



**Committee on Sanitary and Phytosanitary Measures**

**SUMMARY OF THE MEETING OF 2-3 NOVEMBER 2017**

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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 and obligations under the WTO.

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## **1 ADOPTION OF THE AGENDA**

1.1. The Committee on Sanitary and Phytosanitary Measures (the "Committee") held its 70<sup>th</sup> regular meeting on 2-3 November 2017. The proposed agenda for the meeting was adopted with amendments (WTO/AIR/SPS/18).

## **2 INFORMATION SHARING**

### **2.1 Information from Members on relevant activities**

#### **2.1.1 Japan - Update on the situation surrounding Japanese food after the Fukushima Daiichi nuclear power plant accident**

2.1. Japan provided an update on the developments since the last Committee meeting, reporting on the most recent data from its food monitoring programme. The data showed that the rate of products exceeding the Japanese standard limits had decreased and all the test results, with the exception of edible fungi, wild plants and game meats, were below the Codex guideline level. Japan highlighted the comprehensive measures taken by its relevant ministries to achieving these results. Japan thanked the United States and Pakistan for lifting their import restrictions. Japan reported that 50 out of the 54 Members who had introduced import restrictions on Japanese foods had either lifted or eased these restrictions. Japan expressed its appreciation for the visits from governmental and private sector representatives and for the invitations extended to Japanese officials for bilateral discussions. Japan signalled openness for further visits from Members to better assess the current food safety situation. Japan also acknowledged the work of FAO and IAEA for their efforts to ensure food safety.

#### **2.1.2 Senegal - Agricultural health monitoring plan**

2.2. Senegal provided information on the Senegalese national SPS measures committee and the outcome of a study to monitor MRLs. The study covered random samples from the horticultural gardening sector, including local and imported products, using Codex reference levels. Senegal pointed out significant improvements in consumer products and consumer safety compared with 2008 and 2012. Senegal underscored its efforts to promote consumer safety and indicated that with the support of the Senegalese Association for Standardization (ASN), the available scientific data could be used to propose draft national standards for MRLs of pesticide active ingredients for minor uses.

#### **2.1.3 Senegal - Antimicrobial monitoring plan**

2.3. Senegal provided information on the antimicrobial monitoring plan for food products of animal origin to identify sources of contamination, including salmonella, in sheep meat, poultry, pork, beef and meat preparations; and for the detection of antibiotic residues in meat samples. Senegal emphasized that its national risk assessment system was able to address all food safety issues and the data served to guide its authorities on these matters.

#### **2.1.4 Burkina Faso - Update on the fall armyworm (*Spodoptera frugiperda*) situation**

2.4. Burkina Faso provided an update on the fall armyworm situation, which had spread to almost every African country, and affected more than 900,000 hectares of cultivated land, threatening almost 200 million people due to its attack on a variety of crops, particularly grains, the staple crops of most African countries. In Burkina Faso in particular, all regions had been affected. Burkina Faso highlighted the research efforts to develop an effective monitoring system of outbreaks and informed that its farmers had received high quality pesticides and treatment devices, and benefitted from research, anti-pest squads and coordinated actions. Burkina Faso reported had participated in information meetings in African capitals and had worked with FAO, the World Bank and AGRHYMET Regional Centre (ARC) to ensure the safety and security of its staple grain crops. Expressing gratitude for the support received, Burkina Faso highlighted a need for further support for integrated pest management, research on highly pest-resistant varieties, strengthening of phytosanitary controls and capacity building in African research institutions and all stakeholders. Burkina Faso called upon FAO and IPPC to continue their coordinating role in combatting pests, in particular the fall armyworm.

2.5. The United States highlighted that the fall armyworm was spreading rapidly since its first detection in 2016, with a confirmed presence in twenty-eight countries and suspected in nine more. The United States noted the integrated management approach needed to address pest challenges including physical, chemical and biological tools, adding that genetically engineered corn, bt-maize and other pest management approaches could be used. The regional management plan for fall armyworm in Africa, drafted by FAO and partner organizations, included biotechnology options. Access to these technologies required regulatory frameworks conducive to commercial release. The United States strongly supported giving farmers access to genetically engineered technology as part of an integrated strategy and adopting regional biosafety frameworks, such as those already being implemented in WAEMU, ECOWAS and COMESA. The United States recognized the leadership of Burkina Faso in developing the WAEMU and ECOWAS frameworks. The United States was providing funding for (i) regulatory capacity building across Sub-Saharan Africa; (ii) research and development of genetically engineered varieties; and (iii) confined field trials.

### **2.1.5 Belize – Update on Food Safety Preventative Controls Alliance**

2.6. Belize informed of the Food Safety Preventative Controls Alliance Qualifying Individuals Training held at Belize City in collaboration with IICA and USDA, partially funded by OIRSA. Belize also thanked IICA and OIRSA for their support towards ISO accreditation for Belize's Food Microbiology Laboratory and Veterinary Services Laboratory in Belize. Belize also highlighted the ongoing project to develop a food safety policy for Belize, funded by IADB, expected to be completed by the end of 2017.

### **2.1.6 Ukraine – Update on legislation on state control in Ukraine**

2.7. Ukraine provided an update on its new law on state control measures over the content of food and feed safety, animal by-products, animal health and welfare. The new law would be notified to the WTO in November 2017 and enter into force in April 2018. Ukraine explained that the transition period for certain provisions would be five years, and that work was ongoing on legislative drafts relating to, *inter alia*, the establishment of designated border inspection points, border check procedures and common veterinary documents. Ukraine indicated its willingness to engage with its trading partners on these matters.

### **2.1.7 European Union – Information on the change in phytosanitary import requirements**

2.8. The European Union drew attention to notification G/SPS/N/EU/196 regarding a revision in the European Union legal framework on protective measures against the introduction of organisms harmful to plants and plant products, based on new scientific information. The latest revision to Directive 2009/29/EC containing this legal framework had been adopted in July 2017, as Commission Implementing Directive (EU) 2017/1279. On that basis, the European Union invited its trading partners to provide information on freedom from certain harmful organisms in their respective territories before 1 January 2018, without which imports of certain commodities into the European Union could be affected.

## **2.2 Information from CODEX, IPPC and OIE on relevant activities**

### **2.2.1 Codex (G/SPS/GEN/1577)**

2.9. The Chairperson noted that Codex reports had been circulated as G/SPS/GEN/1577 and G/SPS/GEN/1577/Add.1.

### **2.2.2 IPPC (G/SPS/GEN/1579)**

2.10. The IPPC provided an outline of its activities, as contained in G/SPS/GEN/1579. The IPPC drew attention to the 2017 IPPC Regional Workshop and the FAO China South-South Cooperation Programme, which served as forums to develop capacity for contracting parties for the implementation of the Convention on International Standards for Phytosanitary Measures (ISPM), for sharing experience and knowledge on the regional level, and to discuss draft ISPMs. The IPPC also highlighted the ongoing development of the ePhyto system and the Global Symposium on

ePhyto, scheduled for 22-26 January 2018 in Malaysia. Finally, IPPC anticipated the approval of the International Year of Plant Health by the UN General Assembly in 2018.

2.11. The United States appreciated IPPC's work in the development of the ePhyto hub and requested updates on other elements of an ePhyto system, such as how the ePhyto hub would communicate with the concept of a single window. The United States also welcomed a discussion in the SPS Committee on the implementation of the concept of electronic certification.

### **2.2.3 OIE (G/SPS/GEN/1583)**

2.12. The OIE outlined its report, as contained in G/SPS/GEN/1583. The OIE shared its Scientific Enquiry Commission proposal regarding emergency, preventive and temporary zoning in response to increased disease threats, avoiding unjustified barriers to trade. The OIE added that an ad hoc group had been established to undertake a review of Chapter 10.4 of the Code on Infection with avian influenza viruses. The OIE also provided information on the Performance of Veterinary Services (PVS) Pathway "Think Tank" Forum. Finally, the OIE highlighted its new Observatory project to develop, which aimed to develop a framework to monitor the progress and constraints faced in the implementation of OIE standards.

## **3 SPECIFIC TRADE CONCERNS**

### **3.1 New issues**

3.1. Before the adoption of the agenda, Brazil withdrew a specific trade concern regarding Chile's restrictions on chicken products from Rio Grande do Sul. The Russian Federation withdrew a specific trade concern regarding India's fumigation requirements for grain imports. Both of these items had been included in the proposed agenda for the meeting, and were withdrawn because progress had been made in bilateral meetings held prior to the SPS Committee meeting.

#### **3.1.1 EU maximum residue levels for acrinathrin, metalaxyl and thiabendazole - Concerns of Peru**

3.2. Peru raised a concern over the European Union's lowering of MRLs for three pesticides, acrinathrin, metalaxyl and thiabendazole, under Regulation (EU) 2017/1164, which would enter into force on 21 January 2018. Peru stressed that imports of fruits and vegetables into the European Union would be affected, and highlighted the impact this already had on its mango production, as 62% of its exports were destined to the European Union. Peru requested a scientific justification for the measure, which would lower the MRLs for thiabendazole from 5 to 0.01mg/kg, a level more restrictive than the relevant Codex standard of 5mg/kg. Peru explained that the pesticides were used to protect fruits against diseases caused by fungi, in particular anthracnose, and guarantee their shelf life. Peru presented document G/SPS/GEN/1586, which contained information about the measure's impact on Peruvian exports. Peru finally argued that the measure might be inconsistent with Articles 2 and 5 of the SPS Agreement.

3.3. Bolivia, Brazil, Colombia, Costa Rica, the Dominican Republic, Ecuador, Guatemala, Nigeria, and the United States shared the concern raised by Peru. The United States indicated a particular interest because for sweet potato the thiabendazole MRL would be lowered from 15mg/kg to the default level of 0.01mg/kg, due to a lack of residue trial data on sweet potato. The data was being generated and would be submitted at the earliest possible. The United States explained that no risk to consumers had been identified, and that thiabendazole was used as an emergency crop protection tool to manage black rot for which no viable alternative existed. Without an adequate MRL to support exports to the European Union, sweet potato growers would either lose market access or risk a black rot outbreak, which could be devastating to the industry and result in unnecessary food waste. The United States planned to submit an import tolerance application and requested an expedited review.

3.4. Colombia emphasized the effect the measure would have on its banana and melon exports. The Dominican Republic requested an explanation of the measure under Article 5.8 of the SPS Agreement because of the measure's impact on mango trade. Costa Rica urged the European Union to consider the Codex MRL for thiabendazole. Members underlined the importance of basing

measures on risk assessment and scientific evidence and emphasized that Codex was the reference as the relevant international standard.

3.5. The European Union explained that the proposed MRLs were based on the European Food Safety Authority's (EFSA) identification of dietary intake concerns and data gaps in their assessment of MRLs for thiabendazole in mangoes. The European Union reported that comments received from Members in response to notification G/SPS/N/EU/174 had not presented specific new data for re-evaluation and invited Members to apply for import tolerances for affected products accompanied by substantial new data addressing EFSA's concerns. The European Union noted that some mango producing countries had replaced thiabendazole with alternative substances. Finally the European Union reminded Members that it had provided an information note in June 2016 on the on-going review of EU MRLs, which had been updated in June 2017. It was available on the European Commission webpage on pesticides, and had been circulated as document G/SPS/GEN/1494/Rev.1.

### **3.1.2 United Arab Emirates measures on plant protection products - Concerns of Turkey**

3.6. Turkey raised a concern regarding the United Arab Emirates Ministerial Decree No. 799 of 2005 as amended by Ministerial Decree No. 2364 of 2014, which required, for the registration of a pesticide, a certificate of registration from the country of origin, a certificate of registration in an OECD member State, and a trading certificate of the pesticide from an OECD member State. Turkey asked for the scientific reasons behind these requirements, highlighting that fulfilling these conditions was not always possible and created unjustifiable discrimination between WTO Members. Turkey reported that bilateral meetings with the United Arab Emirates had not led to progress.

3.7. The Chairperson noted that United Arab Emirates were not present at the meeting.

### **3.1.3 EU maximum level of cadmium in foodstuffs - Concerns of Peru**

3.8. Peru raised a concern over the maximum levels of cadmium in chocolates and other cocoa products proposed by the European Union Commission Regulation (EU) No. 488/2014, which would come into force in January 2019. Peru highlighted that it was the second largest exporter of cocoa after Ecuador, and emphasized the importance of cocoa and chocolate exports to its economy. Peru queried whether the measure was based on "as low as reasonably achievable" (ALARA) principles. The risk analysis for substances of this kind should be conducted using the margin of exposure (MOE) approach. Peru reported that the Codex Committee on Contaminants in Food was developing a Codex standard on maximum levels of cadmium in chocolate and other cocoa products, and was expected to publish it in 2019. Peru submitted further details in document G/SPS/GEN/1587.

3.9. Colombia, Costa Rica, Côte d'Ivoire, the Dominican Republic, Ghana, Guatemala, Madagascar, and Nigeria shared Peru's concerns and requested that the European Union consider delaying the implementation of this measure until Codex had developed relevant international standards, or to exclude chocolates from the scope of application of the measure. Colombia also requested assistance to mitigate the trade impact of this measure along with a longer transition period, taking into account the needs of developing country Members. Costa Rica added that intrinsic difficulties in controlling the level of cadmium in cocoa production be taken into account when setting these levels. The ECOWAS representative indicated that ECOWAS members also shared the concern.

3.10. The European Union highlighted its efforts to alleviate the difficulties of trading partners in complying with this measure, such as agreeing to a transitional period of five years in October 2012, which had deferred the application date to January 2019, and setting maximum limits for blended products instead of cocoa beans to facilitate trade. The European Union further elaborated that these limits were based on EFSA recommendations that exposure to cadmium should be reduced and that in the light of available science, excluding chocolate and cocoa products from this measure would not achieve the desired level of protection.



