
Committee on Sanitary and Phytosanitary Measures

SUMMARY OF THE MEETING OF 28-29 OCTOBER 2009

Note by the Secretariat¹

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I. ADOPTION OF THE AGENDA

1. The Committee on Sanitary and Phytosanitary Measures (the "Committee") held its forty-sixth regular meeting on 28-29 October 2009. The proposed agenda for the meeting was adopted with amendments (WTO/AIR/3460).

II. ACTIVITIES OF MEMBERS

2. The representative of Zambia reported on a number of activities related to its pest survey programme which is further detailed in document G/SPS/GEN/965. A workshop sponsored by the Southern African Confederation of Agriculture Unions was conducted in collaboration with the Zambia National Farmers Union to inform Zambian farmers on SPS matters and their importance. The Zambia Agriculture Research Institute had embarked on a training programme regarding fruit fly for provincial trainers in the Ministry of Agriculture and Cooperatives (MACO). Concerning American Foulbrood disease in bees, a survey had been done, samples collected and the laboratory results were pending. MACO was working in collaboration with the Zambia Honey Council to ensure that quality honey was produced. With regard to Potato Cyst Nematode (PCN), a survey was conducted yearly on all farms growing potato seed imported from South Africa, and there were no indications that PCN was present in Zambia. A survey was underway for Banana Bunchy-Top Virus in all major banana growing areas. The pest had been found in the Southern and the Copperbelt areas and the Plant Quarantine and Phytosanitary Services were working with the private sector in an effort to control the pest.

3. The representative of Argentina stated that Huanglongbing (HLB), also known as Yellow Dragon Disease, had not been found in Argentina. However, one of its vector insects (*catarina chircuayama*) had been found in many of the citrus growing provinces. The potential for economic damages, should HLB enter Argentina, was very high. Due to this, a National Prevention Programme for HLB was created with four operational components: inspection; monitoring; research and development; and training, dissemination, coordination and follow up. Argentina subsequently circulated a document with the complete text of the resolution that created the programme and a detailed description of each of the components (G/SPS/GEN/987).

4. The representative of China reported on its comprehensive regulatory system for the export of poultry and poultry products, an important legal infrastructure specifically aimed at ensuring the safety of export poultry and poultry products. The new Food Safety Law, implemented as of 1 June 2009, clearly specified the responsibilities of different ministries involved in food safety, and established a license system for food production and marketing. A poultry farm must submit an application to the Ministry of Agriculture (MOA) for certification of the condition of animal epidemic prevention. A poultry farm can launch its business only after certification by MOA. If poultry farms and poultry processing factories want to export their products, they have to subsequently apply for registration by the General Administration of Quality Supervision Inspection and Quarantine of China (AQSIQ). Only the raw materials of registered farms are allowed to be used to produce export poultry or poultry products, and only registered poultry processing factories are eligible to get involved in poultry exportation. Based on this license system, AQSIQ further implemented an in-factory inspection and quarantine administrative model by sending officials to poultry exporting enterprises to provide daily supervision of registered poultry farms and poultry processing factories, particularly to monitor for animal diseases and residues of pesticides and veterinary medicines. AQSIQ also provided guidance to poultry exporting enterprises in adopting internationally recognized safety and environmental management systems. A credit system had been created for poultry exporting enterprises where red and black lists of names were updated regularly. More details on the farm-to-fork regulatory system to ensure the safety of Chinese export poultry and poultry products can be found in G/SPS/GEN/985.

5. The representative of the United States provided information on the Food and Drug Administration (FDA) Reportable Food Registry (RFR). The RFR is intended to provide a reliable mechanism to track patterns of adulteration in food in order to target inspections to protect public health. The registry was developed in response to the FDA Amendments Act of 2007. The electronic portal opened on 8 September 2009. Domestic and foreign facilities that manufacture, process, pack, or hold food for human or animal consumption in the United States should be registered under Section 415(a) of the Food Drug and Cosmetics Act. Such facilities are required to report via the RFR within 24 hours if they find a reasonable probability that the use of, or exposure to, an article of food will cause serious adverse health consequences or death to humans or animals. The RFR applies to all FDA-regulated categories of food and food products, including animal feed and pet food, with the exception of infant formula and dietary supplements. Poultry and some egg products that are exclusively regulated by the US Department of Agriculture are also exempt. The information obtained through the RFR is assessed and shared with federal, state and local public health officials.

6. The representative of Ecuador reported that it had consolidated the Integrated System of Agricultural, Quality and Food Safety (SISCAL) as the institution in charge of the coordination and sectoral articulation of the entities involved in activities related to food safety, agriculture and quality (G/SPS/GEN/982. As a part of this process, the official service of Ecuador, AGROCALIDAD, had been strengthened, with the hiring of 85 technical experts. AGROCALIDAD was preparing 80 procedural manuals and administrative, financial and technical protocols for its various departments. Ecuador's National Notification Authority and Enquiry Point was within the Ministry of International Trade and Foreign Affairs, with full time staff for its administration and follow-up of SPS related issues, in coordination with AGROCALIDAD and the private sector. A new unit on international relations was being established to improve and optimize the participation of Ecuador in international fora where SPS issues are discussed. The national Codex Alimentarius System was being validated to facilitate and make more flexible the activities taken in relation to Codex standards.

7. The representative of Belize reported that her government had sound assistance from the Inter-American Development Bank in January 2009 to increase the competitiveness of its agricultural products in the international market. Belize wanted to expand its export base by focusing on two main areas: research and development, and further strengthening of national sanitary and phytosanitary capacity. A series of strategic planning sessions had been held with stakeholders in May and June 2009 in the areas of plant and animal health and food safety to identify what the focus of the project should be in order to achieve the desired objectives. The first disbursement for the project was expected in December 2009.

8. The representative of Australia provided an update on the implementation of the recommendations of the review of Australia's quarantine and biosecurity system. Australia was reforming its biosecurity system, as recommended in the Beale review. In order to make many of the improvements recommended in the report, new legislation was required. A draft of this legislation would be released for public comment prior to its scheduled introduction into Parliament in 2010. A number of interim institutional reforms came into effect on 1 July 2009 to strengthen Australia's biosecurity operations. The establishment of a new Biosecurity Advisory Council was scheduled for later in 2009.

9. The representative of Australia also announced a change to the 2001 policy on BSE, following a review of the policy. The change would take effect on 1 March 2010, and will allow for countries that have had one or more cases of BSE to apply for assessment for possible access to the Australian market. Countries with existing access would have to apply for assessment under the new policy by 30 June 2011. These changes had been notified in G/SPS/N/AUS/239, with a deadline for comments of 25 December 2009.

10. The representative of Namibia reported on the establishment of a National Committee on SPS. The committee is comprised of public and private institutions that are responsible for animal health, plant health and food safety regulations and related matters. One objective of the committee is to enhance Namibia's implementation of the SPS Agreement and its participation at the WTO SPS Committee. One of the challenges faced in creating the committee was that some of the institutions were not well informed on the SPS Agreement, which made it difficult to get the relevant officials to serve on the technical committees. Namibia hoped to learn from experiences of other Members which had gone through a similar process, particularly with regards to the composition, structure and operation of their national SPS coordinating committees.

III. SPECIFIC TRADE CONCERNS

(a) New Issues

(i) US Import Restrictions on Fresh Pork Meat and Beef – Concerns of Brazil

11. The representative of Brazil raised concerns regarding US import restrictions on fresh pork, beef and beef products from Brazil. Brazil had requested the US authorities to begin a risk assessment on beef products in 1999, but despite bilateral exchanges of information for a decade, the risk assessment had still not been finished. In January 2009, the United States had informed Brazil that it was giving full attention to the issue of Brazilian beef, but Brazil was still waiting for the result of the risk assessment process.

