (v) the relationship between the SPS mechanism vis-à-vis the DSU procedures. Switzerland had also requested further clarification on which comments had been kept or removed from G/SPS/W/243/Rev.3.

100. While no Member had objected to discussing the elaboration of procedures on *ad hoc* consultations by the SPS Chairman, many Members had urged that the discussions focus on the proposed text in G/SPS/W/243/Rev.3, which offered an inexpensive, voluntary, flexible, and confidential mechanism. Some Members had also recalled that the Committee had a mandate to negotiate such a procedure, which would in any case be reviewed periodically.

101. Brazil had presented its comparison table of the different mechanisms to solve SPS-related concerns (G/SPS/GEN/1052). According to Brazil's analysis, the proposed NAMA Horizontal Mechanism appeared to be more comprehensive, and the discussion at a more mature stage, than the work in the SPS Committee. Brazil had proposed to consolidate all the comments on the SPS mechanism to date, to more clearly identify divergences in views.

102. Several Members had maintained that the mechanisms in discussion should be considered complementary to each other, as a single tool could not address all the problems related to SPS. It had also been suggested that the discussions in the SPS Committee should take into account the provisions on special and differential treatment.

103. Given the differing views of Members, the Chairman had suggested that the Committee follow a two-track approach to advance its work.

104. First, a new revision of G/SPS/W/243 could be prepared by the Secretariat. This document had been discussed for more than one year, and Members had been given seven different opportunities to comment on the draft over time. Many comments had been made during that period, many of which may have been superseded by the development of the discussions. To ensure that the new revision included all the relevant suggestions by Members, the Chairman invited Members to ensure that their comments on G/SPS/W/243/Rev.3 included all the suggestions they believed were still relevant. That is, Members should comment on G/SPS/W/243/Rev.3 as though this had been a new proposal, repeating, if necessary, comments they might have made previously.

105. Also, the Secretariat would prepare a paper that described the use of *ad hoc* consultations in previous cases, based on the information that Canada and the United States had offered to provide on their experiences during those consultations.

106. Members could also, if they so wished, submit other proposals for consideration by the Committee.

107. Based on this additional information, the Chairman hoped that the Committee would be able to set the level of ambition which would guide its work on this matter.

108. In concluding his report on the informal meeting, the Chairman invited Members to submit all of their comments on the issue before the end of the year, so that a revised document compiling all the comments to date could be prepared and circulated before the March 2011 meeting of the Committee.

109. In commenting on the Chairman's report of the informal meeting, the representative of Hong Kong, China stressed the importance of implementing the various recommendations agreed following the Second Review of the SPS Agreement, in particular the one relating to Article 12.2. It was time for all Members to consider the proposal on the table and adopt it expeditiously as a workable and practicable way to assist Members in resolving specific SPS issues. The latest proposal took into consideration Members' comments in many previous discussions, and offered a reasonable solution with adequate flexibility, as the basis for further discussion. He encouraged other Members to submit any further suggestions to the Secretariat with a view to adopting the proposal. While Hong Kong, China agreed with India, Norway, the Philippines and Switzerland that the deliberations at the SPS Committee should not adversely affect the NAMA negotiations, the reverse was also true. Hong Kong, China would study carefully the helpful comparison table prepared by Brazil, and looked forward to further engagement on this subject as soon as possible.

110. The representative of El Salvador stated that the *ad hoc* consultations were extremely beneficial because all Members could express their concerns. Brazil's table was very useful, and El Salvador hoped that Members would be ready to reach a decision at the next meeting in March 2011.

111. The representative of India requested more precision regarding the three questions raised by the Chairman in his report, and suggested that it would be useful to have an informal meeting before the March meeting to discuss these and move forward.

112. The Chairman observed that the three questions would be discussed again in March 2011, as no decisions had yet been made. The Secretariat would revise document G/SPS/W/243 to include all the relevant comments and suggestions submitted by Members before the end of the year, and at the same time would also prepare a paper describing the use of *ad hoc* consultations in previous cases, based on the information offered by Members on their experiences. An informal meeting would be organised before the next SPS Committee meeting and he remained open to meet with delegates or provide a sort of good office to facilitate the process. The Committee needed to decide in which direction it was going to move forward on this issue.