### **3.1.4 South Africa's import restrictions on poultry due to Highly Pathogenic Avian Influenza - Concerns of the European Union**

3.11. The European Union raised concerns over country-wide bans on imports of poultry products from several EU member States due to HPAI, despite most of them have been recognized as free from HPAI for months. The European Union explained that South Africa's decision not to accept HPAI zoning even after it had received relevant evidence disregarded the regionalization obligation under the SPS Agreement. The European Union noted that this situation has significant impacts on EU trade of poultry to South Africa. The European Union highlighted its bilateral engagement with South Africa, including a study visit to the European Union in 2016.

3.12. South Africa acknowledged past discussions with the European Union and the visit to understand the EU regionalization mechanism that took place in 2016. South Africa however expressed concerns regarding the effectiveness of the control and preventive measures in the European Union, and noted it would have another visit to assess these controls.

### **3.1.5 EU restrictions on poultry meat due to *Salmonella* detection - Concerns of Brazil**

3.13. Brazil raised concerns over the reinforced border testing controls in the European Union, which had resulted in increased reports of salmonella detections in poultry. Additionally, Brazil pointed out that distinct microbiological criteria for fresh meat products and poultry meat preparations were unjustified, as the two products were similar. Brazil argued there was incorrect risk management and communication, contrary to the principles of the SPS Agreement, and asked the European Union to provide scientific justification for these measures.

3.14. The European Union acknowledged the difference in microbiological criteria for *Salmonella* for the two product categories as pointed out by Brazil, indicating that the scientific considerations were based on the opinion of the Scientific Committee on Veterinary Measures relating to Public Health on *Salmonella* in Foodstuffs. The European Union stated that there was no justification to revise the criteria. The European Union added that all shipments from Brazil were subject to pre-export testing as a reaction to the meat fraud scandal, and on the basis of the results of an audit carried out in April 2017. However, despite the pre-export tests, the prevalence of *Salmonella* found in poultry meat consignments from Brazil at the EU border was close to 8% and this was a matter of concern. The European Union noted its willingness to continue bilateral discussions on this issue.

### **3.1.6 Turkey's restrictions on rough rice imports - Concerns of the United States**

3.15. The United States raised concerns over Turkey's continued restrictions on rough rice imports due to *Aphelenchoides besseyi*, a nematode that was widespread in Turkey. The United States referred to IPPC standard ISPM No. 5, according to which a plant disease or pest could not be considered a quarantine pest if it was widespread within a given territory and not under official control, and to Article 2.3 of the Agreement on the Application of Sanitary and Phytosanitary Measures. The United States highlighted its efforts to receive market access for rough rice under the same conditions that Turkey applied to its domestic industry. The United States regretted that Turkey had failed to provide scientific justification for the restrictions and requested that Turkey ensure that its rough rice import standards were consistent with its WTO obligations and aligned with international standards.

3.16. Turkey noted that the relevant regulation had been notified as G/SPS/N/TUR/203 and argued that it was in line with Article 7 of the IPPC, which granted countries the right to regulate in order to prevent the introduction and spread of pests in their territories. Turkey stressed its domestic quarantine measures and the limited existence of the organism in Turkey.

### **3.1.7 India's fumigation requirements for teak tree wood (G/SPS/N/IND/149) - Concerns of Colombia**

3.17. Colombia raised a concern over India's requirement that teakwood be fumigated with methyl bromide at the port of export, as notified in G/SPS/N/IND/149, with a transition period ending on 31 December 2017. Colombia noted that, as other WTO Members, it did not approve the use of the substance, following the Montreal Protocol to the Vienna Convention for the Protection



of the Ozone Layer recommendation to gradually eliminate this substance. Colombia elaborated that it had requested that India accept the use of alternatives such as phosphine for teakwood treatment, as it had accepted it for teakwood exports from other trading partners. Colombia argued this would meet the appropriate level of phytosanitary protection, while also complying with the aforementioned international convention.

3.18. Belize, Costa Rica and Liberia shared the concern. Costa Rica mentioned other possible alternatives to methyl bromide fumigation, including the use of sunlight to increase the temperature, crop rotation, the use of other herbicides, and using microorganisms to control weeds and other pests.

3.19. India noted that it had relaxed methyl bromide fumigation requirements until 31 December 2017 and agricultural imports from countries whose products could not be fumigated with methyl bromide at the port of export could be fumigated upon arrival in India. The Montreal Protocol allowed for the use of methyl bromide for quarantine purposes. Additional information was available on the website of India's Department of Agriculture Cooperation and Farmers Welfare, <http://www.agricoop.nic.in>. India also reported that its NPPO had formally requested Colombia for information to consider its request to use an alternative fumigant.

## **3.2 Issues previously raised**

### **3.2.1 India's fumigation requirements for cashew nuts - Concerns of Senegal (No. 427)**

3.20. Senegal reiterated its concern over India's methyl bromide fumigation requirements for cashew nuts. Senegal noted that methyl bromide use had been discontinued by several countries due to its high toxicity and negative effects on the ozone layer. Senegal reported on the exchange of documents with India and scientific publications regarding the effectiveness of aluminium phosphate as an alternative fumigant, and urged India to accept its use.

3.21. The United States associated itself with the concern expressed by Senegal on the fumigation of imported products with methyl bromide, particularly as it affected peas and pulses. The United States expressed its commitment to continue to find alternatives to methyl bromide fumigation as a pest mitigation measure, and encouraged India to consider that methyl bromide was not necessary in cases of negligible pest risk.

3.22. Burkina Faso, Colombia, Madagascar, Mozambique, Nigeria, Togo, and Ukraine shared Senegal's concern. Madagascar reported that it had held bilateral discussions with India on the fumigation requirement for agricultural products. Burkina Faso referred to its cashew nuts exports, urging India to accept the principle of equivalence in order to facilitate trade of agricultural products. Ukraine shared the concern as it prohibited the use of methyl bromide for fumigation and had therefore submitted alternatives to India. Togo urged India to accept aluminium phosphate as an alternative fumigant. Colombia supported the systemic concern on India's fumigation requirement and its environmental and trade implications.

3.23. India responded that its phytosanitary requirements were consistent with its WTO obligations. India reiterated that until 31 December 2017, agricultural imports from countries whose products could not be fumigated with methyl bromide at the port of export could be fumigated upon arrival in India. Finally, India had also made a formal request to Senegal for information to consider its request for alternative fumigants.

3.24. The United States commented that India had only responded to Senegal without providing a response to the concerns raised by other Members, and requested that India circulate a document with the fumigation requirement applicable to other Members, in particular to the United States.

3.25. India reiterated that its phytosanitary requirements were consistent with its WTO obligations and that the information was available on its official website <http://www.agricoopnic.in>.

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### **3.2.2 Viet Nam's suspension of groundnut seed imports – Concerns of Senegal (No. 418)**

3.26. Senegal reiterated its concern on Viet Nam's provisional suspension on groundnut imports from Senegal and reported on the provisions taken to ensure compliance with the phytosanitary requirements, including an audit by a Chinese quarantine service mission.

3.27. Viet Nam reiterated that there had been detections of groundnuts infested with live insect quarantine pests. Viet Nam reported that Senegal had been notified, and that its temporary suspension was in line with IPPC guidelines. Viet Nam also reported that it was currently reviewing the technical information received from Senegal's National Plant Protection Agency.

### **3.2.3 Brazil's measures on bananas - Concerns of Ecuador (No. 423)**

3.28. Ecuador reiterated its concern over the import suspension of Ecuadorian bananas to Brazil. Ecuador urged Brazil to comply with its Normative Instruction No. 3 of 21 March 2014, which laid down sanitary and phytosanitary standards for bananas, based on which Ecuador submitted a working plan to Brazil. Ecuador regretted that the import ban had already lasted for more than 20 years.

3.29. Brazil emphasized its bilateral engagement with Ecuador, noting that Ecuador's concern on the ban on shrimps had been resolved. Regarding bananas, Brazil explained that its Ministry of Agriculture was reviewing Ecuador's working plan. Brazil aimed to streamline its standards with its normative instruction on technical standards for banana imports. Brazil also referred to its working meeting with Ecuadorian plant safety authorities and remained positive about swift progress in resolving Ecuador's concern.

### **3.2.4 China's import ban on fresh mangosteen – Concerns of Indonesia (No. 416)**

3.30. Indonesia reiterated its concern regarding China's import ban on fresh mangosteen fruit. Indonesia reported on its corrective actions to resolve the contamination detected on its mangosteen fruit, which had been verified by China's General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), resulting in a draft protocol for mangosteen exports. However, Indonesia regretted the protocol had not been signed. Indonesia added that it had engaged in bilateral negotiations with China and had opened its market to garlic and other products from China, aiming at balancing bilateral trade. Indonesia finally requested that China comply with its obligations under the SPS Agreement.

3.31. China responded that in 2013, quarantine pests had been detected on fresh mangosteen from Indonesia, which resulted in an import suspension. China added that following bilateral consultations and an onsite investigation, both parties agreed on a protocol for plant quarantine requirements in September 2016. China urged Indonesia to complete the pending follow-up work and promote the healthy development of trade of agricultural products between China and Indonesia.

### **3.2.5 Thailand's import restriction on papaya seeds – Concerns of Chinese Taipei (No. 421)**

3.32. Chinese Taipei reiterated its concern on Thailand's import restriction on papaya seeds imposed since 2008. Chinese Taipei reported that it was currently reviewing Thailand's draft quarantine requirements for its papaya seeds. Chinese Taipei confirmed that the exported papaya seed was free from tobacco ringspot virus (TRSV) and urged Thailand to lift the import restriction and comply with its WTO obligations.

3.33. Thailand explained that the reason for the initial ban on the import of papaya seeds from Chinese Taipei was due to a regulatory amendment. An exemption was granted to existing traded commodities, but Chinese Taipei's request to include papaya seeds in the exemption was received only after the time-frame. Therefore, it faced a delay in its market access. Thailand added that the draft import protocol for papaya seeds had been approved by its Quarantine Technical Subcommittee. If it was accepted by Chinese Taipei, it would be submitted to Thailand's Pest Quarantine Committee for final approval to resume imports of papaya seeds from Chinese Taipei.

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### **3.2.6 General import restrictions due to BSE – Concerns of the European Union (No. 193)**

3.34. The European Union reiterated the importance of this concern, recalling BSE-related science on the safe trade of beef regardless of the BSE country risk status, as stated by the OIE. The European Union regretted that after fifteen years, some countries maintained their BSE-related bans, which contradicted their obligations under the SPS Agreement. The European Union also underlined the lack of transparency of some Members' import procedures, noting that South Korea had not responded to the market access application submitted by EU member States since 2006, urging for an expedient resolution on this issue. The European Union also urged other Members, including Malaysia, to promptly allow imports of safe beef from the European Union. The European Union also urged the United States and China to continue lifting their import bans for all pending EU member States. The European Union also appreciated positive developments in Chinese Taipei and Japan.

### **3.2.7 China's import restrictions due to African swine fever – Concerns of the European Union (No. 392)**

3.35. The European Union again raised concerns over China's country-wide ban on pork products from several EU member States due to the outbreak of African swine fever (ASF). The European Union recalled that the issue had first been raised in July 2015, without a positive response from China to date. The European Union stressed its regionalisation measures and the evidence presented to guarantee safe trade, urging China to recognize the concept of disease-free areas and respect its regionalization obligations in compliance with the SPS Agreement and OIE standards. The European Union also requested that China provide information on its procedure to recognize disease-free areas and on its standard processing period, and that China ensure that these procedures were undertaken and completed without undue delay. The European Union was encouraged by recent developments including the organization of a seminar in China with the relevant authorities to discuss a possible way forward and hope that this dialogue will deliver concrete results in the coming months.

3.36. China explained that it had implemented regionalization management measures, but remained cautious regarding major animal epidemic diseases that had never occurred in China, such as ASF, considering its stock density and limited epidemic disease control ability. Recently, African swine fever was still spreading in Europe. According to the rules of the SPS Agreement and China's current protection ability, China had to strictly prohibit imports of animals and animal products with a high risk.

### **3.2.8 Korea's import restrictions due to African swine fever – Concerns of the European Union (No. 393)**

3.37. The European Union reiterated its concern over Korea's ban on pork and pork products from Poland since February 2014, which did not take into account the European Union regionalization measures. The European Union regretted that despite bilateral meetings the import restriction remained. Korea had performed a preliminary risk assessment and an on-site inspection in December 2014, and had received responses to its questions. Korea had indicated that as a result of the preliminary risk assessment, it would proceed with a risk analysis. Finally, the European Union urged Korea to comply with its WTO obligations by putting in place measures that were not more trade restrictive than necessary, applying regionalization, only requesting necessary information to complete the recognition of regionalization, and taking into account information already available.

3.38. Korea drew attention to the increasing number of ASF cases in Poland, with 87 cases recorded in domestic pigs from January to September 2017, a number four times larger than recorded between 2014 and 2016. Korea also reported that the European Animal Health Regulatory Committee had stated that lack of biosecurity measures and illegal transactions in pigs and pork meat were the main causes of ASF in Polish domestic pig farms. Korea expressed its concern that the ASF-free zone in Poland was not effectively managed, and requested pertinent information on the spread of ASF on domestic pig farms, according to OIE standards. Korea hoped the epidemiological situation in Poland would be under control in order to resolve this issue.

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### **3.2.9 China's import restrictions due to Highly Pathogenic Avian Influenza – Concerns of the United States (No. 406)**

3.39. The United States reiterated its concern over China's Highly Pathogenic Avian Influenza (HPAI)-related restrictions on poultry products and requested that China follow OIE standards, particularly on regionalization. The United States regretted that despite being HPAI-free according to OIE guidelines, China still maintained the restriction. The United States urged China to remove all HPAI-related import restrictions and promised to continue to maintain its rigorous and effective surveillance for HPAI.

3.40. The European Union echoed the United States concern and the desire to have it resolved, as it faced the same issue.

3.41. China replied that it had found certain problems with the prevention and control system of avian influenza in the United States in July 2017, based on its preliminary risk assessment. China had informed the United States of the problems detected, but had not yet received a response. China urged the United States to provide feedback in writing, as well as the supplementary information requested. China explained that there had been bilateral discussions on biosafety compartmentalization and regionalization methods, and kept an open mind on both methods. China added that it would submit its standards on biosafety compartmentalization in writing to the United States again. Finally, China suggested that both parties coordinate their standards on regionalization and biosafety compartmentalization under the OIE guidelines.