12. Regarding pork, in 2006 Brazil had been informed that their national inspection system was eligible for consideration under the risk assessment process due to its well-known safety and biosecurity standards. In 2007, Brazil requested access for the state of Santa Catarina, since it is an FMD-free zone without vaccination, as recognized by the OIE in 2007. All technical information was forwarded to the US authorities in 2007. At the beginning of 2009, Brazil was informed of the conclusion of the risk analysis technical process and approved the working plan for pork meat. Since then, Brazil has been waiting for the publication of the proposed rule. According to the US legislation, however, after the publication of the proposed rule, effective market access can still take from 18 months to two years. This unjustifiable administrative delays had motivated Brazil to raise a specific trade concern on the matter in April 2008, as it was important to have a predictable and reliable timetable for the conclusion of the risk analysis process.

13. The representative of the United States stated that the risk evaluations were completed and USDA was currently drafting a proposed rule to recognize Santa Catarina as eligible to ship pork to the United States. Regarding beef, the United States was working to complete the review of the FMD risk mitigation measures. The United States recognized the importance of the request and would continue to work closely with Brazil to complete the rulemaking processes for fresh pork and beef as expeditiously as possible.

(ii) Indonesia's Import Restrictions on Poultry Meat – Concerns of Brazil

14. The representative of Brazil raised concerns about restrictions on Brazilian poultry meat due to Indonesian legislation that was not in accordance with international standards. Although Indonesia claimed to accept the principle of regionalization, it had not presented any sanitary reasons for the restrictions on Brazilian poultry meat. Throughout 2009, Brazil and Indonesia had consulted on this trade barrier and Brazil had provided information showing that its poultry meat and by-products complied with the relevant international standards and even with Indonesia's regulations. Brazil requested the sanitary justification for the restrictions, or that the restrictions be lifted.

15. The representative of Indonesia expressed his authorities willingness to have bilateral meetings with Brazil to find solutions on the issue.

(iii) South Africa's Import Restrictions on Fresh Pork Meat and Beef – Concerns of Brazil

16. The representative of Brazil reported that since 2006 Brazil had been exchanging information with South African authorities regarding restrictions on pork and beef products from Brazil. Three round of questions had been asked, and three sanitary negotiating missions had been sent to South Africa. South Africa had not provided any final results of its risk analysis on beef and pork. Brazil requested more conclusive information on the risk analysis processes that had been carried out, since Brazil fulfilled the requirements established by the OIE.

17. The representative of South Africa confirmed that a number of interactions had taken place with regards to the import of pork and beef into South Africa, most recently in July 2009. However, there were still some issues that required clarification with regards to the import of pork. The import of matured de-boned beef should be approved pending agreement on certificates.

(iv) Ukraine Import Measures on Animals and Animal Products – Concerns of the European Communities²

18. The representative of the European Communities raised concerns with regards to the imposition of an inspection requirement on all establishments wanting to continue exporting a wide range of animals and animal products to Ukraine. There was no justification for the sudden introduction of such comprehensive inspections. The European Communities questioned the scope, range of products covered and how the inspections would be carried out. Assurance was needed that trade would not be unjustifiably and unnecessarily disrupted. The measure would take effect on 14 January 2010, and the Ukraine should clarify that if it had not completed inspections by 14 January this would not result in the rejection of goods, as had been stated in bilateral meetings with the Ukraine Veterinary Services. The European Communities requested the postponement of the entry into force of the measure.

19. The representatives of Canada, Iceland, Norway and the United States expressed similar concerns with respect to Ukraine's new import conditions on animal products. They indicated that their respective authorities had submitted comments to Ukraine regarding the new measure.

20. The representative of Ukraine stated that the measure was intended to protect health and safety within the territory of Ukraine. Ukraine would take note of the concerns raised and the comments that had been received during the comment period for the original notification. Notification G/SPS/N/UKR/3/Rev.1/Corr.1 had been distributed to WTO Members with a deadline for comments of 30 November 2009. Ukraine authorities had been in contact with the concerned Members and remained willing to further rectify and revise the text of the measure so that it provided more legal certainty and comfort for trading partners.

(v) US Measures on Catfish – Concerns of China

21. The representative of China raised concerns about the US Federal Meat Inspection Act which potentially could have a significant impact on the international trade of catfish. According to the Act,

² On 1 December 2009, the Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community (done at Lisbon, 13 December 2007) entered into force. On 29 November 2009, the WTO received a Verbal Note (WT/L/779) from the Council of the European Union and the Commission of the European Communities stating that, by virtue of the Treaty of Lisbon, as of 1 December 2009, the European Union replaces and succeeds the European Community.

regulatory responsibility for catfish was shifted from the FDA to USDA. USDA was mandated to draft a series of rules concerning the production and inspection requirements for catfish before the beginning of 2010; countries wanting to export or to continue exporting catfish to the United States were required to have their inspection system recognized by the USDA as equivalent to the US system. China had serious concerns about the possible negative impact this change of the regulatory system could have on the current catfish trade. China requested an explanation of the sudden change of the regulatory system, and whether any SPS risk factors had triggered the decision. China also questioned whether the US policy would remain consistent in order to avoid any adverse effect to the existing trade of catfish, and whether the existing trade between China and the United States would be taken into consideration when developing the new regulatory system.

22. The representative of the United States stated that the Food Conservation and Energy Act of 2008, signed into law on 18 June 2008, amended the Federal Meat Inspection Act and required USDA's Food Safety Inspection Service (FSIS) to establish a new federal programme for the production and inspection of catfish. In preparation of the anticipated federal regulations, USDA had visited and communicated with many Members to alert them to the new law. Members were encouraged to participate in the rule-making process once it was announced and notified via the WTO, and to identify any potential concerns with the proposed regulation as soon as possible.

(b) Issues Previously Raised

(i) *Import Restrictions Relating to Influenza A/H1N1 (STC 212) – Concerns of Mexico, Canada, the European Communities and the United States*

23. The representative of Mexico raised concerns that various Members, including China, Gabon, Indonesia and Jordan, continued to maintain unjustified restrictions on pork products due to the Influenza A/H1N1 virus occurrence in humans in Mexico in April 2009. In May 2009, Mexico had presented a document (G/SPS/GEN/921) with information on the control actions, the characteristics of the virus, and its form of propagation. Mexico had taken timely and effective measures to contain the virus and its spread to the rest of the world, yet measures had been taken against Mexican pork products without legal or scientific basis. Mexico requested trading partners imposing such measures to immediately withdraw these unnecessary trade barriers. Influenza A/H1N1 had not been detected in swine or poultry from Mexico, but only in humans. The OIE, WHO and FAO had made it clear that the risk of being infected by Influenza A/H1N1 through the consumption of pork meat was regarded as inexistent. Mexico stressed the need for these international organizations, specially the OIE, to accelerate research and available scientific information on the risk of propagation of Influenza A/H1N1 from humans to animals and vice versa. Mexico expressed appreciation to those Members that had fully supported Mexico during the global pandemic and to Members that had fully withdrawn previously imposed trade restrictions.

24. The representative of Canada recalled that WHO has declared a human influenza pandemic, and that managing the public health impacts of this outbreak was critical. The trade measures adopted by several WTO Members on swine, pork and pork products in response to the H1N1 influenza virus were without any scientific basis. The safety of pork meat was based on global evidence and supported by statements from FAO, OIE and WHO; detection of the pandemic H1N1 strain in animals was not contributing to the global human pandemic. Canada thanked those trading partners that had removed restrictions on imports from Canada, and expressed disappointment that other trading partners continued to maintain restrictions.

25. The representative from the European Communities stated that EC authorities continued to monitor closely the Influenza A/H1N1 virus incident in humans to ensure a high level of awareness in the veterinary and producing community, and to effectively monitor the animal population. The European Communities had an adequate surveillance plan in place should any outbreak occur. A

statement from the OIE made it clear that the imposition of measures related to the import of pig and pig products from countries with human or animal cases was pointless and did not comply with international standards of the OIE and other competent international bodies. Despite the clear statements by the international organizations, several Members continued to impose unjustified bans or other unnecessary measures on pigs and pig meat from EC member States. Such trade measures did not address the real challenge, which was the transmission of the virus between humans.