(ii) *Issues Arising from the Third Review*

113. The Chairman reported on the informal meeting on issues arising from the Third Review of the operation and implementation of the SPS Agreement, held on 19 October 2010.

114. The Chairman recalled that the Committee had adopted the report of the Third Review in March 2010, which had been circulated in document G/SPS/53. The report identified several issues where the Committee had agreed to further work.

115. At the meeting in June, Members had been invited to submit proposals on those issues which they believed should receive priority for further work. At the informal meeting on 19 October 2010, three proposals had been discussed, tabled by Japan, Canada and Argentina, on proposed priorities for the work of the Committee arising from the Third Review.

116. Japan and Canada had introduced their respective submissions, G/SPS/W/251 and G/SPS/W/253, on the cooperation between the SPS Committee and the three Sisters. The proposals were based on the recommendations from the October 2009 workshop on the relationship between the Committee and the three Sisters. Japan had emphasized in particular the need to improve coordination, both at national and global levels. Canada had highlighted issues relating to the strategic plans of ISSBs on future work and the need to share information on the use or lack of use of international standards.

117. Members had welcomed the proposals by Canada and Japan on issues related to the relationship between the SPS Committee and the three Sisters. The OIE had also welcomed the suggestions made by Japan and Canada to look at ways to improve the collaboration between the Committee and the three Sisters, and amongst the three Sisters.

118. Argentina had introduced its proposal (G/SPS/W/252) and had specifically flagged the need for the Committee to further discuss issues related to monitoring the use of international standards, and Annex C on control, inspection and approval procedures.

119. While a number of Members had welcomed the proposals from Argentina as a good basis for further debate on issues arising from the Third Review, some had flagged the need for care in attempting to clarify terms in Annex C.

120. The discussions had shown support to first focus on (i) the cooperation between the SPS Committee and the three Sisters, as proposed by Japan and Canada; (ii) improving the procedure for monitoring the use of international standards; and (iii) discussions of Article 8 and Annex C on control and inspection, as proposed by Argentina.

121. In concluding his report on the informal meeting, the Chairman invited Members to submit, well in advance of the next meeting of the Committee, specific comments and proposals on the three issues prioritized for consideration. He proposed that the specific inputs received be discussed at an informal meeting in the margins of the March Committee meeting.

122. No Members had further comments on this agenda item.

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

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

123. No Member raised any new problems which they believed related to the use or non-use of relevant international standards, guidelines or recommendations.

### **(b) Issues Previously Raised**

124. No Member or observer organizations provided further information on any of the issues previously raised under this agenda item.

(c) Adoption of Annual Report (G/SPS/W/250/Rev.3)

125. The Chairman recalled that the Committee had adopted the draft Twelfth Annual Report on the Procedure to Monitor the Process of International Harmonization at its June meeting, subject to its revision to include information arising from discussions at that meeting. The revised report had been circulated with a deadline for comments. As comments had been submitted by China and the United States, a new revision had been circulated, with a new deadline for comments. Japan had proposed further modifications to the draft report, which were reflected in G/SPS/W/250/Rev.3.

126. The Committee adopted the Twelfth Annual Report on the Procedure to Monitor the Process of International Harmonization, subsequently circulated as G/SPS/54.

**XI. CONCERNS WITH PRIVATE AND COMMERCIAL STANDARDS  
(G/SPS/W/247/REV.3)**

(a) Report on Chairman's Consultations

127. The Chairman reported that the *ad hoc* working group on SPS-related private standards had held its seventh meeting on 19 October 2010 and had focused its discussion on document G/SPS/W/274/Rev.3 entitled "Possible Actions for the SPS Committee Regarding SPS-Related Private Standards". This document had been revised by the Secretariat after the last meeting of the working group in June 2010.

128. The Chairman reported that the meeting had been very constructive. The working group had neared consensus on the first six proposed actions, pending some further modifications to their texts. In general terms, those six actions would define the scope of the discussions on SPS-related private standards and promote information exchange among various entities with a stake in the evolution of SPS-related private standards, within existing resources.