3.42. The United States appreciated China's compartmentalization proposal. However, it noted that each country should be evaluated for recognition of regionalization or compartmentalization separately, following the procedure established by the importing country. The United States added that since both countries were in different stages of the process, it requested that China remove all HPAI-related restrictions on imports from the United States in line with its HPAI-free status, according to OIE standards.

### **3.2.10 The Russian Federation's import restrictions on certain animal products from Germany – Concerns of the European Union (No. 411)**

3.43. The European Union reiterated its concern regarding the Russian Federation's import ban on fresh and chilled pig meat, beef and poultry meat from the entire territory of Germany imposed in early 2013, and the subsequent ban on finished meat and milk products from three German Federal States. The European Union repeated its earlier statements on the inconsistency of the measure with the SPS Agreement and expressed its disappointment that the ban remained in force despite efforts made by Germany and the European Union. The European Union urged the Russian Federation to repeal its measures without further delay.

3.44. The Russian Federation recalled that the temporary import restriction stemmed from the detection of unsafe products and multiple mistakes in animal products certificates found during 2013 and 2015 inspections, and their systemic nature. The Russian Federation also noted the agreement that Germany would implement guidelines to verify its compliance with the requirements of the Eurasian Economic Union and of the Russian Federation, and that draft guidelines were under review by both parties.

### **3.2.11 The Russian Federation's import restrictions on processed fishery products from Estonia and Latvia – Concerns of the European Union (No. 390)**

3.45. The European Union reiterated its concerns regarding the Russian Federation's import restrictions on all fishery products from Estonia and Latvia, which followed an audit of a few establishments by the Russian Federation in 2015. The European Union argued that these measures were inconsistent with the SPS Agreement, unjustifiable on sanitary grounds, and not in compliance with the Russian Federation's WTO accession commitments. The European Union added that Latvia and Estonia reacted without delay to the findings and had put in place corrective measures within the requested time-frame, and had been subsequently audited by the Russian Federation in June 2016. The European Union regretted that it only received the report of these audits the day before the Committee meeting. Estonia and Latvia had held bilateral discussions

with the Russian Federation to show their readiness to resolve this concern. The European Union called for an immediate repeal of the measure.

3.46. The Russian Federation recalled that the temporary restriction had been the result of onsite inspections that found systemic deficiencies in fish processing. More recent inspections noted the progress made in complying with requirements of the Eurasian Economic Union, but did not fully address the safety concerns. Finally, the Russian Federation awaited responses from Latvia and Estonia to the preliminary report of its inspection.

### **3.2.12 European Union's revised proposal for categorization of compounds as endocrine disruptors – Concerns of Argentina, China and the United States (No. 382)**

3.47. Argentina reiterated its concern over the European Union's process to define criteria to identify endocrine disrupting properties. Argentina noted the European Parliament's recent rejection of the draft implementing regulation that would have amended Regulation (EU) No. 1107/2009 Annex 2, which established definitive and specific scientific criteria for the determination of endocrine disruptive properties, as adopted by the European Union Standing Committee on Plants, Animal, Food and Feed (SCoPAFF) in July 2017. Argentina requested an update of the following steps. Argentina was concerned about current discussions in the European Union about restricting imports of substances on the basis of hazard identification rather than of a comprehensive risk assessment. Argentina reiterated its request that the European Union maintain import tolerances with MRLs above default values, in accordance with its Regulation (EC) 396/2005.

3.48. China echoed the Argentina's concern and recommended that the European Union adopt the Codex standards, in accordance with the SPS Agreement.

3.49. The United States reiterated its concerns on the EU pesticides policy. The United States argued that the EU hazard-based pesticide regulations were insufficiently grounded on science and risk, and would harm global agriculture production, food security and international trade, without making a meaningful contribution to public health. The United States reaffirmed its stance against the hazard-based criteria of the European Union to ban substances identified as endocrine disruptors, and its concern over the effects that the prolonged uncertainty on the matter was having on producers. The United States recalled that the European Union would apply interim criteria in the absence of adoption of the proposed criteria, and therefore asked about the difference between the list of substances that would fall under the interim criteria and those that would fall under the criteria rejected by the European Parliament. The United States emphasised the existence of other approaches that could provide the high level of human health and environmental protection sought by the European Union without disrupting international trade and asked the European Union how it would ensure consistency with the SPS Agreement if it withdrew MRLs without conducting risk assessments or considering import tolerances or relevant Codex MRLs. Finally, the United States looked forward to receiving responses to the written question submitted to the European Union after the March 2017 SPS Committee meeting.

3.50. Canada stated its concern over the EU approach to the categorization of compounds as endocrine disruptors. Canada expressed its disappointment that a regulatory amendment for derogation based on negligible risk had not been introduced in the European Parliament, and the delay and uncertainty this created. Canada sought assurances from the European Union that decisions on setting MRLs would continue to be made on the basis of risk assessments, as set out in Regulation (EC) 396/2005.

3.51. Australia, Brazil, Colombia, Costa Rica, Guatemala, India, Israel, Madagascar, Mozambique, New Zealand, Nigeria, Peru, Senegal, Thailand, Togo, and Uruguay indicated that they shared this concern and called upon the European Union to base its measures on adequate scientific risk assessments and to consider Codex MRLs. They also requested the European Union to keep Members abreast of their next steps on this issue.

3.52. The European Union reiterated its commitment to transparency, noting that all the information regarding this matter was available on the European Commission's website. The proposal on defining the criteria to identify endocrine disruptors for plant protection products had been recently rejected by the European Parliament and the European Commission was

considering the next steps. Import tolerance requests for substances falling under the cut-off criteria would be carefully evaluated on a case-by-case basis, considering the objectives of consumer protection as well as the European Union's obligations under the SPS Agreement. Due to transitional measures of Regulation (EC) No. 1107/2009 and the delays in the renewal programmes of the approved active substances, the European Union did not yet have experience on MRL and import tolerance setting for substances falling under the cut-off criteria. The European Union reiterated that its measures were neither discriminatory nor a disguised restriction to trade, but would be applied domestically and internationally. Finally, the European Union undertook to keep Members duly informed about further developments.

### **3.2.13 France's dimethoate-related restrictions on imports - Concerns of the United States (No. 422)**

3.53. The United States reiterated its concern over actions taken by France to ban the importation of fresh cherries from the United States and other countries that had approved the use of the pesticide dimethoate on cherries. The United States expressed concern over the decision to restrict imports of commodities based on the authorization of a pesticide in the country of origin rather than based on a scientific assessment of risk, and regardless of whether or not residues of the pesticide were present in the imported commodities. The United States noted that publicly available evaluations from other regulatory authorities had determined that dimethoate metabolites were not toxicologically relevant, as did the draft Rapporteur Assessment Report of the European Food Safety Authority (EFSA). The United States informed it had received from France a response to its comments, but regretted that it referred to data gaps when the United States argued the data was available. Finally, the United States requested France not to renew its ban for a third consecutive year.

3.54. Canada echoed the US concern, requested information about the measures that would apply from 1 January 2018, and encouraged France to adopt measures in line with those of the European Commission, which were scientifically justified and not discriminatory against products from countries where dimethoate was authorised for use. Canada urged France to conduct a risk assessment to determine if the current MRL established by the European Union was insufficient before enacting more trade restrictive measures.

3.55. The European Union referred to the response provided in the July 2017 SPS Committee meeting. To the question on the rationale behind the application of the measure only to fresh cherries when other commodities could also contain dimethoate residues, the European Union stated that it was based on consumption patterns, which were higher for cherries than for other commodities which could contain dimethoate residues. The European Union finally indicated that new studies had been submitted for evaluation to EFSA, with a conclusion expected in spring of 2018.

### **3.2.14 The Russian Federation's import restrictions on wine - Concerns of Montenegro (No. 426)**

3.56. Montenegro reiterated its concern on the Russian Federation's restrictive measures applied to imports of wine from Montenegro, and provided an update on the efforts and actions taken by Montenegro since the previous SPS Committee meeting. Montenegro recalled that the import restrictions had been introduced in 2016 without advance or official notification to the authorities in Montenegro and the companies involved. Montenegro reported that it had submitted two official letters to the Russian Federation authorities requesting additional information and clarification on the scientific evidence and nature of the imposed restriction, had offered bilateral consultations and indicated that joint control of the wine would offer the best course to resolve the issue. Montenegro pledged its full cooperation to the Russian Federation and its willingness to have the Russian Federation carry out a verification of its wine production compliance with the Russian Federation standards. Montenegro expressed its deep regret for the lack of response on the part of the Russian Federation to its correspondence and the lacking intention to engage in bilateral consultation or undertake corrective measures to lift the existing restriction. Montenegro urged the Russian Federation to lift the restriction and to find a mutually agreed solution including the review of the SPS conformity of Montenegrin wine to facilitate the full return of the exported confiscated wine.



3.57. Moldova referred to its statement made in the July 2017 SPS Committee meeting and reiterated its support to Montenegro's proposal of a joint control of the confiscated Montenegrin wine to ensure a better understanding of the Russian Federation food safety standards and procedures in order to take corrective actions. Moldova urged the Russian Federation to constructively engage in bilateral consultations to find a mutually acceptable solution in line with WTO rules.

3.58. The Russian Federation stated that the temporary import restriction was imposed due to the detection that Montenegrin wines failed to meet the Eurasian Economic Union's and the Russian Federation's requirements. The Russian Federation indicated that Montenegro's communications were currently under consideration, but that they did not provide information about the actions taken by Montenegro to identify cases of contamination of wines imported to the Russian Federation. The Russian Federation expected constructive cooperation with Montenegro in this area.

### **3.2.15 China's AQSIQ official certification requirements for food imports (G/TBT/N/CHN/1209) – Concerns of Israel and the United States (No. 184)**

3.59. The United States reiterated its concern on China's proposed official certification requirements for imported food. The United States thanked China for its bilateral engagement and for its notification to the WTO of the two-year transitional period for the implementation of the official certification requirement, delaying its entry into force to 30 September 2019. The United States noted that though the notification had been made to the TBT Committee, it indicated the protection of human health and food safety in the description and objective of the measure. The United States therefore requested China to keep the SPS Committee abreast of the measure's developments. The United States also requested a clarification of the scope of the measure, given that AQSIQ Food Bureau's Correspondence No. 83 appeared to require a wide range of imported food products to be accompanied by official certificates on a shipment-by-shipment basis, including processed, shelf-stable food, which would pose little to no risk to food safety and human health. The United States argued that China's proposed requirement was inconsistent with Codex guidelines and principles. Finally, the United States welcomed the clarifications provided by China and the opportunity to work with China on the matter.

3.60. Singapore supported the concern and added that it looked forward to receiving responses to the questions posed to AQSIQ.

3.61. Japan, the European Union, Guatemala, and Thailand also shared the concern of the United States and urged China to provide timely and appropriate information on the revised draft and its implementation, noting that the measure would be disproportionate, go beyond international standards, and be trade disrupting.

3.62. China responded that it had carefully considered the comments submitted by Members and had decided to provide a unified transitional period of two years until 30 September 2019, as notified to the WTO. China explained that the measure had been drafted taking into account the practical situation of other Members, and hoped that Members would provide a sample of certificates attached to food exported to China as soon as possible. The comments received would be delivered back to the capital for consideration.

### **3.2.16 US seafood import monitoring programme - Concerns of China (No. 415)**

3.63. China reiterated its concern on the US seafood import monitoring programme. China highlighted the differences between the US bills related to the trade of aquatic products, namely the Seafood Import Monitoring Program (SIMP) and the Fish and Fish Product Import Regulations, and the Marine Mammal Protection Act. China urged the United States to consider removing aquaculture products from the bills to promote the healthy development of bilateral trade in these products. China requested updates on the relevant bills under the regional fishery management organizations and the relevant international management organizations.

3.64. The Russian Federation shared China's concern, noting that trade-related measures should be adopted and implemented in a fair and transparent manner, and only after prior consultation with interested Members.



3.65. The United States reiterated that the final rule was not an SPS measure and therefore fell outside the scope of the SPS Agreement. The United States also reiterated that the objective of the final rule was to combat illegal, unreported and unregulated (IUU) fishing and seafood fraud, and thus required the US importers to report certain information upon entry into the United States and retain other information that would allow the shipments to be traced back to the point of catch or harvest in order to protect its market from being used to sell fraudulently marketed seafood or seafood products produced from IUU fishing.

### **3.3 Information on resolution of issues in G/SPS/GEN/204/Rev.17**

3.66. The Secretariat informed that in September 2017 it had contacted all Members who had raised specific trade concerns (STCs) that had not been discussed in the previous year, to request an update on their status. Eleven Members had responded and had indicated that 15 STCs had been resolved, and 13 STCs had been partially resolved. The Secretariat also explained that an STC was reported as partially resolved when (i) it was only reported as resolved by some of the Members that had raised the STC; (ii) trade had resumed for some, but not all, of the products covered by the STC; or (iii) trade had resumed with one of the Members maintaining the measure subject to the STC. The Secretariat indicated that the information received had been circulated in document RD/SPS/28 of 31 October 2017, and that the SPS IMS would be updated on this basis, using the date of the present SPS Committee meeting as the date of resolution of the relevant STCs.

3.67. No Member provided any further information under this agenda item.

### **3.4 Annual report on the use of the procedure to encourage and facilitate the resolution of specific SPS issues (G/SPS/61)**

3.68. The Secretariat informed Members that the annual report on the use of this procedure had been circulated in G/SPS/GEN/1573, and that the procedure had not been used to date.