26. The representative of the United States supported the interventions of Mexico, Canada and the European Communities. While some Members had lifted their bans on live swine, pork and pork products, they had instead imposed burdensome requirements without scientific justification. US agricultural products, including pork and live swine, were safe and trade restrictions on such products to prevent the spread of influenza were not supported by scientific evidence, nor recommended by the international public health, food safety and animal health bodies. The United States urged all WTO Members to comply with their WTO obligations and to follow the advice of the relevant international organizations not to impose any H1N1 related bans, or testing requirements, and to rescind those bans currently in place, so that trade in pork and pork products was not unnecessarily disrupted.

27. The representative of Australia, Brazil, Chile, Japan and New Zealand supported the interventions of Mexico, Canada, the European Communities and the United States.

28. The representative of Ghana requested that further information on Influenza A/H1N1 be released in order to stem public concern. He noted that many developing countries put up trade restrictive measures in response to the public reaction to the pandemic, and that most of these countries did not have the capacity to do a proper risk analysis of the pandemic.

29. The representative of the OIE stated that Influenza virus A/H1N1 was being spread effectively from human-to-human, but that it was important to maintain surveillance in animals. The OIE encouraged Members to report cases of H1N1 found in swine associated with the human disease, and recalled that trade in pork and pork meat products did not represent any risk. The OIE also stated it would continue to monitor the event, in cooperation with other organizations.

30. The Secretariat acknowledged that for some WTO Members, especially developing countries, it was not easy to identify where to obtain information when a situation like the pandemic H1N1 arose. The Secretariat pointed out the usefulness of bringing this kind of information to the Committee. Regarding the pandemic H1N1, international organizations including WHO, FAO and OIE had provided information to the public through several joint statements. From the early stages of the pandemic, the international organizations clarified that there was no justification for measures to restrict trade. Due to concerns about implications the pandemic could have on trade, WTO had decided to join one of the statements. Finally, the Secretariat pointed out the need to consider ways to ensure that in this kind of situation information was easily accessible to the public and to the authorities.

31. The representative of China stated that following the outbreak of Influenza A/H1N1 in April 2009, China had adopted an emergency provisional measure to prevent the introduction of the virus into the country. The measure, notified to WTO, was in line with the SPS Agreement, especially Article 5.7, and other principles of the Agreement had also been respected by applying regionalization treatment to affected countries and regions, and lifting the ban on cooked pork products based on available scientific information, ensuring the measure was the least trade restrictive. China was aware of the concerns on the issue and was actively seeking additional information for a more objective assessment of the risk. China welcomed any input or scientific research that could help finalize the assessment. China would reconsider its provisional measure according to the conclusion of the assessment and would inform its trading partners of any changes.

32. The representative of Jordan stated that the suspension of imports of swine products had been lifted. The concerns of Members regarding the temporary suspension of imports of live swine had been included on the agenda of the technical standards committee of the Ministry of Agriculture for the purpose of revising the measure.

(ii) *China's Hygienic Standard for Distilled Spirits and Integrated Alcoholic Beverages, G/SPS/N/CHN/111 (STC 278) – Concerns of Mexico*

33. The representative of Mexico stated that the Federal Commission for Prevention of Sanitary Risks of the Ministry of Health, as well as the national tequila industry, had submitted comments on China's standard in September 2009. In addition, a risk analysis had been submitted on the content of ethanol in tequila. Bilateral meetings had taken place on the margins of the Committee meeting and useful information had been obtained for the review of the standard. Mexico reiterated its commitment to work jointly with China on the issue.

34. The representative of China confirmed the reception of comments and supporting materials from Mexico. China was aware of the particularity of the processing techniques of tequila. Chinese experts were currently reviewing comments from different stakeholders, and the comments and suggestions from Mexico would be taken into consideration in the review of the standard.

(iii) *Mexico's Restrictions on Imports of Swine Meat, Lack of Recognition of the Disease-Free Status for Certain Regions of Brazil and the Lack of Response to Brazil's Request for the Use of the Chairperson's Good Offices (STC 271) – Concerns of Brazil*

35. The representative of Brazil stated that Brazil's pork had been facing serious restrictions to the Mexican market since 2006. In 2008, Brazil raised a specific trade concern with regards to Mexico's position to not recognize the sanitary status of Santa Catarina as an FMD free zone without vaccination, although the OIE had recognized this status in 2007 and the recommendation had been followed by various Members. Mexico's lack of recognition had resulted in import restrictions for Santa Catarina's pork exports. Brazil had tried without success to resolve the issue through bilateral discussions, and had proposed the use of the good offices of the SPS Committee chair. Mexico has not responded to this proposal. In July 2009, Brazil had received a new request from Mexico for very extensive information, much of which had already been previously provided. Brazil hoped that the new questionnaire was not a means to delay the opening of the Mexican market, and looked forward to Mexico's agreement to use the Chairperson's good offices.

36. The representative of Mexico stated that on 3 July 2009, three questionnaires were submitted to the Veterinary Services of Brazil regarding the import of beef, poultry and pork; however Brazil had not provided any response to the questionnaires. On 20 July 2009, Mexico, through SENASICA, sent remarks relating to Brazil's toxic residues programme but no response had been received. Mexico was willing to continue bilateral discussions on the matter, and encouraged Brazil to provide the requested additional information needed to work further on the issue.

(iv) *US Import Restrictions on Cooked Poultry Products (STC 256) – Concerns of China*

37. The representative of China recalled this specific trade concern related to US import restrictions on cooked poultry products was first raised in 2007, and had been raised again several times. The United States had modified the relevant clauses of the Omnibus Appropriations Act 2009, and the newly adopted Agriculture Appropriation Act of 2010, allowed imports of processed poultry or poultry products from China only if certain criteria were met. The criteria included audits of inspection systems and onsite reviews of slaughter and processing facilities, laboratories and other control operations; a significantly increased level of port of entry re-inspection; and the creation of

an information-sharing programme with other countries. While China noted the progress on the issue, the new measures were discriminatory as they specified conditions applicable only to China.

38. The representative of China further stated that the planned auditing and inspection requirements were excessively stringent and the certifying procedure was complicated. Additionally, the new provision ignored the agreement reached in 2007 between the United States and China on relevant technical issues concerning the import of poultry and poultry products from China, and the achievements China had made on developing disease-free areas in accordance with OIE standards. China requested the United States to fulfil its WTO obligations and to take active steps to eliminate discriminatory measures and normalize bilateral poultry trade.

39. The representative of the United States stated that her government placed great importance on ensuring that its measures were based on science and in compliance with the WTO SPS Agreement. The Agriculture Appropriations legislation approved in 2009 permitted USDA to make a determination with respect to China's application to export poultry products to the United States, provided that the Secretary of Agriculture made certain commitments to Congress. Such commitments set forth what would ordinarily occur under the standard procedure that would apply to an application to export poultry products from any country. USDA would undertake certain transparency and notification obligations with respect to Congress, but it would not have any effect on the substantive treatment of China's application or of any imports from China.

(v) *India's Restrictions Due to Avian Influenza (STC 185) – Concerns of the European Communities and the United States*

40. The representative of the European Communities stated that this concern had been discussed bilaterally for several years, and had been raised on multiple occasions India still did not base its requirements on OIE standards, and still maintained a ban on live pigs, pig semen and products such as feathers for reasons of avian influenza. Furthermore, India did not recognize the regionalization principle, applied strictly in the European Communities where affected zones were placed under strict biosecurity measures, and instead India required total country freedom from avian influenza. Although India had announced that unprocessed meat would no longer be blocked for reasons of avian influenza, India's requirements stated that only heat-treated pig meat could be imported, a measure not in line with international standards. The European Communities requested India to provide scientific evidence justifying its strict measures; to bring its import requirements in line with international standards; and to recognize the regionalization principle as applied in the European Communities.

41. The representative of the United States stated that India's ban and avian influenza import requirements were not in line with the OIE standards. India continued to prohibit the import of pigs and a wide range of avian species and avian products without a risk assessment that supported the measures. India had maintained an emergency measure in one form or another since 2002 and its emergency notifications since 2004 had essentially blocked all imports. Sufficient time had passed for India to complete an import risk assessment and to adopt OIE-consistent measures. The United States requested India to provide its risk assessment and to modify its measures to address the concerns expressed by a number of Members.