129. There had been some discussion on the remaining Actions, in particular Action 7, on which Members continued to have divergent views. Members had different opinions on the applicability of the SPS Agreement to SPS-related private standards and on any role the SPS Committee could formally play in this area. Some Members were of the view that "any" SPS requirements affecting "market access" fell under the responsibility of Member governments, especially if they deviated from international standards. Others were of the view that commercial requirements affecting "shelf-access", which were often tailored to consumer preferences, were not controlled by governments and therefore did not fall under the purview of the SPS Agreement.

130. In light of these discussions, the Secretariat would prepare the working group's report to the SPS Committee, in consultation with the participants of the working group, for consideration at the March 2011 meeting of the SPS Committee. The report would forward specific actions to the SPS Committee for endorsement. In addition, it would list the remaining proposed actions, on which the working group could not reach consensus, along with a brief explanation of the main differences of opinion.

131. In concluding his report on the meeting of the working group, the Chairman indicated that the report should bring to a conclusion the mandate of the current *ad hoc* working group. Therefore, in March the Committee would need to consider the process and format for any future discussions on SPS-related private standards.

132. In commenting on the Chairman's report, the representative of El Salvador expressed concern about the impact of private standards on exports from developing countries. While Members have the right to take SPS measures for the protection of human, animal, plant life or health, such measures

had to be based on science and not on commercial considerations. Private standards went beyond the standards, guidelines and recommendations developed by the relevant international organizations. El Salvador requested that the Secretariat continue to present studies and organize workshops on this matter.

133. The representative of India indicated that he would provide comments on document G/SPS/W/274/Rev.3 at the next meeting, however the Chairman recalled that the revised version of the document would be circulated prior to the next meeting, and invited India to comment on the revised version.

134. The representative of Cuba shared the concerns raised by El Salvador about the trade restrictive effects of private standards that exceeded the international standards or national standards to protect human health. Priority should be given to enriching official standards based on risk assessments. The representatives of Ecuador and Colombia noted the effect of private standards on market access and development, particularly of small and medium enterprises which could not afford the cost of private certification. The Committee and the three Sisters needed to take into account these new barriers to market access. Colombia suggested that the SPS Committee adopt actions to support the work of public entities.

135. The representative of Senegal observed that most developing countries were not able to regularly participate in the SPS Committee meetings and other relevant activities to allow a better understanding of that issue. SPS-related private standard represented a major problem for developing countries, and a major constraint to trade. The representative of Guinea said that developing countries struggled to comply with international standards because they lacked technical resources and testing laboratories, and were often excluded from markets. It was important that appropriate attention be paid to this issue.

136. The representatives of Venezuela and the Dominican Republic opined that actions 7 through 12 were of key importance, and these should be discussed. The Dominican Republic noted that those actions related to the clarification also of Article 13. Venezuela stressed the need to take into account the need for special and differential treatment.

137. The representative of the OIE stated that they were looking for practical solutions to these concerns. It was important to be clear about the role of official versus private standards, because both had a role, and these should not be confused. The OIE was taking steps to promote compatibility and avoid conflicts between private and official standards. The OIE was concerned that the Fisheries Sub-Committee of the FAO Committee on Agriculture had produced agriculture certification guidelines that mixed up the roles of official and private standards. Training on the different roles of official and private standards could perhaps be provided through STDF projects. To increase transparency about schemes, the OIE was specifically seeking examples of private standards that imposed sanitary standards in excess of official standards. Food safety was essential and should not be used as a marketing tool.

138. The representative of Codex agreed that all food should be safe and that food safety claims should not be used for marketing purposes without really adding more safety. Codex welcomed the ongoing work between FAO, OECD and UNCTAD, but it was difficult to find the necessary factual information. The issue of private standards would be discussed in the Codex regional coordinating committees, and Members were encouraged to participate in those meetings. The FAO Committee on Agriculture was also considering the issue of private standards in relation to market access.

139. The representative of Morocco asked that more attention be given to the difficulties faced by developing countries in complying with the official standards, let alone the private standards, in importing markets. The costs of compliance and of certification with different private standards was

very high, and the SPS Committee and the three Sisters needed to help developing countries to find a solution. The representative of Mali observed that private standards added costs, which many developing countries could not afford, resulting in more barriers to their exports.

140. The representative of Chile believed that this was not only an issue for developing countries, but it was more systemic. The role of private standards needed to be clarified, as they continued to proliferate, and it would be useful to explore ways to ensure the complementarity of the private standards with those of Codex and OIE.