## **4 OPERATION AND IMPLEMENTATION OF THE SPS AGREEMENT**

### **4.1 Equivalence**

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

### **4.2 Pest- and disease-free areas**

#### **4.2.1 Information from Members**

##### **4.2.1.1 Botswana – Information on FMD in Ngamiland**

4.2. Botswana provided an update on the outbreak of foot and mouth disease in the Sehithwa area of Ngamiland District, which had been detected in September 2017 and notified to the WTO on 26 September 2017 through document G/SPS/GEN/1572. Botswana enumerated the measures it had taken to control the spread of the disease: (i) district wide clinical surveillance to determine the extent of the outbreak; (ii) primo vaccination followed by booster vaccination; (iii) FMD vaccination coupled with surveillance; (iv) a total livestock movement ban and other movement restrictions; (v) slaughter of cattle under certain conditions. Botswana emphasised that the outbreak was contained and did not affect beef trade in the OIE-recognized FMD-free zones of Botswana.

##### **4.2.1.2 Ecuador – Update of list of quarantine pests**

4.3. Ecuador informed that the Ecuadorian Agency for Agricultural Safety and Quality, AGROCALIDAD, had recently published Resolution No. 0122 through which it updated the list of quarantine pests not present in Ecuador. The annex of the aforementioned resolution contained the details of all pests that were not present in Ecuadorian territory. Ecuador committed to making the updated list available to Members.

#### **4.2.1.3 Dominican Republic – Freedom from Mediterranean fruit fly**

4.4. The Dominican Republic informed that through resolution RS/MA/2017/11 of the Ministry of Agriculture it had been declared free of Mediterranean fruit fly. The Dominican Republic explained that this was based on the ISPM with regard to the requirements for establishing areas free of fruit fly, which required a minimum of three life cycles without any capture in the area to consider the pest eradicated.

#### **4.2.1.4 South Africa – HPAI situation**

4.5. South Africa provided an update on the Highly Pathogenic Avian Influenza (H5N8) outbreak reported in chickens in South Africa on 22 June 2017, indicating that as of 18 October, 92 locations had been identified to be infected and reported to the OIE. South Africa informed Members of the measures that had been deployed to control the outbreak.

#### **4.2.1.5 Committee work on regionalization**

4.6. The United States thanked the European Union for proposing the thematic session on regionalization held on 11 July 2017, which had allowed the exchange of experiences and best practices between a diverse set of Members, and further deepened the understanding of the SPS Agreement as it relates to regionalization. The United States encouraged Members to actively use the agenda on regionalization to share experiences on challenges encountered and successes achieved in applying the principles of regionalization to facilitate safe trade. It further encouraged Members to strengthen the implementation of regionalization in a manner consistent with Article 6 of the SPS Agreement. The United States proposed (i) the upcoming Fifth Review of the SPS Agreement as a possible avenue to focus on regionalization; (ii) to further the discussion within the Committee by holding future thematic sessions or workshops to explore aspects of regionalization in greater detail, perhaps with a focus on developing of guidance on best practices; (iii) a thematic session on pest-free areas in February 2018; and (iv) that Members report on cases where they had successfully applied the concept of regionalization in resolving a specific trade concern. The United States concluded by calling on other Members to provide possible ideas on how to build on the discussion held in July 2017 on regionalization. The United States offered to present a short proposal for the next thematic session on pest-free areas for Members' comments, if there was interest.

4.7. The European Union welcomed the United States proposal and highlighted the importance of continuous work on regionalization, possibly within the framework of the Fifth Review. The European Union considered favourably the proposal to hold a thematic session on pest-free areas in February 2018. The European Union was also interested in observing cases where regionalization had been useful and where it had failed to address a trade concerns. With regards to the suggestion on guidance or best practices, the European Union pointed to the existing guidelines on the implementation of Article 6 and enquired about the added value in elaborating on this. Finally, the European Union emphasised the contribution of the relevant international organizations, the OIE and IPPC, on this matter.

4.8. Chile reiterated its support for the US suggestions.

### **4.3 Operation of transparency provisions**

#### **4.3.1 Report on Workshop on Transparency**

4.9. The Chairperson reported on the Workshop on Transparency held on 30-31 October 2017 (programme in document G/SPS/GEN/1568/Rev.2).<sup>2</sup> The WTO Global Trust Fund had sponsored 34 participants selected from developing and least developed countries for the two-day workshop only. In addition, the African Union had made it possible for seven participants from French- and English-speaking Africa to participate in the workshop and the meetings of the Committee.

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<sup>2</sup> A more detailed summary report of the workshop will be circulated.

4.10. The main objective of the workshop had been to bring together officials from Members' SPS Enquiry Points, National Notification Authorities and other relevant authorities for an exchange of experiences and for hands-on training on the improved SPS tools, the SPS Information Management System (SPS IMS), the SPS Notification Submission System (SPS NSS) and the ePing notification alert system. In addition, the workshop had focused on the sharing of national experiences and best practices in conducting public consultations when developing SPS regulations.

4.11. The first session of the workshop had included an overview of the transparency provisions in the SPS Agreement and the Recommended Transparency Procedures. The second session had focused on sources of SPS-related information, including: the SPS Gateway on the WTO website; WTO Documents Online and the new e-Subscription service for delegates to receive official WTO documents; the WTO Integrated Trade Intelligence Portal (I-TIP); the improved SPS IMS; and an overview of the ePing alert system for SPS and TBT notifications. Then, participants had broken into language groups for hands-on training on the use of the improved SPS IMS and the ePing alert system, respectively.

4.12. The National Board of Trade of Sweden had presented on a study, which analyzed the relationship and complementarity between the SPS obligations arising out of the new WTO Agreement on Trade Facilitation and the provisions contained in the SPS Agreement.

4.13. The Secretariat had presented an overview of Members' level of implementation of the SPS transparency provisions based on the latest revision of its annual transparency report contained in G/SPS/GEN/804/Rev.10. At the end of day one, the Secretariat had provided an overview of the improved SPS NSS, followed by a hands-on exercise on how to use the system to draft and submit notifications online.

4.14. The second day had begun with a session on national experiences and best practices in public consultations. This session had highlighted relevant international work on models and mechanisms for public consultation in SPS rulemaking, with speakers from the OECD, the World Bank and Malaysia, which had provided both a national and an APEC perspective. One key recommendation had been to find ways to align domestic consultation processes with those required by the WTO in order to maximize the benefits of comments received from abroad. Having a single, unified website or portal had also been highlighted as being useful in conducting and managing a consultative process.

4.15. The session on domestic experiences had been conducted in a round table format, where representatives from four Members shared their experiences in conducting public consultations when developing SPS regulations. Speakers had outlined their national processes, stakeholder engagement, what worked well, and how to evaluate whether their systems had been working. While the systems outlined had differences, there had been some common elements, including single access points for managing comments, unified processes, and sharing information in multiple formats (single website, press releases, public hearings, symposiums, etc.).

4.16. Next, participants had heard overview presentations on three specific topics related to the implementation and benefits of the SPS transparency provisions. The specific topics had been: decision criteria for deciding what and when to notify; how to manage the volume of notifications on which to comment; and consultations with government and non-government stakeholders on foreign SPS notifications. Participants had broken into smaller groups to further discuss the topics presented. The results of the discussion groups had then been reported back to the plenary. Some recurring themes across the groups included, *inter alia*, the importance of national coordination, how to strengthen engagement with relevant stakeholders, the use of ePing to filter the increasing number of notifications, and encouraging Members to make efforts to share unofficial translations of notified regulations.

4.17. In concluding his report, the Chairperson indicated that presentations from all sessions of the workshop would be made available on the SPS Gateway.

### 4.3.2 Report of the Informal Meeting

4.18. The Chairperson also reported on the transparency-related discussions that had taken place in the informal meeting held on 1 November 2017.

4.19. The Chairperson recalled that at the informal meeting, the Secretariat had provided an update on transparency-related issues. The first such issue had been a "technical revision" of the Recommended Transparency Procedures; document G/SPS/7/Rev.3. The current version of the document contained outdated references to the online tools (SPS NSS, SPS IMS), other websites and outdated notification templates which were longer been in use since the WTO had updated its document formats in 2013. It also contained references to outdated practices for submitting notifications, for example by regular mail, or by fax. The revised version of the document would be circulated after the SPS Committee meeting for comments by Members. No substantive changes to the Recommended Procedures would be made. The Secretariat had proposed 31 January 2018 as the deadline for comments. Then, a clean version of the document in the three languages would be circulated in early February, presented at the February SPS Committee meeting, and a final version would be circulated afterwards.

4.20. The Secretariat had further explained that a second document, the 2011 edition of the Procedural Manual for NNAs and NEPs, was being revised to incorporate the improved SPS NSS and IMS platforms and the new ePing alert system, as well as other general updates. An advanced draft had been made available in all three official languages. This draft would be shared with Members after the SPS Committee meeting, with a 15 December 2017 deadline for comments.<sup>3</sup> The Secretariat would then produce a finalized version incorporating any feedback early next year. The Secretariat had thanked Ms Sally Jennings from New Zealand, the original author of the manual, for her assistance in the new revision. The Secretariat had also thanked Burkina Faso, Chile, the Democratic Republic of Congo, Jordan, Madagascar and New Zealand for preparing case stories. The Secretariat was considering how best to include these case stories in the Manual.

4.21. The Secretariat had also reported that a detailed user guide for the SPS NSS had been completed. This guide would be shared with Members, then incorporated in the SPS NSS and subsequently published on the transparency toolkit link of the SPS Webpage after the SPS Committee meeting. The user guide for the SPS IMS had nearly been completed and was expected to be shared with Members by the end of 2017.

4.22. In concluding his report, the Chairperson also recalled that the Secretariat had noted that besides the SPS delegates emailing list, the SPS team also managed two documents emailing lists, one for notifications and another for unrestricted documents. These lists would be discontinued at the end of November. Members could continue to receive SPS documents through the new e-Subscriptions service. Access to this new service was restricted to delegates, who needed to contact the delegation coordinator at their Geneva mission to request credentials. Alternatively, SPS documents and notifications were available through WTO Docs Online or the SPS IMS. Additionally, it was possible to receive alerts on new SPS and TBT notifications through the ePing alert system.

### 4.3.3 Madagascar – Update on notifications

4.23. Madagascar provided an overview of the notifications it had submitted during the period from July to October 2017. In total, eight draft regulatory texts had been notified to the WTO, which included an emergency measure; a memorandum adopted by the Ministry of Agriculture and Livestock in order to address and lift certain measures to prevent the entry of foot and mouth disease from Mauritius; and several draft regulatory texts adopted by the Ministry of Agriculture and Livestock related to harmonization of its animal health regulations with the requirements of trading partners.

## 4.4 Special and Differential Treatment

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

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<sup>3</sup> The deadline was subsequently extended until 31 January 2018.

## **4.5 Monitoring of the use of International Standards**

### **4.5.1 New issues**

#### **4.5.1.1 United States – The relation of the World Health Organization and the Food and Agriculture Organization to Codex Alimentarius**

4.25. The United States recalled the SPS Committee procedure to monitor the process of international harmonization (G/SPS/11/Rev.1), highlighting that this procedure should help to identify, for the benefit of the relevant international organizations, where a standard or guideline was needed, or was not appropriate for its purpose and use. In this regard, the United States drew Members' attention to the recent discussions that had taken place at the Codex Alimentarius Commission in July 2017, regarding the relation of the WHO and FAO to Codex. The United States acknowledged the critical importance of the institutional support provided to Codex by the WHO and FAO, such as through the scientific advisory bodies, while also recognizing the unique role of Codex in the support of public health and trade, and the need for Codex to independently issue standards with support from its members.

4.26. The United States noted that Codex effectively carried out its mandate, by maintaining an inclusive, open and transparent standards development process and by relying on scientific and technical advice from a wide range of perspectives from the public and private sector, as well as international organizations. The United States further stated that while WHO and FAO routinely provided inputs to Codex for further consideration by its membership, Codex ultimately made its determinations based on science, and consistent with the views of its members. The United States urged WHO and FAO to jointly reinforce the independence of Codex, including its responsibility to make decisions that were both science-based and consistent with the views of its members. Due to the differences in mandate and procedures of the WHO and FAO, the United States noted that any ambiguity regarding the independence of Codex posed a concern, since any undue influence could adversely impact the appropriateness of Codex standards in ensuring fair practices in the trade of food.

4.27. The United States further underscored the need for Codex to remain a member-driven, science-based, transparent and inclusive organization in order to ensure the appropriateness of its standards for their purpose and use in protecting public health and ensuring fair trade. The United States urged WHO and FAO to provide sustainable funding to enable Codex standards to meet their health and trade objectives.

4.28. Canada recalled that Codex had been jointly established by the FAO and WHO with a specific mandate to develop food standards to protect the health of consumers and to ensure fair practices in trade of food products. Canada recognized the different mandates of each of the three organizations and indicated its support for their respective work, while highlighting the complementary and synergistic nature. Canada further underscored that any work undertaken by Codex should be within the purview of its mandate, while also recognizing the importance of taking into account the policies of FAO and WHO in its work, and the need for Members to strengthen their national coordination structures on FAO, WHO and Codex.

#### **4.5.1.2 United States – OIE's new chapter on Porcine Reproductive and Respiratory Syndrome (PRRS)**

4.29. The United States recalled that at the July 2017 SPS Committee meeting, it had thanked the OIE for its new chapter on PRRS which had been adopted at the May 2017 General Session of the World Assembly. The United States highlighted that this new PRRS chapter provided science-based guidelines to ensure safe trade in live swine and their products, as well as clarity on the nature of actions to effectively manage risks associated with PRRS. The United States further observed that several WTO Members continued to implement PRRS-related import restrictions which appeared not to reflect the new OIE guidelines and which were impacting US exporters. The United States indicated that it was closely monitoring the implementation of the new guidelines, as well as engaging in bilateral discussions with several Members. The United States urged Members to fully implement the OIE guidelines and to expeditiously remove PRRS-related restrictions that did not reflect these guidelines.

4.30. Canada shared the concerns of the United States and underscored the role of science-based international standards in contributing to a transparent and predictable trading environment for Members. Canada further noted that the recommendations in the chapter would help Members manage the risk of international transmission of PRRS and specifically highlighted the conclusion of the OIE Scientific Committee which found that meat is not a pathway for the transmission of PRRS virus and that the disease would not spread with the measures included in the new standards. Canada encouraged all Members to follow the recommendations included in the new chapter as a basis for their sanitary measures to address PRRS.