42. The representative of India stated that the notification issued on 28 August 2009 prohibited the import of poultry and poultry products and live pigs from countries reporting both highly pathogenic and low pathogenic avian influenza. India's technical experts had observed that symptoms of highly pathogenic avian influenza were noticeable and the infection could be controlled, but low pathogenic avian influenza might pass unnoticed and the control of the infection could become difficult. Additionally, there was no data available confirming that low pathogenic avian influenza could not mutate into highly pathogenic avian influenza. Imports were currently allowed based on the

avian influenza status of the exporting country. The Indian authorities had commissioned a lab-based study of domestic pigs to confirm the chances of genetic re-assortment of the virus in live pigs that could produce new influenza viruses. As notified, India permitted the import of poultry products from countries reporting avian influenza subject to a conformity assessment. Comments received from trading partners on this notification were under examination.

43. The representative of the OIE stated that there were some differences at a scientific and technical level in relation to this matter, and reminded Members of the OIE's informal mechanism to resolve differences at a scientific and technical level.

(vi) Indonesia's Meat Import Conditions (STC 280) – Concerns of the European Communities

44. The representative of the European Communities stated that the concern related to Indonesia's import regime was first introduced in April 2009, and related to the burdensome accreditation process and the non-respect of international standards in many areas, mainly related to BSE and other diseases for which Indonesia imposed unnecessary and unjustified measures. The European Communities had communicated its concerns in writing and at various bilateral meetings with Indonesia. It had requested a justification for the deviation from international standards, as well as Indonesia's risk analysis, but no answer had been provided.

45. The representative of Indonesia stated that its Agriculture Regulation Number 20 of 2009 concerning the import and distribution of carcass meat and/or edible offal complied with international standards. Since 4 September 2009, the Agriculture Ministry Decree 3229 allowed the importation of de-boned meat from Ireland, and the establishment approval procedure followed a risk assessment for BSE on a country-by-country basis. Constructive commitments had been made in October 2009 between Indonesia and the European Communities in regards to this issue.

(vii) Import Restrictions Due to BSE (STC 193) – Concerns of the European Communities

46. The representative of the European Communities recalled that his authorities had repeatedly raised concerns about unjustified restrictions by some WTO Members on imports of bovine, ovine and related products allegedly in response to transmissible spongiform encephalopathies. Any measures should be based on the relevant international standards. While some Members were aligning their processes to OIE recommendations, other Members still required unnecessary certification, applied burdensome and lengthy procedures and discriminated between countries without scientific basis. EC measures to eradicate and control BSE were comprehensive and offered every guarantee that EC exports were safe. Finally, the European Communities urged Members to fully take into consideration the latest OIE BSE guidelines and to establish fair, non-discriminatory and transparent rules.

(viii) US Regulation on Wooden Handicraft (STC 284) – Concerns of China

47. The representative of China reiterated concerns regarding US regulations on wooden handicrafts from China (G/SPS/N/USA/1921). The draft regulation broadened the scope of regulated products to all wooden handicrafts from China, which had to be subjected to fumigation or heat treatment and accompanied by a plant quarantine certificate. Risks, however, were only associated with wooden handicrafts with bark with diameter over one centimetre. The US heat treatment requirement went far beyond the IPPC standard. China requested that the United States base its measures on the relevant international standards, in particular ISPM 32, and to eliminate the certificate requirement for low risk wooden handicrafts in the final measure.

48. The representative of the United States stated that in April 2009, the USDA proposed to allow the importation of wooden handicrafts from China under certain conditions. The proposal would

allow trade to resume in a broad range of Chinese-origin wooden handicrafts while continuing to protect the United States against the introduction of plant pests, such as wood boring beetles. The United States had taken measures in response to finding pests on wood handicraft products, including artificial Christmas trees, trellis towers, other home and garden wood décor, and wood handicraft items were found on 418 different occasions between 2002 and 2005. The intercepted pests were closely related to the Asian long horned beetle, which had previously been introduced into the United States in shipments of wood packing material from China. The comment period on the proposed rule had closed on 8 June 2009, and all comments would be considered prior to making determination to issue a final rule.

49. The representative of the IPPC stated that ISPM 15 concerned wood packaging material and that in 2008 the Commission on Phytosanitary Measures (CPM) had recognized that handicrafts were an issue. The topic "Wood products and handicrafts made from raw wood" had been included on the IPPC work programme. A specialized technical panel would draft a specification for this new standard in 2010.

(ix) Japan's Pesticide Residue Limit Enforcement System (STC 267) – Concerns of China

50. The representative of China recalled that after the implementation of Japan's positive list system for chemical residues, China and many other WTO Members had expressed concerns regarding the issue of "uniform standards". Japan had indicated that the standard would be revised on the basis of scientific evaluations and MRLs would be established for more chemical residues. In recent years, almost all notices that China received from Japan regarding products that exceeded pesticide limits were caused by the "uniform standards". These had severely affected China's trade with Japan. Also, after the implementation of Japan's positive list system, a series of regulatory measures such as intensified inspection, quarantine and supervision, had been undertaken. China urged Japan to develop science-based residue limits for the items of concern as soon as possible, to alleviate unnecessary restrictions to international trade.

51. The representative of Ecuador supported China's concern regarding MRLs applied by Japan. Ecuador's cacao exports had faced difficulties of market access, and although various meetings had taken place, no solution had been provided. Ecuador requested Japan to modify its MRLs in accordance with international standards.

52. The representative of Japan stated that the uniform standard was based on the evaluations by the FAO/WHO Joint Expert Committee on Food Additives (JECFA) and/or on the tolerance exposure amounts that the US Food and Drug Administration adopted for food additives.

(x) Application and Modification of the EC Regulation on Novel Foods (STC 238) – Concerns of Peru

53. The representative of Peru recalled that the entry of traditional exotic products to the European market had been seriously affected by the EC regulation on novel foods. The measure contravened the activities that the European Communities themselves had been undertaking to support small producers and to open the EC market to new and exotic products. Various exotic products had been certified by the Health and Environment Authority of Peru, which certified the safety and compliance with a HACCP system, and these products were fit for human consumption and could be marketed internationally. Peru expressed concern about the continuous loss of business opportunities due to this measure and asked for an update on the modification progress.

54. The representatives of Brazil, Colombia, Ecuador, and Mexico supported Peru's concerns regarding the EC regulation on Novel Foods.

55. The representative of the European Communities stated that on 15 January 2008, the EC Commission had submitted to the Council and the European Parliament a proposal for the revision of the Novel Food Regulation. The proposal was notified to WTO Members in March 2008 under the TBT Agreement. The revised procedure was expected to be more flexible and some novel foods had already been approved for entry into the EC market. The reference period for establishing a history of safe food use had been changed to a period of 25 years, and consumption data could originate from any third country and not necessarily from the country that submitted the application. The possibility to apply for a novel food authorization had also been opened to any interested party. The proposal kept the main rules currently applicable to novel foods, but simplified EC market access for traditional foodstuffs from third countries which had a history of safe use and put in place proportionate regulatory measures. The proposal was still under negotiation and its adoption was foreseen for July 2010.

(c) Consideration of Specific Notifications Received

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

(d) Information on Resolution of Issues in G/SPS/GEN/204/Rev.9

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

IV. OPERATION OF TRANSPARENCY PROVISIONS

58. The Secretariat noted that the most recent lists of National Notification Authorities and National Enquiry Points were contained in G/SPS/NNA/15 and G/SPS/ENQ/25, respectively. Paper copies of these lists were now updated only once every year, however, the lists were constantly updated and available through the SPS Information Management System (IMS). The Secretariat asked Members to ensure the accuracy of the list of addresses of Enquiry Points and National Notification Authorities.

59. The Chairperson reported that documents G/SPS/GEN/957, G/SPS/GEN/958, G/SPS/GEN/960 and G/SPS/GEN/964 summarized the notifications received since the last Committee meeting.