141. The representative of Brazil shared the concerns of Codex and the OIE on the role of the SPS Committee and governments concerning private standards. The SPS Committee should develop guidelines regarding costs, transportation issues, the role of private versus official standards, and identify ways to deal with the proliferation of standards. The SPS Committee should give a signal for other fora to follow. The FAO fisheries guidelines addressed issues such as climate change, environmental protection, animal welfare and social issues, and made clear the need for this Committee to assume its responsibility on the issue. Brazil appreciated the constructive approach of Members, and looked forward to the final report of the *ad hoc* working group.

142. The representatives of Uruguay and Belize shared the view that the Committee had an important role to play regarding private standards. Belize looked forward to moving beyond discussions of whether the issue fell within the Committee's mandate, to discuss concrete actions the Committee could take to address the issue of private standards, at its March 2011 meeting.

143. The representative of Peru, with support from Argentina, the Dominican Republic, El Salvador and Mexico, suggested that an informal meeting be held in March to discuss private standards, so that the Committee could move rapidly to identify practical actions. Argentina suggested that for the actions on which there was consensus, the discussions could focus on the procedure to put these into place. For the remaining actions, the discussions could focus on their content.

144. The representative of New Zealand observed that private standards also affected exports from developed countries, such as New Zealand horticultural products. However, New Zealand was not convinced that the SPS Committee was the right place to address these problems.

145. The representative of South Africa said his country was badly affected by private standards. However, it was important to consider the complexity of market access and the effects of stringent requirements, whether official or private. South Africa suggested that it would be useful to discuss Article 13, its drafting history and intention, the definition of "non-governmental entities", etc.

146. The Chairman recalled that the *ad hoc* working group should issue its report on possible actions for consideration by the Committee at the meeting in March and he hoped that the Committee would be in a position to agree on certain courses of action at that time. He would explore the possibility of convening an informal meeting where the Committee could discuss how to move forward on agreed actions, and further consider the other possible actions.

## **XII. REQUESTS FOR OBSERVER STATUS (G/SPS/W/78/REV.7)**

### **(a) *Ad Hoc* Observers**

147. The Committee agreed to invite all of the *ad hoc* observers to participate in the next Committee meeting, including the informal meetings.



(b) Outstanding Requests

(i) *Renewed Request from CBD (G/SPS/GEN/121/ADD.2/Rev.1)*

148. The Secretariat reported that the Convention on Biological Diversity (CBD) had renewed its request for observer status in the Committee (G/SPS/GEN/121/Add.2/Rev.1). The Secretariat suggested that the participation of the CBD could be useful for the Committee, in particular in light of their work on alien invasive species. The Secretariat already participated in virtual and physical meetings on the work of the CBD.

149. The representative of the European Union supported granting observer status to the CBD. There was already close cooperation between the IPPC and the CBD, and their participation in the SPS Committee would create synergies and facilitate implementation of the relevant international standards and guidelines.

150. The representatives of Canada, Pakistan, Peru and Norway also supported granting observer status to the CBD.

151. The representatives of Argentina, Brazil, Paraguay and the United States indicated that they needed more time to analyse the application by the CBD.

152. The Chairman concluded that given the lack of consensus to grant *ad hoc* observer status to the CBD at this time, the Committee would revert to this request at its next regular meeting.

153. There was no change in the position of Members with respect to the pending requests for observer status from the Asian and Pacific Coconut Community (APPC), International Vine and Wine Office (OIV) and the Gulf Customs Council Standardization Organization (GSO). The Committee decided to revert to these outstanding requests at the next regular meeting.

**XIII. CHAIRMAN'S ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS (G/L/943)**

154. The Chairman noted that it was usual at this time of the year for the Chairman to provide, under his own responsibility, a brief, factual annual report on the activities of this Committee for consideration by the Council for Trade in Goods (CTG). A draft of the Chairman's annual report had been provided to all delegations. The annual report would provide information on the main work undertaken at the meetings in 2010, including specific trade concerns and other issues discussed, as well as on the implementation of the transparency provisions. The report would highlight, in particular, the adoption of the report on the Third Review of the Operation and Implementation of the SPS Agreement, and draw attention to the workshop on transparency.