4.31. The European Union echoed the concerns of the United States and reiterated that the new OIE chapter on PRRS was based on science, while urging all OIE member countries to fully implement these guidelines. The European Union also recalled that the OIE was currently in the process of setting up an observatory on the implementation of OIE standards by its member countries. The European Union indicated its support for this project and further encouraged the OIE to include the PRRS guidelines in its observatory work.

#### **4.5.2 Issues previously raised**

##### **4.5.2.1 European Union and the United States– HPAI restrictions not consistent with the OIE international standard**

4.32. The European Union shared its concerns regarding inconsistencies in the application of OIE international standards on regionalization in relation to HPAI outbreaks. The European Union highlighted its strict and transparent system of control, characterized by its effective early detection and eradication of avian influenza. The European Union explained that it applied the same policies and guarantees to its intra-European Union trade, as to its exports to non-European Union countries. In the event of an outbreak of a contagious animal disease, the potentially affected parties were immediately notified via several channels, including directly by the Commission and via the OIE's WAHIS. The European Union also noted that in the event of a prolonged disease outbreak, regular status reports were published on the European Commission – DG SANTE website. In addition, audit reports were published on the control systems in EU member States and non-EU countries importing to the European Union. The European Union assured trading partners of its transparent approach to sharing information on the animal health situation in EU member States and further noted that the information it had provided so far, objectively demonstrated the robustness of its measures, which guaranteed that safe trade could continue without the need for country wide bans. These measures, which were legally binding in the European Union and based on OIE international standards, were aimed at containing the disease in the infected zone, while allowing trade of safe products from the rest of the European Union and exports to non-EU countries.

4.33. The European Union underscored that a country-wide ban was not required whenever there was an HPAI outbreak, as this type of measure was not science-based nor was it relevant in the context of the European Union's single market. In addition, the actions of some Members in targeting bans on wild birds only and on heat-treated products were disproportional to the level of risk and were not in line with OIE international standards. The European Union expressed its concerns regarding Members' classification of some bans as temporary, even though these bans had not been lifted or had been kept in place for extended periods. The European Union also noted that some Members did not provide information on the various steps of their recognition process for regionalization or did not inform Members of missing information required for the completion of the process and subsequent lifting of bans. The European Union called upon Members to comply with the regionalization obligations under the SPS Agreement and to follow OIE international standards, and allow trade of all safe products, especially from non-affected zones. The European Union further requested Members to immediately lift all bans, no later than three months after the application of stamping out procedures and disinfection of all affected premises, and to refrain from imposing trade restrictions in cases where HPAI was detected in wild birds. The European Union indicated its continued support for the Committee's thematic sessions on regionalization, which provided a forum to further discuss the proper implementation of OIE international standards.

4.34. The United States shared the concerns of the European Union, and informed Members that it had regained country-wide freedom from HPAI, consistent with the OIE guidelines, in August 2017. The United States reminded Members of the importance of the HPAI guidelines in facilitating



safe trade in life poultry and poultry meat. In particular, the United States highlighted that the OIE guidelines for avian influenza stated that free status could be regained quicker in a previously free country, if it applied a stamping out policy that included disinfection of all affected establishments and provided that the appropriate surveillance had been undertaken. The United States noted that some AI-related restrictions on imports from the United States had been lifted, and acknowledged the European Union, Japan and South Africa for their actions in that regard. However, the United States observed that not all Members were following the OIE guidelines, nor did they offer scientific justification for deviating from the international standards. The United States reminded Members of their obligations under Articles 2 and 3 of the SPS Agreement, and urged Members to swiftly lift HPAI-related restrictions on US exports.

#### **4.5.2.2 Burkina Faso – Application of ISPM 13 on notifications of non-compliance**

4.35. Burkina Faso reiterated its concerns regarding the application of ISPM 13, noting the delays in receiving notifications of SPS non-compliance from Members, including from the European Union. Burkina Faso welcomed the COLEACP information note on monitoring RASFF and EUROPHYT notifications which provided transparency in the management of issues related to non-compliance with SPS measures. This would allow countries, especially those with notifications of non-compliance through official inspection structures, to better monitor SPS problems and propose solutions.

4.36. Canada indicated the importance of the IPPC guidelines with respect to the notification of non-compliance in emergency action, as set out in ISPM 13. Canada highlighted the requirements of the importing party to provide a notification to an exporting party in instances where consignments failed to comply with specified phytosanitary import requirements, and to report an emergency action taken upon the detection of a pest posing a potential threat. Canada underscored that such notifications were intended to help investigate the cause of non-compliance and to facilitate steps to avoid its recurrence, thereby helping exporting countries meet importing country requirements. Canada's approach to issuing and receiving such notices was set out in the Canadian Food Inspection Agency's Plant Health Directive D-01-06. Canada encouraged all Members to follow the international standard in order to prevent the spread of organisms that might pose a potential phytosanitary threat.

4.37. The European Union indicated its willingness to have bilateral discussions with Burkina Faso in order to understand its concerns and find a solution.

#### **4.5.2.3 Argentina and the United States– Use of the Codex International Standard on Glyphosate**

4.38. Argentina reiterated its concern that some Members were considering the possibility of rescinding the use of glyphosate and thereby no longer apply the Codex MRL. In particular, Argentina noted the ongoing debate within the European Union on the renewal of the authorization of glyphosate use and the increasing uncertainty regarding the adoption of a decision to renew the licence for its use in the European Union, which would expire on 15 December 2017. Argentina referred to the scientific opinions from EFSA and the European Chemicals Agency (ECHA), as well as risk analyses undertaken by several agencies from various countries, which all concluded that glyphosate could not be classified as being carcinogenic, mutagenic or toxic for reproduction. Argentina also noted that glyphosate had been the subject of various risk assessments carried out by JMPR, which provided the basis for establishing maximum residue limits, for subsequent adoption by the Codex Alimentarius Commission. Argentina acknowledged the concerns of various EU member States and other EU stakeholders, and echoed the need to ensure consumer and environmental protection, but further emphasized the fundamental importance of basing sanitary measures on a scientific risk assessment. In this regard, Argentina noted that glyphosate had been proven to be safe and effective when used correctly by farmers. Argentina further indicated its concern regarding the position of some EU member States to prohibit the use of glyphosate or to renew it for very short periods, even when EU legislation indicated that approval for substances whose uses had been assessed to be safe, could be renewed up to a fifteen year period.

4.39. Argentina stated that a potential decision against the renewal of the approval of glyphosate, despite the conclusions of available scientific assessments which backed the renewal of



glyphosate, would lead to serious concerns about the science-based decision-making procedures in the European Union. In addition, Argentina highlighted the possible impact of the non-renewal of the authorization of glyphosate on the advancement of safe agricultural techniques, as well as the effects on international trade and prices of grains, oilseeds and by-products. While Argentina acknowledged the need to control the indiscriminate use of toxic substances, it emphasized the importance of ensuring that SPS measures were based on scientific evidence and not more trade restrictive than necessary. As such, Argentina urged the European Union to comply with its obligations under the SPS Agreement to base decisions on scientific evidence, as set out in Article 3, and to swiftly proceed with the renewal of the authorization of glyphosate, in accordance with EU legislation. Finally, Argentina drew the Committee's attention to the European Court of Justice ruling in Case C111/16, which stated that neither the European Commission nor EU member States could adopt emergency measures, such as the prohibition of genetically modified organisms, if it were not proven that such products may credibly present a grave risk for human, animal health or the environment.

4.40. The United States reiterated its concerns over the fact that some Members had already taken action, or were considering taking action, to withdraw existing glyphosate MRLs or to no longer apply the Codex MRL for glyphosate. The United States observed that some of these measures appeared to lack scientific justification, while noting that glyphosate had been one of the most rigorously studied and evaluated crop protection tools. The United States recalled JMPR's conclusion that neither short-term nor long-term dietary exposure to glyphosate presented a risk to consumers or a public health concern. On this basis, all existing Codex MRLs had been reaffirmed. The United States expressed concern that actions to restrict the use of glyphosate and withdraw glyphosate MRLs would significantly harm international trade without any benefit to public health, and that such actions had the potential to undermine Codex and its standards. In particular, the United States noted the ongoing delays in the European Union to renew the current authorization for glyphosate, and recalled that the European Union had failed to reach a renewal decision last year, despite the conclusions by both EFSA and JMPR that glyphosate was unlikely to be a human carcinogen. The United States explained that a short 18-month extension had been provided, in lieu of a 15-year renewal decision, in order to allow a third independent opinion by ECHA on glyphosate. In March 2017, the ECHA had corroborated the findings of EFSA and JMPR. The United States recalled the European Union's subsequent statement in the March SPS Committee meeting, where it had restated its commitment to adopt a science-based decision on glyphosate renewal. However, the United States expressed concern that EU member States appeared to be ignoring the findings of international and European scientific authorities, as they had failed to reach a qualified majority at the October 2017 Standing Committee on Plants, Animals, Food and Feed (PAFF).

4.41. With the pending December 2017 expiration of the EU authorization, the United States reiterated its concern that EU member States had yet to reach a decision on the renewal of glyphosate and that non-renewal could lead to the lowering of glyphosate MRLs to default levels in the European Union. The United States further noted the potential impact on crop production techniques, world trade of grains and oilseeds, and the estimated net global losses to the sector, nearly US\$7 billion dollars according to a third party impact assessment, if authorization for glyphosate use was withdrawn or MRLs lowered. The United States stated that separating production throughout the entire supply chain for exports to the European Union was unwarranted from a risk stand point, and also not feasible. In concluding, the United States observed that the European Union's decision had the potential to undermine regulatory authorities around the world (EFSA, ECHA, JMPR), and could embolden those who rejected the validity of independent and objective scientific evaluations as the basis of regulatory approvals. The United States urged the European Union to avoid further delay and to base its glyphosate renewal decision on the scientific findings published by European and international authorities.

4.42. The Chairperson drew the Committee's attention to the report submitted by Codex in G/SPS/GEN/1577/Add.1, which provided some information on glyphosate.

4.43. The European Union thanked the United States and Argentina for the detailed information provided to the Committee, and confirmed that the current glyphosate approval was valid until the end of 2017. The European Union explained that there were ongoing discussions with EU member States on the renewal of the approval, on the basis of the positive opinions by EFSA and ECHA, and that all relevant information was available on the European Union's glyphosate webpage.

4.44. Australia, Brazil, Canada, Colombia, Peru, New Zealand and Uruguay echoed the concerns of Argentina and the United States, and stressed the importance of scientific, risk-based decision-making, as well as the importance of following the Codex standard. The potential impact of the EU decision on world agricultural production and exports to the European Union, as well as the potential pest and disease issues that might arise, were also noted. Members encouraged the European Union to take into account the conclusions of the various scientific risk assessments, including by European authorities, in its decision-making process. Australia also raised several queries in relation to the likely timeline for the EU decision, the expected period of re-approval, how this information would be communicated to trading partners, and whether a comment period would be provided if glyphosate approval was restricted or not renewed. Australia further requested the views of the EU Commission on its import tolerance setting process if glyphosate was not approved for EU use, bearing in mind the conclusions of the European Union's risk assessment of glyphosate and the cut-off criteria indicated in EU Regulation No. 1107/2009.

#### **4.6 Chairperson's Annual Report to CTG**

4.45. The Chairperson noted that he would make a factual annual report, under his own responsibility, on the activities of the Committee for consideration by the Council for Trade in Goods (CTG) in mid-November. Members could provide comments by 7 November 2017.<sup>4</sup>

#### **4.7 Procedure for the Fifth Review**

4.46. The Chairperson invited the Secretariat to provide information on a possible process to launch the Fifth Review. The Secretariat recalled that the Fifth Review had been mentioned several times in Members' discussions, and provided background information on the Review process in order to guide the Committee's consideration of the procedure for the Fifth Review. The Secretariat explained that Article 12.7 of the SPS Agreement mandated the First Review of the SPS Agreement to be undertaken after three years. This First Review had started in October 1997, with subsequent adoption of the report in March 1999. This had been the only Review specifically scheduled in the SPS Agreement, as the Agreement only indicated that subsequent reviews be undertaken as the need arises. However, at the 2001 Doha Ministerial Conference, a Ministerial Decision had been adopted which indicated that the SPS Committee review the Agreement every four years. As such, the Report of the Second Review had been adopted in July 2005 and the Third Review in March 2010. The Secretariat recalled that the process for the Fourth Review had started in 2013, with an expected completion date in 2014, but that the Committee had only been able to adopt the report at its July 2017 Committee meeting. The Secretariat noted that this delay had impacted the timing of the Fifth Review, and requested the Committee to indicate its views on returning to a four-year cycle, with the possibility to start the Fifth Review in 2018. The Secretariat further explained that the Review process normally started with the Committee requesting the Secretariat to prepare a procedure for the Review, indicating timelines for various steps. The Secretariat highlighted that the procedure for the last Review was available in G/SPS/W/270 and also drew Members attention to the TBT Committee's launch of its 8<sup>th</sup> Triennial Review and adopted timeline in JOB/TBT/235.

4.47. The United States sought clarification on whether the Fifth Review process would start at the request of a Member, with consensus from the Committee. The Secretariat clarified the procedure and time-frame for past Reviews, highlighting that the Committee would normally request, by consensus, the preparation of a timeline, for subsequent agreement by the Committee. The United States further suggested that Members could consider the information provided by the Secretariat, with a view to reviewing a proposed timeline in the March 2018 meeting of the SPS Committee.

4.48. The European Union further requested clarification on the launch of the procedure for the Fifth Review and the submission of specific proposals by Members.

4.49. The Chairperson requested the Committee to indicate whether it was in agreement with the preparation of a draft timeline by the Secretariat for consideration and discussion at the March 2018 Committee meeting. The Committee agreed to this approach.<sup>5</sup>

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<sup>4</sup> The report was circulated as document G/L/1202 on 8 November 2017.