(a) Overview of the Operation of Transparency Procedures

60. The Secretariat introduced the transparency overview document G/SPS/GEN/804/Rev.2, based largely on the SPS IMS launched in 2007. The revised transparency procedures adopted in 2008 included revised notification formats which aimed to facilitate the provision of clearer and more specific information regarding new or modified SPS measures, for instance, new fields on the conformity of the notified measure with international standards or the proposed date of publication of a measure.

61. As of October 2009, 133 Members had designated an Enquiry Point and 144 had designated a Notification Authority.

62. The SPS Agreement requires Members to notify new or modified SPS measures that may have a significant effect on trade, if their content is not substantially the same as the content of an international standard. Since 1995, 10,532 notifications (regular, emergency, addenda and corrigenda) had been submitted; 54 per cent from developed country Members, 45 per cent from developing country Members and a very small share from LDCs. During 2008, 1,273 notifications were circulated. As of October 2009, 101 Members had submitted at least one notification. Notifications from developing country Members had increased steadily over the years.

63. The revised format for regular and emergency notifications had a number of fields seeking information on links to international standards. From June 2007 through August 2009, 43 per cent of regular notifications stated that there was a relevant international standard. For emergency notifications, 81 per cent of notifications had indicated that there was a relevant international standard; 64 per cent of these had made reference to the OIE. The new notification formats also requested identification of which standards of Codex, OIE or IPPC were relevant, however, this part of the form was not always completed. The revised format included a new entry asking whether the proposed regulation conformed to the relevant international standard. From December 2008 through August 2009, 47 per cent of regular notifications had indicated the existence of a relevant international standard, of which 71 per cent indicated that the proposed regulation was in conformity; for emergency notifications during the same period, 55 per cent had stated that there was a relevant international standard. Of these, 50 per cent indicated that the proposed regulation conforms to the relevant international standards.

64. From June 2007 through August 2009, about 75 per cent of notifications had provided a comment period. Although a minimum 60-day period was recommended, the average comment period provided was about 50 days. Since 2008, Members could provide the electronic version of the regulation being notified to the Secretariat, be accessible through a hyperlink in the notification. Unfortunately, very few Members were using this facility.

65. The Secretariat recalled several initiatives to enhance the implementation of transparency provisions and the benefits of a transparent system. Recent updates of the SPS IMS facilitated searches according to the specific needs of Members and the preparation of summaries and reports. A mentoring mechanism was established by the Secretariat following the transparency workshop held in 2007. So far 18 Members seeking mentoring assistance had been matched with nine Members offering such assistance. New mentoring requests had been received and new mentors were needed. A new manual developed by New Zealand, with the assistance of Australia and the Secretariat, included guidelines on how to prepare notifications, how to manage incoming notifications, how to alert stakeholders and how to draft standard letters. The technical assistance activities of the WTO Secretariat devoted a significant amount of time to transparency issues. The Standards and Trade Development Facility (STDF) had also funded various projects to increase transparency by enhancing interagency coordination at the national and regional levels.

66. The representative of New Zealand stated that his colleagues were pleased to be mentors, and New Zealand had been partnered with five developing countries. Unfortunately despite numerous attempts to contact these countries, New Zealand had not been able to get a reply and to provide assistance.

67. The representative of Senegal thanked the European Communities for their mentoring and for having provided them with relevant documentation.

68. The Secretariat expressed its appreciation to those Members who had offered to provide assistance, and encouraged other Members to volunteer to be mentors. The mentoring mechanism was not a programme for financial aid or technical assistance, but rather an informal approach of email exchanges and communication.

69. The Secretariat recalled that the Committee had previously decided to periodically organize a special meeting on transparency to which the National Notification Authorities and Enquiry Points would be encouraged to attend. These meetings had been held every three years, back-to-back with a regular Committee meeting. The Secretariat proposed to organize a special meeting on transparency to be held in October of 2010 back-to-back with the October Committee meeting. Normally the participation of about 50 officials from LDC and developing countries could be funded through the WTO Global Trust Fund, with priorities for LDCs. Assistance would be provided specifically for the

National Notification Authorities and the Enquiry Points and that this represented an incentive for those countries who had not established their National Notification Authorities and Enquiry Points to do so. The Secretariat stated that there are new documents and issues that will be discussed during the aforementioned meeting and that it would be very useful for the National Notification Authorities and Enquiry Points to be present.

V. IMPLEMENTATION OF SPECIAL AND DIFFERENTIAL TREATMENT

(a) Chairperson's Report on Informal Meeting

70. The Chairperson reported that during the informal meeting held on Tuesday, 27 October on special and differential treatment, the main focus had been on the proposed revision of the procedure to enhance transparency of special and differential treatment in favour of developing country Members contained in G/SPS/33.

71. During the informal meeting, the Secretariat had introduced revision 5 of the draft document, G/SPS/W/224, which reflected discussions at the last Committee meeting. Instead of reproducing all the usual steps, for example for the circulation of a notification, this version contained references to the relevant documents containing those steps. Other changes related to situations where phased implementation might not resolve the problem, and to the possibility to use the process also after the end of the comment period on a notified measure and before its entry into force.

72. Two delegations, Egypt and the United States, had suggested small amendments to the text in revision 5, while other delegations had indicated that they could accept the text without changes.

73. Following the Chairperson's oral report, the Committee considered a revision to the draft text which reflected changes suggested during the informal meeting. The Committee adopted the proposed revision on an ad referendum basis (G/SPS/W/224/Rev.6). No objections were raised by the 16 December 2009, and the revised decision was subsequently circulated as G/SPS/33/Rev.1.

VI. EQUIVALENCE -- ARTICLE 4

(a) Information from Members on their Experiences

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

(b) Information from Relevant Observer Organizations

75. The representative of the OIE stated that while there were some matters broadly related to equivalence in the report of the OIE, no specific work was underway on the topic of equivalence.

VII. PEST- OR DISEASE-FREE AREAS

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

76. The representative of Costa Rica reported on a series of surveillance, control, prevention and eradication measures for classical swine fever (G/SPS/GEN/966). These included training for the staff and the creation of both a surveillance programme and a national swine health programme run by high-level professionals. Costa Rica now met the necessary requirements established by the OIE and declared itself to be a "country free from classical swine fever".

77. The representative of Chile reported that in August 2009, pandemic human influenza was detected on two turkey breeding farms (G/SPS/GEN/981). The outbreak corresponded to the

pandemic influenza A/H1N1 virus and was duly reported to the OIE on 21 August. The detected virus was a human virus that had been transmitted to the turkeys. In these circumstances, the likelihood of viral dissemination was negligible and there were no risks in trading fresh poultry meat and poultry by-products. A number of countries had introduced trade-restricting measures when there are no scientific grounds to do so. One Member even notified its measures as based on the presence of avian influenza, despite the fact that Chile's freedom of this disease is recognized by the 172 members of the OIE. Chile urged Members to comply with Articles 2.2 and 2.3 of the SPS Agreement and to examine all evidence before or applying measures in situations such as this one. Certain measures if taken hurriedly and without any scientific basis, resulted in significant trade losses.

78. The representative of Madagascar reported on its surveillance of fruit fly populations in collaboration with the International Atomic Energy Agency (IAEA). Fruit flies could present a barrier to exports from Madagascar. The Ministry of Agriculture had implemented measures for the detection of *ceratitis capitates*, which does not currently exist in Madagascar, but there is a risk of infestation and infection since it is present in neighbouring African countries and in the Comoros Islands. A second activity related to the H1N1 virus, 127 cases of humans infected by the virus had been reported by the Ministry of Health to the WHO, and although there were no cases of infected animals to date, the Ministries of Health, Education and Environment were working together to reduce and limit the propagation of the disease. Madagascar was seeking to resume exports of honey to Europe, as exports had been halted as a result of falsification of documentation. A surveillance plan had been established to monitor bee diseases as well as hives, and the relevant legislation was being revised. The resumption of exports would depend on the outcome of the surveillance.