155. Members were invited to submit any comments they might have on the draft annual report by 5 November 2010. The report was subsequently submitted to the CTG as document G/L/943.

**XIV. OTHER BUSINESS**

156. Chile reported that Albania restricted imports of poultry products from Chile allegedly because of avian influenza. However, no avian influenza had been found in Chile since 2002. If Albania's concern was with regard to the A1/ H1N1 virus, Chile noted that there was no scientific evidence that this virus was spread by poultry products. Chile therefore requested that Albania remove these emergency measures.

157. The representative of the United States supported Chile's request and urged all Members to remove any trade restrictions that had been imposed due to H1N1.

158. The representative of Albania indicated that this information would be transmitted to his authorities, who would reply to Chile shortly.

159. The representative of Chile indicated that Croatia had also imposed restrictions on poultry products from Chile allegedly because of avian influenza. As there had been no avian influenza in Chile since 2002, there was no scientific basis for these restrictions. Furthermore, Croatia had not notified those measures to the WTO. Chile requested Croatia to remove those measures without delay.

160. The representative of Croatia responded that the measures had been introduced in 2009 on the basis of an OIE warning about an emerging disease situation in Chile. However, the emergency measure had expired after six months, and had been formally abolished in August. This would be notified to the WTO shortly.

161. The representative of Chile expressed concern that Members should not introduce restrictions in reaction to information provided to the OIE for purposes of transparency. He encouraged all Members to be more transparent about their measures.

162. The representative of Nicaragua raised concerns regarding Mexican restrictions on its beef exports because of BSE-related concerns. Nicaragua had requested Mexico to recognize its status as a "controlled risk" country, in line with its submission to the OIE. In addition, Mexico failed to approve Nicaraguan slaughterhouses, despite the fact that these had been approved by other countries.

163. The representative of the OIE stressed that according to the OIE standard, de-boned beef was a safe commodity with regard to BSE, irrespective of the BSE status of a country.

164. The representative of Mexico indicated that his country was willing to work bilaterally with the government of Nicaragua to resolve those difficulties.

## **XV. DATE AND AGENDA OF NEXT MEETING**

165. The Chairman recalled that the next meeting of the Committee was tentatively scheduled for **30-31 March 2011**. Informal consultations regarding the use of *ad hoc* consultations and the work plan on issues arising from the Third Review were scheduled to immediately precede the next Committee meeting.

166. The Committee agreed to the tentative calendar of SPS Committee meetings for 2011, as follows: the weeks of 28 March, 27 June, and 17 October (G/SPS/GEN/1035/Rev.2).

167. The Committee agreed on the following tentative agenda for its next meeting:

1. Adoption of the agenda
2. Election of Chairperson
3. Information on relevant activities
  - (a) Information from Members
  - (b) Information from Observer organizations
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.11
  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
    - (a) Information from Members on their pest or disease status
    - (b) Information from Members on their experiences in recognition of pest- or disease-free areas
    - (c) Information from relevant observer organizations
  9. Technical assistance and cooperation
    - (a) Information from the Secretariat
    - (b) Information from Members
    - (c) Information from Observers
  10. Review of the Operation and Implementation of the SPS Agreement
    - (a) Issues arising from the Second Review
      - (i) Use of ad hoc consultations – Report on informal meeting
    - (b) Issues arising from the Third Review
      - (i) Report on informal meeting
  11. Monitoring of the use of international standards
    - (a) New issues
    - (b) Issues previously raised
  12. Concerns with private and commercial standards
    - (a) Report of the ad hoc Working Group
  13. Observers – Request for observer status
  14. Other business
  15. Date and agenda of next meeting
168. Members were asked to take note of the following deadlines:
- (i) For submitting comments on the proposed recommended procedure for *ad hoc* consultations (G/SPS/W/243/Rev.3): **Friday, 17 December;**
  - (ii) For submitting specific comments and proposals on the three issues prioritized for consideration under the Third Review of the Operation and Implementation of the SPS Agreement (G/SPS/53): **Friday, 17 December;**
  - (iii) For identifying new issues for consideration under the monitoring procedure, AND for requesting that items be put on the agenda: **Thursday, 17 March 2011;**
  - (iv) For the distribution of the Airgram: **Friday, 18 March 2011.**
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