## 5 CROSS-CUTTING ISSUES

### 5.1 Workshop on Pesticide Maximum Residue Levels (MRLs): Recommendations for Endorsement by the SPS Committee – Proposal by Kenya, Uganda and the United States (G/SPS/W/292/Rev.1)

#### 5.1.1 Report of the Informal Meeting

5.1. The Chairperson reported on the relevant discussions at informal meeting that had been held on 1 November 2017.

5.2. The Chairperson reminded Members that Kenya, Uganda and the United States had first submitted their proposal for follow-up steps to the Workshop on Pesticide MRLs (G/SPS/W/292) in March of this year. The proposal had been discussed in informal consultations in June and at the formal and informal Committee meetings in July. A revised proposal had been circulated on 3 October, which addressed comments received from Members. It suggested that the SPS Committee include the recommendations contained in the proposal in the future Report of the Fifth Review of the Operation and Implementation of the Agreement. It also suggested that the Committee endorse a proposed Ministerial Decision annexed to the proposal for transmission to MC11.

5.3. The revised version had also been discussed at informal consultations held on 10 and 18 October. At the consultations, a majority of Members had supported the proposal. Several Members had indicated that they were still studying it, and some had made specific comments. Several Members had asked about the proposed process for the possible adoption of the Ministerial Decision. The proponents had again revised the proposal. Revision 2 had subsequently been circulated on Monday 30 October 2017, along with a compilation of comments that had been received, a track-changes version explaining how comments had been considered, and a separate response to India's comments.

5.4. Regarding the process, the Chairperson had explained that, according to his understanding, the SPS Committee would agree to forward the proposed Ministerial Decision to the Council for Trade in Goods, if there was consensus, from where it would subsequently go to the General Council, and then the Ministerial Conference.

5.5. The authors of the proposal had again emphasized the importance of the Committee's work on pesticide MRLs since the workshop in October 2016. They had stressed the trade disruptions caused by missing and misaligned MRLs, and the urgency of stepping up efforts to find solutions to these concerns. They had proposed taking this work of the Committee to a higher level, which would give momentum to the important task of resolving MRL-related trade concerns, and would also contribute to reinvigorating the work of the Committee.

5.6. Many Members had taken the floor to react to the proposal. Virtually all of them had supported the recommendations contained in the proposal, and there had been broad support to include these in the report of the Fifth Review. Many had indicated that they also faced trade concerns related to pesticide MRLs. One Member had indicated that the recommendations in the proposal did not fully address its concerns related to application of default MRLs at levels of detection; this Member could not support the adoption of the recommendations.

5.7. There had also been a lot of support for the Ministerial Decision from most Members who had taken the floor. Four Members had indicated that they were not in a position to support it. Their concerns had related to the timing of the proposal, the merits of singling out a single topic for Ministers' attention, and the existence of a mandate. One Member had raised questions for clarification *inter alia* on the title of the proposed Decision, its scope, some of the terminology used, and the desire to avoid duplication. A couple of Members had made textual suggestions, and had been invited to submit them in writing.

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<sup>5</sup> The Proposed Process for the Fifth Review was circulated in document G/SPS/W/296 on 19 December 2017.

5.8. At the end of the exchanges, Members had expressed the desire to continue the discussion, and the Chairperson had convened an open-ended consultation in the afternoon to give a smaller group of Members the opportunity for a frank exchange of views. At these consultations, the Chairperson had first invited Members to focus on the recommendations for inclusion in the report of the Fifth Review, where consensus seemed close. The Chairperson had noted that one Member indicated that the recommendations did not solve its concern related to application of limits of detection. Yet the authors of the proposal had indicated that in their view this concern, many aspects of which they shared, had been addressed. Although Members had engaged in the discussions and several had explained their views in more detail, it was not possible to bridge the gap.

5.9. In concluding his report of the informal meeting, the Chairperson recalled that he had invited Members to continue engaging with their capitals and with each other, with a view to finding a solution.

5.10. Kenya expressed its appreciation for the constructive engagement and support from the majority of Members, as well as the efforts of the Chairperson to facilitate discussions. However, Kenya also expressed its disappointment that, despite concerted efforts and flexibility on the part of several Members, the Committee was not able to reach a consensus to include the proposed recommendations in the report of the Fifth Review. Kenya recalled that the recommendations focused on voluntary cooperative actions by the SPS Committee to reduce MRL-related trade barriers identified in discussions during the Workshop on Pesticide MRLs. Kenya was of the opinion that the recommendations captured ways in which Members could, on a voluntary basis, support the critical efforts to address missing and misaligned MRLs that constrained the smooth flow of trade. Kenya also expressed disappointment that there was no consensus on the proposed Ministerial Decision, despite the flexibility shown by certain Members. In Kenya's view, the endorsement of such a Decision would help to raise the profile of MRL-related issues in the work of the Committee and inject momentum towards resolving MRL-related trade problems which were of concern to many Members, particularly developing countries. Kenya further noted the lost opportunity to reinvigorate the work of the Committee, in line with paragraph 29 of the Nairobi Declaration. Kenya indicated its willingness to further engage with Members and urged those with reservations, to show flexibility in order to reach consensus on the proposal.

5.11. Uganda echoed the statements made by Kenya and similarly voiced its disappointment that the Committee had been unable to reach consensus on the proposal, which would have had a direct and beneficial effect to all Members. Uganda explained that, at the East African Community level, it had been harmonizing its MRLs for horticultural products with that of Codex, and encouraged countries to similarly harmonize their MRLs, instead of using LODs or default levels. Uganda noted the challenges it faced in exporting horticultural products due to the MRL-setting practices of major trading partners, which ran counter to the harmonization approach encouraged by the WTO SPS and TBT Agreements. Uganda urged the SPS Committee to play a proactive role, in line with paragraph 29 of the Nairobi Ministerial decision, in energizing global efforts to address MRL concerns that result in trade distortions and barriers to export. Uganda underscored that the task of addressing these MRL-related issues would immensely benefit from an indication of high-level support, such as through a Ministerial endorsement. Uganda further indicated that there was great interest by developing countries to gain access to lower risk pesticides, especially for minor crops, as well as to establish Codex MRLs for those older generic substances for which there were no health risks of concern. Finally, Uganda urged Members to include the recommendations in the report of the Fifth Review, and to endorse the Ministerial Decision for transmission to the Ministerial Conference in December 2017.

5.12. Argentina, Australia, Belize, Brazil, Canada, Chile, Colombia, Costa Rica, Liberia, Madagascar, Nigeria, Peru, Senegal, Turkey and Uruguay expressed their support for the proposal, both the draft Ministerial Decision, as well as the inclusion of the recommendations in the Fifth Review. Several of these Members indicated that the proposal and its recommendations broadly captured the current MRL-related concerns and noted that the proposal would be beneficial to all Members. Several Members also thanked the proponents for the transparent and consultative approach used throughout the process, highlighting that these discussions had started a year ago, on the basis of deliberations in the Workshop on Pesticide MRLs, followed by informal discussions in several meetings. In addition, it was noted that the topic of pesticide MRLs merited consideration at the Ministerial Conference.

5.13. Ukraine expressed its interest in the issue and thanked the proponents for their proposal, noting the importance of transparency in Members' regulatory approach for pesticide MRLs.

5.14. India thanked the proponent's for their written response to its comments. India highlighted that Article 5.7 of the SPS Agreement allowed Members to provisionally adopt SPS measures on the basis of available pertinent information, including that from the relevant international organizations, as well as from SPS measures applied by other Members. However, Members could not arbitrarily apply MRLs at LOD, which had an adverse trade effect on developing country Members. India restated its concerns regarding default MRLs and LODs as contained in its earlier document (G/SPS/W/284), which remained unaddressed in the revised proposal by the proponents. India was of the view that the proposal required further discussion and indicated that it would continue to work with the proponents to substantively address its concerns. India noted that until the discussions in the SPS Committee were exhausted, it would be premature to submit recommendations for the Fifth Review or to the CTG.

5.15. The United States expressed regret for the lost opportunity to advance the proposed Ministerial Decision, which would have been beneficial to all Members, particularly to developing and least developed countries. The United States observed that the lack of consensus was not based on the merit of the proposal, and further noted several arguments raised by opponents of the Ministerial Decision. With respect to the perceived lack of mandate for the Ministerial Decision, the United States noted that Article 12 of the SPS Agreement established the authority of the SPS Committee and that the mandate elaborated under the Doha Development Agenda, and assigned to negotiating groups, did not alter the authority given to the SPS Committee under the SPS Agreement. In relation to the perceived lack of authority of the SPS Committee and lack of precedence for this action, the United States reminded the Committee of the text of Article 12.1. In this regard, the United States highlighted that the recommendations in the proposal sought to strengthen the implementation of several provisions of the Agreement, such as Articles 3, 5, 7, 8 and 12. The United States also recalled that it had requested the Committee to agree, by consensus, to include the recommendations in the report of the Fifth Review and to put forward a Ministerial Decision. The United States further noted that other standing bodies, such as the Trade Policy Review Mechanism and TRIPS Council, had transmitted decisions for adoption at previous Ministerial Conferences.

5.16. With respect to the perceived number of other issues under discussion at MC11, the United States expressed concern whether this argument could provide sufficient justification for blocking a Ministerial Decision of merit to many Members, instead of constructively engaging in discussions on the proposal. On the perceived late submission of the proposal on 3 October 2017 and insufficient time for a Ministerial Decision, the United States noted that the issue had been under discussion for two years. In addition, the proponents of the proposal had conducted a transparent year-long process of consultations on the issue. With respect to the issue of LODs, the United States believed that the proponents had addressed the issue through a written response and during bilateral discussions. However, the United States noted that the opposing Member had maintained that its concern had not been addressed, and as such, the United States was of the view that the burden was on that Member to provide its reasoning, in order to facilitate understanding with a view to making the necessary adjustments. Finally, the United States expressed its deep appreciation for the collaborative efforts of many Members through the open, in-depth and transparent process of engagement in building consensus on the MRL proposal.

5.17. The Russian Federation noted that such a high-level political decision should not be rushed and that it was not appropriate to raise the issue at the upcoming 2017 Ministerial Conference, while Members still had additional questions on the wording and scope of the Decision. The Russian Federation expressed its interest in engaging in further consultations with Members to reach a consensus, as well as holding bilateral discussions with the proponents on the wording of the proposal.

5.18. China acknowledged the scientific and representative basis of the proposal, and its benefit to Members. China expressed its intention to actively participate in discussions and hoped that its suggested amendments would be added to the revised proposal. China indicated that its capital was currently reviewing the proposed Ministerial Decision and that it would constructively participate in discussions.

5.19. The Chairperson noted the extensive support for the proposal and general willingness by Members to continue exploring how to build consensus around this proposal, which appeared to be important for the majority of Members. The Chair further indicated his availability, and that of the Secretariat, to continue providing a forum for further discussions.

## **5.2 Catalogue of Instruments available to manage SPS issues – Proposal by Canada and Kenya (G/SPS/W/279/Rev.2, RD/SPS/16)**

### **5.2.1 Report of the Informal Meeting**

5.20. The Chairperson continued to report on the informal meeting that had been held on 1 November 2017.

5.21. The Chairperson had recalled the long history of discussions since the document had been first circulated in June 2014. He had stressed that everyone had agreed that the Catalogue was an extremely useful document; the only disagreement had been over the inclusion of disclaimer language to clarify its legal status.

5.22. In July, a large majority of Members had indicated that they could accept a "soft" disclaimer, although one Member had preferred a more far-reaching version. The Committee had decided to try a new approach, combining an introductory paragraph clarifying the intended use of the Catalogue with a soft disclaimer. The new language had been circulated in room document RD/SPS/16. The Chairperson had asked delegates to consult with their capitals, and to send comments before 15 September. The Chairperson had also announced that if no comments were received, he would propose the Catalogue for adoption at the present meeting.

5.23. The Chairperson had further noted that on 15 September 2017, one Member had submitted comments indicating that systemic concerns regarding the inclusion of disclaimers in Committee documents persisted. The Chairperson had consulted with several delegations, and had asked Members for suggestions at the consultations held on 10 and 18 October. While there had been no new suggestions, it was clear that Members wished to continue working towards consensus.

5.24. At the informal meeting, the Chairperson had also indicated that the Committee had heard the arguments of both sides many times. He had reminded Members of the creativity and flexibility they had shown in adopting the Report of the Fourth Review in July, and had asked them to use these qualities to also resolve this subject. This would allow the Committee to focus on the new topics it had embarked on, and those it might include in the work programme of the Fifth Review.

5.25. One Member had explained its systemic concerns over the inclusion of disclaimers. This Member had been concerned about setting a precedent with the inclusion of a disclaimer. Referring to jurisprudence, the Member had explained that Committee documents did not create new obligations. Panels had taken Committee decisions into account when interpreting the covered agreements, regardless of whether the decision in question contained a disclaimer or not. This Member had asked others to take a broader perspective, and requested those who were requesting a disclaimer for an explanation of their concerns to justify this request. In addition, this Member had suggested an exchange with legal experts from the Secretariat to explain the interpretation of Committee decisions and disclaimers. This suggestion had been supported by one of the authors of the document, who also thought it could be helpful.

5.26. Many Members had taken the floor to reiterate their support for the Catalogue, and their wish to see it adopted. They had stressed the usefulness of the document, especially for developing countries, and had been frustrated that the disclaimer issue was holding it up. Some had indicated that they had shown flexibility in their positions, and most had been willing to adopt the Catalogue with the introductory language proposed in July.

5.27. In summing up, the Chairperson had indicated that in his view, if adding a disclaimer did not have a big influence on the interpretation of a Committee document in a possible dispute, then it would be a pity to hold up the adoption of such a document in a situation where there was consensus on the substance. The Chairperson had asked the Secretariat to enquire about the possibility of arranging a conversation with legal experts to help Members understand the legal implications of disclaimers.

5.28. The Chairperson informed Members that the Secretary of the Committee had subsequently consulted with experts from the Legal Affairs Division who, although they could not attend the current Committee meeting, would be present to provide information at the March 2018 Committee.