(b) Information from Members on their Experiences

79. The representative of the European Communities gave additional information about its notification G/SPS/N/EEC/349 concerning the list of third countries from which poultry and poultry products may be imported into and transit through the Community. The Members affected by the measures were Brazil, Canada, Chile, Croatia, Israel and the United States. The amendment embraced the concept of zoning and regionalization, and introduced more flexible conditions for certification for freedom of Newcastle disease for imports of poultry and certain poultry products. The amendment would enter into force upon its publication, foreseen for December 2009, and a transitional period would be applied for the use of certificates until 1 June 2010.

(c) Information from Relevant Observer Organizations

80. The representative of the OIE recalled that at the last Committee meeting the OIE had presented a report which covered the official status of OIE member countries as decided at the General Session in May for four diseases: BSE, FMD, bovine pleuropneumonia and Rinderpest. The list was updated annually on the basis of the dossiers submitted by members to the OIE. The OIE did not grant official recognition for other diseases but that there were guidelines on establishing disease-free status. The OIE invited Members to submit a dossier and it would publish a bulletin on the website on their claim for freedom. Document G/SPS/GEN/971 contained an update on relevant work done by the OIE and described the establishment of procedures for FMD free compartments as a new approach. At this stage the OIE was not proposing to grant official recognition for FMD-free compartments.

VIII. TECHNICAL ASSISTANCE AND COOPERATION

(a) Information from the Secretariat

(i) *WTO SPS Activities*

81. The Secretariat provided a report on the activities that had been undertaken and future planned activities on SPS (G/SPS/GEN/956). The Secretariat highlighted two introductory courses for LDC's which included sessions on SPS; one trade policy course in Benin; one regional workshop in Lao People's Democratic Republic; national seminars in Zimbabwe, Indonesia and Bangladesh; and one e-training course delivered in Spanish. The fifth specialized course on SPS had been delivered in Spanish. Participants were required to elaborate action plans to enhance the implementation of the SPS Agreement.

82. The representatives of Haiti, Mexico, Guinea and Paraguay thanked the Secretariat for organizing the fifth specialized course on SPS and noted the usefulness of the course.

83. The Secretariat reminded Members of the types of assistance that WTO offered, and stressed that its expertise was on the WTO Agreements and not on technical issues. The specialized course was offered once a year, and the intention was to offer the course in 2010 in the English language. The course was limited to 25 participants because of the facilities and the nature of the course. Regional training events were also offered, usually two or three times each calendar year, with the cooperation and participation of Codex, IPPC and OIE. These events were normally of a four-day duration, where five participants from the selected Members were invited, especially officials responsible for plant protection, animal health, food safety, SPS Enquiry Point and from the Ministry of Trade responsible for WTO (and preferably SPS) matters. Many Members did not keep their SPS contact information up-to-date, which created a serious problem as sometimes the invitations were not received. The largest number of training activities that WTO offered were national seminars, which were available on request. LDCs could request three WTO training events each year, while other developing country Members could request two events. It was possible to request an event that combined both SPS and TBT Agreements. Other activities offered workshops on particular SPS-related issues, regional trade policy courses, Geneva-based policy courses at basic and advanced levels covering all WTO Agreements, including the SPS Agreement. The Secretariat indicated that it would shortly offer an advanced regional trade policy course in Jamaica that would specifically focus on Agriculture, SPS and TBT. In the coming years, advanced policy courses would be undertaken in Geneva with specific focus that would include the SPS Agreement.

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

84. The Secretariat of the STDF stated that STDF work was done mainly in three areas: coordination and information dissemination; project development; and project funding. The STDF film which had been shown to the Committee in June was now available to delegates in English, French and Spanish. The Secretariat encouraged Members to show the film in their capitals to increase awareness about the importance of SPS capacity building and investment in this area. The Secretariat also drew attention to the STDF newsletter in three languages; and a two-page STDF briefing note highlighting the key findings and conclusions of an expert seminar on climate change and SPS risks and responses, organized jointly by STDF and the World Bank in September 2009.

85. Other STDF coordination and information dissemination activities included two regional "training of trainers" workshops held in Africa in July through STDF's involvement in the PAN-SPSO project implemented by African Union/Inter African Bureau for Animal Resources (AU/IBAR). These workshops trained SPS officials of the regional economic commissions and other African SPS experts. The training focused on SPS and implementation of the standard-setting procedures of three

Sisters, who were closely involved in the workshops. Further training at regional and national levels were foreseen in 2010 and 2011.

86. The STDF was also funding a scoping study on existing SPS collaboration mechanisms in Africa at national and regional levels. In September 2009, the STDF together with the Economic Community of West African States (ECOWAS), the World Bank and COLEACP co-hosted a workshop on the implementation of a regional action plan to control fruit fly in West Africa. Over 100 participants, including beneficiaries, donors, private sector and research organizations, had validated the regional action plan and agreed on concrete steps to implement the plan. STDF activities are described in document G/SPS/GEN/969.

87. The Secretariat reminded Members of the workshop organized for 30 October 2009 by the STDF on the use of economic analysis to inform SPS decision making. The aim of the workshop was to demonstrate that economic analysis could generate information that was useful to improve SPS decision making and enhance the effectiveness of resource allocation, as well as to demonstrate the economic rationale of investment in SPS capacity building. One presentation during the workshop was on the multi-criteria decision making approach, and the STDF was considering possible follow-up work to pilot test the approach in countries, and to develop user friendly tools and training materials targeted at regulatory authorities in developing countries. The summary report of the workshop was subsequently circulated in the STDF Briefing note number three in December 2009.

(b) Information from Members

88. The representative of Brazil stated that a Brazilian technician invited by FAO had participated in August 2009 in a project to help strengthen Angola's national system of food control. The project consisted of presentations and a seminar on the importance of the Codex Alimentarius, how to increase participation in Codex activities, SPS Agreement and the SPS Committee, and an introduction to the TBT Agreement. The activity illustrated the significant importance of cooperation between developing countries on SPS issues.

89. The representative of Belize reported on technical assistance received from the European Communities on the implementation of a project to enhance national sanitary and phytosanitary capacity that was initiated in May 2009. The project included the training of 22 officers in meat hygiene inspection and ten officers in sanitary certification of fishing vessels. Additional training delivered in September and November 2009 included training to enhance surveillance programmes, including sampling and testing methodologies, specialized training on avian pathology and pest identification. One of the experts would also conduct a GAP analysis via comparison of the current draft Food Safety, Plant and Animal Health legislation with EU agriculture, health and food safety legislation, with the objective of highlighting those areas most pertinent to Belize.

90. The Belize Agriculture Health Authority would be hosting a seminar on 15 November 2009 with the objective of updating stakeholders on the major achievements that Belize had obtained as a result of the implementation of sanitary and phytosanitary programmes at the national level, and as a result of participating in international forums such as Codex, OIE and the SPS Committee. The seminar was conducted in cooperation with IICA and had been held on an annual basis for the past four years. The representative of Brazil acknowledged and thanked the Mexican Government for the assistance received to strengthen two specific surveillance programmes, one on animal health and the other on plant health. Belize also thanked STDF for the opportunity to participate in the workshop on the use of economic analysis to inform SPS decision making.

91. The representative of Indonesia reported that the Indonesian Agriculture Coordinating Agency, in cooperation with the WTO Secretariat, had held a symposium on the SPS Agreement in Jakarta, with a total of 170 participants. The symposium discussed several topics concerning the

implementation of the SPS Agreement, SPS technical issues and quarantine issues including food safety and wood packaging regulations. The symposium had a positive result in sharing the knowledge and experience on the application of the SPS Agreement and current SPS issues that affect bilateral, regional and multilateral trade; and helped to identify strategies for capacity building and the strengthening of SPS management.

(c) Information from Observers

92. The representative of the Codex provided an update regarding the operation of the trust fund to enhance participation of members in Codex, and especially LDCs. At the latest session of the Codex Committee on Fish and Fishery Products, 30 countries were funded by the trust fund. This resulted in a very high participation in the committee with over 80 participants in total. There would be a workshop to consider the new distribution of Codex participation in Tunisia on 14-18 December 2009. The midterm review of the trust fund was currently underway and should be completed for the Codex Alimentarius Commission session next year. The Codex secretariat was involved in a project with FAO Algeria to improve all aspects of the fishery sector including food safety. The Codex secretariat had also with WHO Europe on food safety and health policy in central Asian countries, planned to participate within this framework in a seminar in Tajikistan in January 2010. Further information on Codex activities since the last SPS Committee meeting and on forthcoming meetings can be found in the document G/SPS/GEN/973.