5.29. The Chairperson further informed the Committee that, by way of general background for Members, the Legal Affairs Division had advised that there had been no attempt by panels or the Appellate Body to develop a general body of jurisprudence relating to "disclaimers" as such, or a general body of jurisprudence relating to the legal status of Committee documents as such. Panels and the Appellate Body had instead taken an ad hoc approach, and refrained from making any broad pronouncements on the legal status of disclaimers or Committee documents, on whether differences in the language used in different disclaimers or Committee documents implied different legal consequences, or on how Members should formulate disclaimers or Committee documents to achieve certain objectives.

5.30. Canada expressed its disappointment that, despite Members' broad support for the concept and substance of the catalogue of instruments, the issue of a disclaimer had stalled the adoption of the catalogue for three years. Canada further noted that the disclaimer issue had been discussed more than the actual substance of the document. Canada expressed appreciation to the Members who had shown significant flexibility and who had departed from their systemic concerns, in order to move forward in a positive and constructive manner. In preparing for the March 2018 meeting, Canada noted that the impasse and continuous debate on this issue was distracting the Committee from starting other valuable work, and queried whether the Committee would be able to agree on any guidance in the future. Canada appealed to opponents to reconsider their position, and indicated that it might have to change its approach towards this document, if it was not adopted in the next meeting.

5.31. Kenya similarly echoed Canada's statements, noting its disappointment that the Committee could not reach consensus on the catalogue, which was a reference document to advance the work of the Committee. Kenya expressed appreciation to those Members who had supported the document and urged those Members with reservations to show flexibility in order for the Committee to reach consensus.

5.32. Nigeria recalled the flexibility it had shown in its previous position, as well as other African countries, by supporting the soft language indicated in the Chairperson's proposed text (RD/SPS/16). Nigeria proposed that the Committee move forward with the adoption of the catalogue, on the basis of the Chairperson's proposed text.

5.33. Mexico took the floor to reiterate its support for the catalogue of instruments and for the Committee's continued work on this issue. Mexico reiterated concerns about the legal consequences of including a disclaimer in this document, as well as the implications for previous and future documents. Mexico requested the proponents of the disclaimer to provide arguments for its inclusion, and also noted that the inclusion of the disclaimer could have legal and systemic consequences for the work of the SPS and other WTO Committees. Mexico further invited the Committee to analyze the issue from a broader perspective, and further observed that certain language in the Dispute Settlement Understanding continued to provide grounds for its concerns. Mexico indicated that its capital was still reviewing the Chair's proposed language and expressed its willingness to remain open to dialogue and to participate constructively on this issue.

5.34. The Chairperson reminded Members that experts from the Legal Affairs Division would be present at the March 2018 SPS Committee meeting. He expressed disappointment with the lack of consensus among Members on the Catalogue of Instruments, despite overwhelming support for the document.



## **6 TECHNICAL ASSISTANCE AND COOPERATION**

### **6.1 Information from the Secretariat**

#### **6.1.1 WTO SPS activities**

6.1. The WTO Secretariat provided an overview of the technical assistance activities held since the last SPS Committee meeting in July 2017. These activities included two national seminars held in Jordan and Montenegro, and the Workshop on Transparency held in Geneva. More general training on the SPS Agreement had also been provided in the following activities: a WTO Advanced Trade Policy Course in Geneva (in English); four WTO Regional Trade Policy Courses held for Latin America (in Ecuador), French-speaking Africa (in Côte d'Ivoire), Arab Countries, and for Asia and the Pacific (in Thailand); a Workshop on Agriculture for LDCs held in Geneva (in English and French); and several workshops organized by the Swedish International Development Cooperation Agency held in Stockholm.

6.2. The Secretariat further announced that national seminars would be held for Argentina, Bangladesh, Colombia and Papua New Guinea before the end of the year. National Seminars were also being scheduled for Belarus, Costa Rica, Côte d'Ivoire, Saint Kitts and Nevis, and Tunisia. The Secretariat also announced that the follow-up WTO Regional SPS Workshop for Arab countries, which had initially been scheduled to be held in November 2017, had been postponed until April 2018. Additional information on this workshop would be provided at a later stage.

6.3. The Secretariat also drew Members' attention to the 2017 Advanced SPS Course that was currently under way, in English, and acknowledged the presence of the participants attending the Committee meetings. It was the thirteenth consecutive year that this course had been offered, and 23 officials from developing and least developed countries had been selected to participate. This was a unique WTO training activity since it not only focused on transmitting knowledge on the SPS Agreement and the SPS Committee, but also on identifying actions to address specific implementation challenges and opportunities at the national level. Throughout the course, each participant developed an action plan, to be implemented upon their return to their countries. This implementation was monitored by coaches, and through a follow-up session about nine months after the course. The Secretariat thanked the Chairperson and the delegates who had shared their knowledge and experiences during the Advanced Course, as well as the participating organizations (Codex, IPPC, OIE, ACWL, ITC, UNIDO), WTO and STDF colleagues, and the external consultants, Mr João Magalhães and Mr Kevin Walker.

6.4. The Secretariat recalled that the E-Learning Course on the SPS Agreement was available year-round in the three WTO official languages. Further information on SPS Technical Assistance activities could be obtained on the WTO website (under trade-related technical assistance), or by contacting the Secretariat for additional clarification and assistance.

6.5. The Chairperson thanked the Advanced SPS Course participants for their engagement and active involvement throughout the course.

6.6. Montenegro expressed its appreciation to the WTO Secretariat for its assistance in organizing Montenegro's first national SPS seminar. This activity, which had been held on 3-5 October 2017 with the participation of SPS resource persons, focused on the operation and implementation of the SPS Agreement, the role of international standards and food safety, the work of the SPS Committee and the use of SPS online tools.

6.7. Pakistan thanked the Secretariat for the four-day national SPS seminar which had been held the previous year. The objective of this seminar had been to enhance the SPS knowledge and expertise of stakeholders, policy makers and government officials in order to better understand and implement the SPS Agreement. The seminar had also sought to strengthen the capacity of officials to engage in the work of the SPS Committee. Pakistan commended the WTO's SPS technical assistance programme and encouraged developing country Members to make greater use of its training opportunities.

6.8. Belize expressed its appreciation to the WTO for funding the participation of one of its officials in the 2017 Advanced SPS Course. This course would greatly benefit Belize and would allow it, as well as other participating countries, to make positive contributions in the SPS arena.

6.9. Nigeria acknowledged the Secretariat's detailed report on SPS technical assistance activities and confirmed that Nigerian officials had benefitted from some of the mentioned activities. Nigeria further indicated that it had submitted a training request for a national seminar to be held the following year.

6.10. Finally, the Secretariat indicated that it was currently in the process of reviewing and planning ahead for 2018 technical assistance activities. In this regard, the Secretariat recalled that every year a SPS Thematic Workshop was organized by the Secretariat with funding from ITTC. This workshop would normally be held in October, however, given the packed schedule of activities around the October meeting (i.e. STDF Working Group, Thematic Workshop, formal and informal SPS Committee meetings, Advanced SPS Course), the Secretariat proposed the idea of instead holding the next year's workshop in July. Members were asked to provide their views on this suggestion via e-mail to the Secretariat, and also to submit any ideas on possible topics for the workshop. The Secretariat indicated that there would be another opportunity to discuss the topic of the workshop in the March 2018 Committee meeting.

### **6.1.2 STDF (G/SPS/GEN/1581)**

6.11. The STDF Secretariat provided an overview of its activities, as circulated in document G/SPS/GEN/1581. The STDF highlighted its information session on options, costs and the feasibility of FMD control in the context of livestock trade, which was held on the margins of the SPS Committee, where the results of two STDF-funded studies, requested by Zimbabwe and Tanzania, were presented (<http://www.standardsfacility.org/costs-and-benefits-fmd-control-context-livestock-trade>). On the margins of the 6<sup>th</sup> Global Aid for Trade Review in July 2017, the STDF had also held an information session on transitioning from paper based to automated SPS systems ([http://www.standardsfacility.org/A4T\\_Review\\_2017](http://www.standardsfacility.org/A4T_Review_2017)). The STDF further announced that it had recently approved a project in the Working Group to assess the state of play on electronic veterinary certification with OIE as the project lead, and the involvement of FAO and World Bank. The STDF drew attention to its briefing note on SPS capacity evaluation tools ([http://www.standardsfacility.org/sites/default/files/STDF\\_Briefing\\_14.pdf](http://www.standardsfacility.org/sites/default/files/STDF_Briefing_14.pdf)).

6.12. The STDF provided information on the preliminary results of its survey on good regulatory practices, developed with inputs from FAO, WTO, OIE, United States and OECD, which sought to gather information on how SPS agencies in developing countries apply good regulatory practices to strengthen the development, implementation and review of SPS measures. A preliminary report would be made available on the STDF website, to be followed by a detailed report and discussions in the Working Group. In terms of future activities, the STDF planned to identify case stories on the use of good regulatory practice and suggested holding a thematic session on the margins of the SPS Committee meeting, if Members were interested. The STDF further indicated that the Working Group had approved two new project preparation grants and five new project grants. The STDF thanked all its donors – Australia, Canada, European Commission, France, Finland, Germany, Ireland, Japan, Netherlands, Norway, Sweden, Chinese Taipei and the United States – for their continued support. The STDF also recognized the interest expressed by the EIF to co-fund some of these projects, and further noted that the demand for capacity building activities far outweighed the available resources in the trust fund. This had resulted in the Working Group not being able to approve all new project applications for funding.

## **6.2 Information from Members**

### **6.2.1 Senegal - Technical assistance request for control of fall armyworm and other pests; improvement of monitoring infrastructure; and risk analysis capacity**

6.13. Senegal drew Members' attention to the fall armyworm threat in African countries, noting that this pest had been detected in Senegal in August 2017. Senegal indicated that it had increased its surveillance and phytosanitary controls; however, given the speed with which the pest was spreading, there was need for joint support and a regional approach to undertake research and control methods to fight this pest. Senegal recognized the support of partners, such

as USAID, and further highlighted the need for extra assistance in undertaking risk assessments, and improving technical facilities and surveillance structures for monitoring products. Senegal further expressed concern about the impact this pest would have on important export products which were at risk, such as sweet corn.

6.14. Togo informed the Committee that the fall army worm had been detected in Togo in 2016, and that despite efforts to fight the pest using chemicals, the problem still persisted. As such, Togo echoed the calls made by Senegal to have greater regional support in order to fight this pest in a coordinated manner.

### **6.2.2 Senegal - Cooperation on phytosanitary protocol with Malaysia**

6.15. Senegal shared information on the development of its cooperative efforts with Malaysia for the trade of agricultural products, such as mango, rice, peanuts and cattle cake. Senegal explained that with respect to peanuts, it had already finalized and submitted its request for market access to the Malaysian market. Senegal further indicated that it had recently received an invitation from the Malaysian government to visit Malaysia, with a view to concluding a co-operation protocol. Senegal thanked Malaysia for the interest shown in trading agricultural products with Senegal.

6.16. Malaysia acknowledged the market access request submitted by Senegal for several agricultural products, and indicated that the Malaysian Department of Agriculture had requested Senegal to provide technical documents for the pest risk analysis. Malaysia expressed its appreciation for Senegal's interest in exporting to Malaysia, and indicated its willingness to continue bilateral discussions with Senegal.

### **6.2.3 Burkina Faso – Technical assistance received**

6.17. Burkina Faso thanked the European Union, African Union and other partners for the technical and financial assistance provided to African countries, in order to participate in the SPS Committee meeting and the Workshop on Transparency. Burkina Faso also expressed appreciation to the United States, particularly USAID and APHIS, for facilitating its participation in a workshop held in October on practical tools for phytosanitary inspection, which had assisted in the identification of crop harming pests, and allowed the drafting of a manual for best practices to deal with these issues.

### **6.2.4 United States – Report on technical assistance (G/SPS/GEN/181/Add.12)**

6.18. The United States reported on its sponsored technical assistance provided to developing and newly acceding countries to support their implementation of the SPS Agreement, from October 2014 to September 2016 (G/SPS/GEN/181/Add.12). The United States highlighted various bilateral and regional capacity building activities, such as: the workshop on "Better Food Safety Regulation through Increased Transparency and Public Consultation" held together with APEC experts and industry representatives in 2016; a recently concluded five-year animal health project with AU-IBAR on improved animal health, trade relationships and communication in IGAD countries; ongoing technical assistance on integrated pest management and other good agricultural practices in Guatemala; and training programmes organized in collaboration with IICA and local partners aimed at helping Latin American and Caribbean producers to understand FSMA requirements. The United States indicated its commitment to provide demand-driven, results-oriented and sustainable programmes, and further welcomed input on the type of projects that would be of interest to Members. The United States looked forward to continuing its capacity building efforts, and cooperating with the STDF on cross-cutting SPS programmes.

### **6.2.5 Canada – Report on technical assistance to developing country Members**

6.19. Canada provided an overview of its technical assistance activities delivered to developing countries, as contained in document G/SPS/GEN/1584. Canada indicated that it had delivered or initiated 15 SPS-related technical assistance projects in 2016, targeting various geographic regions and amounting to approximately US\$15.83 million. This assistance addressed three of the four broad categories included in G/SPS/GEN/206, namely: information, training, and 'soft' infrastructural development.

### **6.2.6 Madagascar – Report on technical assistance received**

6.20. Madagascar reported on the technical assistance received through various partners and initiatives, such as: a SADC project funded by Africa's Solidarity Trust Fund; FAO technical assistance to update its phytosanitary law, in line with IPPC standards; and FAO technical assistance for drafting national prevention strategies and a contingency plan for three cross border diseases. Technical assistance had also been received in drafting a national bio-security strategy for aquatic species and a handbook on inspections of foodstuffs. The IPPC had also provided technical support to the NPPO in the use of the PCE tool, which had led to the drafting of a phytosanitary strategic plan. Madagascar further requested technical assistance in implementing measures to prevent and fight against the main emerging cross border diseases and pests, e.g. fall armyworm, avian influenza, FMD.