93. The representative of the IPPC reported that seven regional workshops had been held during the summer, which looked at the draft ISPMs and examined the difficulties in implementing IPPC standards. The IPPC was involved with the implementation of several STDF projects, including one in Mozambique to help build phytosanitary capacity and another in the Pacific Islands which focused on the use of the phytosanitary capacity evaluation tool. The IPPC had also been involved in the establishment of a centre of phytosanitary excellence in Kenya, which would serve the East African countries. The centre would help to coordinate phytosanitary training and regional coordination on phytosanitary issues. The IPPC was involved with one UN project in Tanzania which had a component to build phytosanitary capacity. A first regional workshop for Russian speaking countries had been held in October 2009, to help countries understand the obligations of the IPPC as well as how to utilize international standards for phytosanitary measures. The phytosanitary capacity evaluation tool was currently being revised based on user input. IPPC activities since the last SPS Committee meeting are detailed in document G/SPS/GEN/979.

94. The representative of the OIE stated that OIE had been involved in a number of SPS training workshops and some of the STDF projects. For the moment, the main emphasis was on the evaluation on Performance of Veterinary Services (PVS) and on the follow-up activities that arose from the PVS. The OIE received 98 requests for the PVS evaluation as of October 2009, of which 88 missions had been completed and 49 reports were available. The reports could be provided, if the evaluated countries approved, to organizations interested in making investments to support veterinary services. One important follow-up to PVS evaluations was other missions which addressed the state of veterinary legislation. The OIE had received 21 official requests for legislation missions, and eight missions had been concluded so far. A workshop would be held in Paris in December 2009 for experts involved in the PVS evaluation, as a lot of emphasis was placed on the appropriate training of these experts. In December 2010, the first global conference on veterinary legislation would take place in Tunisia. The OIE circulated information on these activities to the Committee in document G/SPS/GEN/971.

95. The representative of Benin thanked the European Communities for resuming the import of shrimp and requested continued support. Some activities were underway in Benin concerning a problem related to fruit fly, and Benin would report on the outcome as soon as the activities had been finalized.

96. The representative of Senegal thanked the IPPC for the considerable amount of capacity building it had received. In light of the importance of phytosanitary risk analysis, there was a need to enhance capacity building in developing countries in that area.

97. The representative of European Communities stated that they had a specific programme targeted at Africa, known as "Better training for Safe Food", that focused on the regional economic organizations. A self-sustaining training mission was intended to provide assistance to countries in correcting problems which were highlighted from inspections undertaken by the EU veterinary office. The European Communities had contributed 5.5 billion euros to the OIE programme.

98. The representative of the Dominican Republic thanked the United States and IICA for the support received in areas related to its sanitary and phytosanitary legislation.

99. The representative of IICA reported on its institutional technical capacity building programme for the Codex Alimentarius. This project was intended to provide support for participation in Codex Committees, and in particular four committees: on Fresh Fruits and Vegetables, on Food Hygiene, on Nutrition and Foods for Special Dietary Use and on Food Import and Export Inspection and Certification System. The fund covered the participation of five countries with a maximum of 32 participants. The project budget was provided by USDA.

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

(a) Issues Arising from the Second Review

(i) *Oral Report on the Workshop on the Relationship Between the SPS Committee and the International Standard Setting Organizations (Codex, IPPC and OIE)*

100. The Chairperson presented an oral report on the workshop on the relationship between the SPS Committee and the International Standard Setting Organizations which had been held on 26 October 2009. The Chairperson noted that the programme for the workshop could be found in (G/SPS/GEN/933).

101. The Chairperson recalled that the need to further clarify the respective roles of the SPS Committee, Codex, IPPC and OIE - the "three Sisters" - had been flagged in the context of the Second Review of the Operation and Implementation of the SPS Agreement. Members had suggested a workshop be organized to focus on the standard-setting procedures and issues before Codex, IPPC, and OIE, and on how to ensure effective coordination with the work of the SPS Committee.

102. The workshop had been organized around:

(a) Presentations by the three Sisters on the procedures and issues they face in the development, adoption and monitoring of the use of international standards of relevance to the SPS Committee; and

(b) Discussion of possible concrete actions to: (i) improve coordination between the Committee and the three Sisters; (ii) increase the use of international standards; and (iii) avoid duplication of efforts.

103. The European Communities had also submitted a document on the relationship between the Committee and the three Sisters (G/SPS/GEN/970).

104. The presentations by the three Sisters addressed (i) the processes and procedures used in the development and adoption of international standards, guidelines and recommendations of relevance to the SPS Agreement, and (ii) possible ways to facilitate the implementation of the SPS Agreement while avoiding duplication of activities.

105. The presentations pointed out some variations in the procedure of adoption of standards among the three Sisters. Some participants stressed the need for an harmonization of the standard development procedures of the three Sisters. However, it was noted that such harmonization could be challenging due to the difference in the three Sisters' procedures and different areas of work. It was recognized that harmonization could be achievable in cross-cutting issues, and while work was being done on this area, further coordination was needed.

106. Several ideas were discussed on what mechanisms the SPS Committee could consider to promote the effective use of the standard-setting bodies in the implementation and administration of the SPS Agreement, while avoiding unnecessary duplication of effort.

107. Members also raised concerns on the role of the SPS Committee and the three Sisters in the implementation of international standards and the monitoring of their usage. Emphasis was given to the role of the SPS Committee as a coordinator with regard to its three Sisters.

108. The need for coordination at the national level was also stressed, as well as the importance of increasing the participation of developing countries in the meetings of the SPS Committee and in those of the three Sisters. The importance of SPS-related capacity building was also highlighted.

109. The Chairperson expressed her belief that the workshop was a very good opportunity to understand how all three Sisters worked and to try to identify some concrete actions to promote a better collaboration and communication between the three Sisters and the SPS Committee.

110. The workshop resulted in a number of specific suggestions: these included:

- (a) Moving the three Sisters' reports to earlier in the Committee's agenda;
- (b) Increasing the number of joint capacity-building activities which could also provide an opportunity to discuss current work, for example draft standards;
- (c) Joint work by two or all three Sisters on cross-cutting issues such as certification, inspection, approval procedures and/or risk analysis;
- (d) Coordination meetings among the three Sisters and with the SPS Secretariat;
- (e) Consideration of how to ensure equivalence among results of standards on related products;
- (f) Soliciting more information at the strategic planning phase of the three Sisters work;
- (g) The SPS Committee transmitting information relating to trade issues linked to non-use of standards, absence of standards, or inappropriate standards to the relevant Sister organization; and/or
- (h) Requesting the three Sisters to analyze the current specific trade concerns to see which of these could have been addressed by the use of the existing international standards;
- (i) The SPS Committee should make better use of the information regarding the use of international standards which is available from the SPS notifications;
- (j) Identifying ways to improve coordination at a national level of the relevant representatives of the three Sisters and SPS representatives; and

- (k) The establishment of a "help desk" to answer enquiries and provide information in each of the three Sisters and the SPS Secretariat.

111. In response to the Chair summary on the workshop the representative of New Zealand noted that there was a need to identify better ways to coordinate at a regional level. It would also be good if the secretariats of the three Sisters and of the SPS Committee could meet more regularly in order to facilitate better communication and greater awareness. The representative of the European Communities stated that it would be helpful if the WTO Secretariat and the secretariats of the three Sisters could work together in order to address the specific trade concerns expressed at SPS Committee meetings.

(ii) *Use of Ad Hoc Consultations*

112. The Secretariat introduced document G/SPS/W/243, which was based on the joint proposal made by Argentina and the United States during the Second Review for a procedure for ad hoc consultations and negotiations under the SPS Agreement and which reflected Members' comments and suggestions. This document acknowledged the fact that work was being undertaken by the negotiating group on NAMA on developing a mechanism to deal with these kind of problems. The document made clear that the work in the SPS Committee was not intended to affect the discussions taking place elsewhere. The Secretariat recalled that the procedure of good offices of the Chair was part of the Rules of Procedure of the SPS Committee. The Secretariat document attempted to capture the suggestions and flexibilities expressed by Members at the June meeting of the SPS Committee to try to find a compromise while basing the details on what had already been jointly put forward by Argentina and the United States.