### **6.2.7 Nigeria – Report on technical assistance received**

6.21. Nigeria acknowledged the SPS-related capacity building activities provided by various organizations such as AU-IBAR and WTO Secretariat, to enhance its effective participation in the SPS Committee. UNIDO, with funding from the European Union, had also supported its national quality infrastructure. In addition, Nigeria recognized USDA assistance in the review of Nigeria's Food Safety Policy and FAO support in the preparation of Nigeria's Food Safety Bill. Nigeria highlighted that it would also benefit from two initiatives of the World Bank Group: Livestock Productivity and Resilience Support, and Livestock Micro-Reforms in Agri-Business. Nigeria called upon donors to provide additional funds, where possible, and to channel these funds through regional organizations like ECOWAS and AU-IBAR, which provided more direct support to African countries.

## **7 CONCERNS WITH PRIVATE AND COMMERCIAL STANDARDS**

7.1. Belize informed the Committee of its participation in a government to government meeting held in Texas, United States in February 2017, with the support of FAO. At this meeting, Belize delivered its intervention on "Existing models of collaboration between public and private sectors and the risk of obfuscating roles in the governance of food safety", where it had shared its view that giving third party certification higher leverage than certification by competent authorities, resulted in the marginalization of competent authorities and the creation of parallel systems. In Belize's view, the private sector could play a complimentary role to that of the public sector, but it should be on the basis of good practices and with regulatory oversight. Belize indicated that the subsequent discussions during this meeting had highlighted some examples of the successful use of third party certification schemes to complement the work of governments in ensuring food safety. However, it had not been clear whether regulatory oversight had been in place or how this had been achieved.

7.2. Given the standing agenda item on "Private and Commercial Standards", Belize suggested that the Committee could benefit from similar discussions, either through a workshop or thematic session, where Members could volunteer to share their diverse perspectives and experiences. Belize observed that a better understanding of the subject matter would help to advance the Committee's work on that agenda item and further encouraged Members to support such an event, and to volunteer to share their experiences on the topic.

7.3. Nigeria reiterated its view that the use of international standards should continue to be the basis for assessing the requirements of export products. Nigeria further noted that any attempt to impose the use or consideration of private and commercial standards as a requirement for exports, would be an impediment to African countries, including Nigeria, in accessing export markets.

7.4. The European Union recalled its previously stated position that private standards do not fall within the scope of the SPS Agreement. The European Union highlighted that private standards was a standing agenda item and noted its support for the idea of having discussions in the context of a thematic session to clarify matters on private standards, while also stating that its support for a thematic session on the issue did not contradict its well-known position. In particular, the European Union saw merit in focusing discussions on third party certification, and further observed that similar discussions were taking place in Codex and in other fora. The European Union suggested that it would be useful to hear Members' views on the implications and practical cases

of certification practices, as well as views from private certification bodies or those setting standards in the private sector.

7.5. The United States echoed the European Union's caveat regarding the scope of the SPS Agreement in relation to private standards. The United States indicated that several of its agencies had participated in the government to government meeting held in Houston and that it had received constructive reports about the discussions. The United States welcomed the report from Belize and indicated its willingness to relay the suggestion of a thematic session, and the other ideas by the European Union, back to capital for further consideration.

7.6. Canada and Brazil also expressed willingness to consider the suggestion of the thematic session, subject to views from their capitals.

7.7. The Chairperson noted that this was the first time that this idea had been raised and indicated that he looked forward to seeing how this suggestion would evolve in the future.

## **8 OBSERVERS**

### **8.1 Information from observer organizations**

#### **8.1.1 ECOWAS**

8.1. ECOWAS reported on recent activities of interest to the Committee, through document G/SPS/GEN/1574. ECOWAS provided an update on its efforts to implement a number of agreements aimed at supporting the free movement of goods, services and people throughout the ECOWAS region. The coordination role played by ECOWAS had enabled the adoption of harmonized regulations on the framework and operational rules related to human, animal and plant health and food safety; establishment of a Regional Task Force for Surveillance, Prevention and Control of Crop Pests with support from USDA-APHIS; capacity building on Codex-related activities for ECOWAS members; capacity building activities in Cote d'Ivoire with focus on border inspection; and ECOWAS' increased participation in SPS Committee meetings and various Codex meetings. ECOWAS thanked USAID, USDA and USDA-APHIS and all partners for their continued support, and requested the extension of SPS support to 12 member States of ECOWAS under the US-Africa Trade initiative, as only three were currently being supported.

#### **8.1.2 CAHFSA**

8.2. The Chairperson drew attention to the report submitted by CAHFSA contained in G/SPS/GEN/1575.

#### **8.1.3 IGAD**

8.3. IGAD reported on recent activities of interest to the Committee, through document G/SPS/GEN/1576. IGAD shared information on the technical support provided to its member States from July to October 2017. This included: the development of a regional policy brief to enhance SPS compliance within IGAD member States, based on a validated regional SPS strategy; development of an aligned national PPR strategy with continental, global and regional PPR control strategy; and development of a regional animal health strategy, and regional contingency and emergency plan to roll out these strategies. IGAD also thanked USAID for supporting its member States on trade enhancement and transboundary disease control.

#### **8.1.4 OIRSA**

8.4. OIRSA reported on recent activities of interest to the Committee, through document G/SPS/GEN/1578. OIRSA highlighted the celebration of Regional Day for Agricultural Health on 29 October 2017, where discussions on food safety and plant protection had been held. In particular, OIRSA noted the regional activities carried out by its member States for the last 74 years, particularly El Salvador, Honduras, Nicaragua, Costa Rica, Dominican Republic and Guatemala, which had resulted in a positive effect on the SPS situation in the region. OIRSA also provided information on its first course on analyzing risk in food items and its various activities to

support the understanding of the SPS Agreement, as well as acknowledged its excellent working relationship with the OIE, IPPC and Codex.

### **8.1.5 IICA**

8.5. IICA reported on recent activities of interest to the Committee, through document G/SPS/GEN/1580. IICA drew the Committee's attention to the election of its 11<sup>th</sup> Director General, Manuel Otero from Argentina, who would assume the post on 15 January 2018. IICA provided an update on its upcoming activities which included working with USDA-FAS, USDA-APHIS and IICA member countries in Latin America and Caribbean to hold a strategic session in March 2018 to review draft OIE standards and prepare for the OIE World Assembly of Delegates; and launching an SPS leadership programme for Latin America in February 2018, in collaboration with the United Nations-mandated University for Peace Centre for Executive Education, with USDA-FAS funding. IICA thanked the United States and Canada for their continued support of agricultural health and food safety capacity building in the Americas.

8.6. Belize expressed appreciation for IICA's technical assistance in the area of animal health and food safety, particularly in funding their participation in the 20<sup>th</sup> meeting of the Codex Committee on Fresh Fruits and Vegetables held in Kampala, Uganda in October 2017. This had enabled Belize to contribute to the development of important Codex standards, as well as to learn more about Codex work in this area.

### **8.1.6 OECD**

8.7. OECD reported on recent activities of interest to the Committee, through documents G/SPS/GEN/1588 and G/SPS/GEN/1589. OECD drew Members' attention to the several areas of work being undertaken by various OECD Committees on international regulatory cooperation, and invited Members to review the details of these activities in G/SPS/GEN/1588. OECD also provided an update on its pesticides programme (G/SPS/GEN/1589) which covered issues related to the registration of chemical pesticides, illegal trade of pesticides and registration of alternative pesticides, such as biological pesticides and pesticides derived from novel technologies. OECD provided information on the work of its two expert groups, the Residue Chemistry Expert Group (RCEG) and the Expert Group on Minor Uses. The former had developed the OECD MRL Calculator, nine OECD Test Guidelines and seven OECD Guidance Documents. In particular, the OECD highlighted the second edition of the 2011 Guidance Document on Crop Field Trials published in 2016, which dealt with proportionality issues, clarified sampling procedures and took into account national/Codex information on recent changes in crop groups. The Expert Group on Minor Uses had published two Guidance Documents, two survey reports, as well as undertaken other projects aimed at identifying the reasons for differences in uses approved in different countries.

## **8.2 Requests for observer status (G/SPS/W/78/Rev.14)**

### **8.2.1 New requests**

8.8. There were no new requests received by the Secretariat.

### **8.2.2 Outstanding requests**

8.9. The Chairperson proposed that, as had been done the previous year, the SPS Committee would invite the organizations with ad hoc observer status to participate in all SPS Committee meetings in 2018 - with the exception of any closed meeting - unless any Member objected to the participation of any of these observers in advance of a meeting. It was so agreed.

8.10. The Chairperson also reminded the Committee that in 2012, it had agreed that if for any one-year period an ad hoc observer organization did not attend any meetings of the SPS Committee, its observer status would lapse, but only after the Secretariat had contacted the observer organization and received confirmation that it was no longer interested in maintaining its observer status. The Chairperson requested that the Secretariat verify after the current meeting whether any ad hoc observer organizations had not attended a single Committee meeting in 2017.



He also requested that the Secretariat contact any such organization and seek information regarding their continuing interest to participate in the SPS Committee.

8.11. The Chairperson noted that there was still no consensus on the six outstanding requests for observer status from the Convention on Biological Diversity (CBD); CABI International; the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES); the Organisation Internationale de la Vigne et du Vin (OIV); the Asian and Pacific Coconut Community (APPC); and the International Cocoa Organization (ICCO).

8.12. The Chairperson thanked the representatives of observer organizations for their contributions to the work of the Committee and for their assistance to Members. The Chairperson once again encouraged observer organizations to provide written reports on their relevant activities in advance of the March 2018 meeting.

## **9 OTHER BUSINESS**

9.1. No Member took the floor under this agenda item.

## **10 DATE AND AGENDA FOR NEXT MEETINGS**

10.1. The Secretariat indicated a slight shift in the dates for the March 2018 meeting, which would see the regular meeting of the Committee being moved back by one day to 1-2 March 2018, in order to accommodate the TRIPS Council which would take place during the same week. The informal meeting of the Committee would take place on 28 February 2018. The Secretariat reminded the Committee that experts from the Legal Affairs Division would provide background information on disclaimers at this informal meeting, and also that the Secretariat would circulate a draft document containing the procedure and timeline for the Fifth Review for discussion at the informal meeting.

10.2. The Secretariat also recalled that the Committee had agreed to hold an informal thematic session on regionalization, with specific focus on pest-free areas for plants, which would take place on 27 February 2018. In this regard, the Secretariat noted that the United States had offered to submit a document on the thematic session by early December 2017.

10.3. The European Union tabled two suggestions, firstly that the Secretariat circulate the convening airgram two weeks (i.e. ten working days) in advance of the Committee meeting, instead of the current practice of one week, in order to provide Members with additional time to adequately prepare for topics on the airgram. Secondly, the European Union queried the possibility of rescheduling the dates of the October/November 2018 Committee meeting, in order to avoid religious festivities which would take place on 1-2 November 2018 in several EU member States.

10.4. Swaziland supported the European Union's request for additional notice for the circulation of the convening airgram.

10.5. The Secretariat recalled the current procedure and timeline for the circulation of the reminder and convening airgrams and further highlighted that the working procedures of the Committee (G/SPS/1) indicated that "a draft agenda shall be issued at least 10 days prior to the date of the meeting." In this regard, the Committee could decide to circulate the airgram earlier; however, the Secretariat observed that many Members submitted their agenda items late. In addition, the Secretariat noted that the 10 calendar day rule was consistently applied by all WTO Committees and that there could be some confusion among Members if the SPS Committee decided to use another timeline. The Secretariat took the opportunity to remind Members to inform their respective trading partners when raising specific trade concerns. In relation to the request to change the dates of the third SPS Committee meeting in 2018, the Secretariat indicated that it would check on the availability of meeting rooms for the week of 8 November 2018.<sup>6</sup>

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<sup>6</sup> The Secretariat subsequently informed Members on 9 November 2017 (via the SPS delegates' list) that no suitable meeting rooms were available during the week of 8 November 2018. As such, the third meeting of 2018 would take place during the week of 29 October – 2 November 2018, as originally planned.



10.6. Swaziland further noted that the working procedures of the SPS Committee did not prevent Members from revising the timeline for the circulation of the convening airgram, once it was circulated within a minimum of 10 days from the meeting.

10.7. The Committee agreed to request that the Secretariat circulate the convening airgram one week earlier than the current practice. The Chairperson reminded Members of their responsibility to submit their agenda items in a timely manner, as well as to inform trading partners when raising specific trade concerns.

10.8. The Committee agreed to the following tentative agenda for its upcoming regular meeting:

1. Adoption of the agenda
2. Information sharing
  - a. Information from Members on relevant activities
  - b. Information from Codex, IPPC and OIE on relevant activities
3. Specific trade concerns
  - a. New issues
  - b. Issues previously raised
  - c. Information on resolution of issues
4. Operation and implementation of the SPS Agreement
  - a. Equivalence
  - b. Pest- or disease-free areas
  - c. Operation of transparency provisions
  - d. Special and differential treatment
  - e. Monitoring the use of international standards
    - i. New issues
    - ii. Issues previously raised
  - f. Catalogue of Instruments
  - g. Proposed process for the Fifth Review
5. Cross-cutting issues
6. Technical assistance and cooperation
  - a. Information from the Secretariat
    - i. WTO SPS activities
    - ii. STDF
  - b. Information from Members
7. Concerns with private and commercial standards
8. Observers
  - a. Information from Observer organizations
  - b. Requests for observer status
9. Election of the Chairperson
10. Other business
11. Date and agenda of next meeting

10.9. Members were asked to take note of the following deadlines:

- For submitting comments on the Chairperson's draft annual report: **Tuesday, 7 November 2017;**
- For submitting comments on the draft Transparency Manual: **Friday, 15 December 2017;**<sup>7</sup>
- For submitting comments on the regionalization proposal (to be circulated by the United States by early December 2017), and for suggested speakers for the thematic session on pest-free areas: **Monday, 15 January 2018;**
- For submitting comments on the "technical revision" of the Recommended Transparency Procedures (G/SPS/7/Rev.3): **Wednesday, 31 January 2018;**

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<sup>7</sup> This deadline was subsequently extended until 31 January 2018.

- For identifying new issues for consideration under the monitoring procedure and for requesting that items be put on the agenda: **Thursday, 8 February 2018**;
  - For the distribution of the Airgram: **Friday, 9 February 2018**.
-