113. The representative of Brazil presented document G/SPS/W/248, which contained a proposal for the implementation of the consultation mechanism in the SPS Committee. Brazil's primary concern was to ensure that this mechanism would effectively resolve the SPS divergences amongst Members. Brazil agreed with most of the joint proposal submitted by Argentina and the United States (G/SPS/W/233), but proposed some modifications. These changes included making a first meeting between the requesting and responding parties compulsory; that consultations not surpass 108 days or six months; and that the Secretariat should circulate to all Members any requests to use the mechanism as well as the formal answers from the responding parties during the first compulsory meeting.

114. The representative of Mexico noted his authorities' intention to submit written comments to documents G/SPS/W/243 and G/SPS/W/248. With respect to the proposal in G/SPS/W/243, Mexico considered it important to include a clause in the first paragraph to ensure that there was no conflict of interest between the parties involved and the chair or facilitator. Paragraph 4 of the same proposal should specify that the condition for beginning consultations should be that a specific trade concern (STC) had been raised by at least one Member during at least one Committee meeting. Mexico considered it important that nothing that took place during the consultations should be made public unless the parties agreed to this. In paragraph 9(1), there was a need to define the material, personal and time scope of the problem. In paragraph 10 it was not clear when the responding Member would need to respond to a request. Paragraph 16 should allow for only one consulting Member to conclude the consultations. (Mexico's suggestions were subsequently circulated in documents G/SPS/GEN/988 and G/SPS/GEN/989.)

115. The representative of India noted that the procedure which they favoured was the one outlined in document TN/MA/W/106, which was currently under negotiation. Because of capacity constraints, India was unable to negotiate the same issue in two separate fora in the same organization.

116. The representative of China recognized the need to develop a procedure for ad hoc negotiation and consultation amongst Members under the SPS Agreement. China noted that there would be a need to bring technical experts from capital for the relevant meetings, which would be burdensome especially for developing country Members.

117. The representative of Argentina drew attention to paragraph 3 of G/SPS/W/243 and noted that they had been waiting for the results of the NAMA discussions for many years. Although Argentina was a co-author of the text under discussion in the NAMA negotiations, it was of the view that the SPS Committee must move soon to formalize rules with respect to ad hoc consultations and in particular on the use of the good offices of the Chair.

118. The representative of the Philippines noted that the proposal in G/SPS/W/243 was similar to the horizontal mechanism being considered in the NAMA negotiations and had a similar objective of trying to resolve trade concerns in a timely and expeditious fashion. There was a need to ensure coherence in that work and across the board.

119. The representative of Canada stated that G/SPS/W/243 set forth reasonable guidelines for the use of Article 12.2. Ad hoc consultations were meant to be more voluntary than mandatory and so the procedure should not include stringent timelines. Canada considered the SPS Committee's work on Article 12.2 to be compatible with the work being undertaken in NAMA.

120. The representative of the United States expressed support for the ratification of the draft ad hoc consultation document and explained that the concerns expressed by India and other delegations were not warranted. On the contrary, discussions within NAMA and the SPS Committee would provide Member's with a greater number of available options for resolving trade concerns.

121. The Chairperson invited Members to submit any written comments on G/SPS/W/243 to the Secretariat by 16 December 2009.

(b) Third Review

(i) *Report of the Informal Meeting*

122. The Chairperson reported that at the informal meeting of the SPS Committee on the Review of the Operation and Implementation of the SPS Agreement held on 27 October, Members had discussed (i) two proposals from MERCOSUR on issues for consideration during the Third Review and, (ii) the revised draft report of the Third Review and the recommendations contained therein.

123. The Chairperson had recalled that according to the agreed timetable for the Review, the goal was to complete the Third Review in 2009 – that is, to adopt the report of the Third Review at this meeting of the Committee.

124. According to the adopted procedure for undertaking the Third Review of the SPS Agreement (G/SPS/W/228), Members had been invited to identify issues for discussion as part of the Third Review.

125. During the informal meeting Members had discussed a new proposal from MERCOSUR (G/SPS/W/244) which had been submitted in response to China's specific proposals on Annex C of the SPS Agreement (G/SPS/W/234), and which had been reflected in the revised draft report.

126. Several Members had supported MERCOSUR's proposal and noted that the SPS Committee should initiate discussions on how to effectively implement relevant provisions of the SPS Agreement, and clarify the scope of, and some terms in, Article 8 and Annex C. It had been further noted that a

more in-depth discussion on Article 8 and Annex C based on specific examples from Members could facilitate the implementation of Article 8.

127. Other Members had stressed the need to avoid duplicating the work being done by the Codex, IPPC and OIE in the area of control, inspection and approval procedures. Some Members had also suggested that any clarification of terms should be considered on a case-by-case basis.

128. Members had also considered a second proposal by MERCOSUR contained in G/SPS/W/245, relating to the development of guidelines to further the implementation of Article 13. This proposal had also been reflected in the revised draft report.

129. Several Members had welcomed the proposal from MERCOSUR as a good basis for further debate by the Committee on the issue of private standards, but also on Article 13 more generally. They had considered such discussion to be a priority issue as it could enable, in particular, small developing country Members to better implement SPS provisions and improve market access.

130. Other Members had raised concerns to this proposal and noted that work on private standards had revealed widely divergent views, and that resources would be best used by focussing on the development of government measures. Some Members had further noted that it was premature to develop guidelines for Article 13 or a Code of Good Practice for private standards as this could preempt the results of the Committee's current work on private standards.

131. In accordance with the procedures and timeline adopted by the SPS Committee for undertaking the Third Review of the SPS Agreement (G/SPS/W/228), the Secretariat had prepared a revision of the draft report on the Review (G/SPS/W/237/Rev.1). The Secretariat had noted that the revised draft report was based on proposals and comments from Members and discussions in the Committee. Specific proposals and documents had been put forward under the Third Review by: China, Australia, India, MERCOSUR (Argentina, Brazil, Paraguay and Uruguay), Codex, IPPC and OIE.

132. The Secretariat had noted that the revised draft report included recommendations under each section, in relation to the issues under consideration, which proposed some immediate actions, but mostly proposed further work by the Committee.

133. The discussion on the revised draft report of the Review had focussed on the recommendations contained under each section of the report. Members had no specific objections to most of the recommendations suggested in the revised draft report.

134. For those recommendations on which Members had suggested revisions, the Secretariat had offered to prepare a piece of paper which showed the suggested changes.

135. The Chairperson concluded her report on the informal discussions by noting that concluding the Review did not finish the work, but would allow the Committee to focus on those issues identified in the recommendations.

(ii) *Consideration of Draft Report (G/SPS/W/237/Rev.1)*

136. The Secretariat drew attention to a room document which presented the proposed changes to the draft report on the Review (G/SPS/W/237/Rev.1) as discussed during the informal meeting.

137. The representative of India noted that they had not been able to participate in the informal discussions and indicated that they would shortly circulate a revision of their earlier proposals (G/SPS/W/236/Rev.1). India supported MERCOSUR's proposals in G/SPS/W/245 on private

commercial standards, and considered that in the circumstances it was necessary for the SPS Committee to develop guidelines for the clarification and implementation of Article 13.

138. Several Members suggested further modifications to the draft report. In particular, some Members considered it would be premature to make private standards a standing item at Committee meetings since a lot of analytical work was still being carried out by the ad hoc working group in this area. Many Members highlighted concerns with the implementation of Article 13 and the importance of making reference to the need for clarification of this article in the report on the Review.

139. The Secretariat clarified that a "standing" agenda item was one which the Committee had decided (by consensus) should be included in the agenda of every Committee meeting. Otherwise, any Member could request the inclusion of an item on the agenda of any Committee meeting, either at the end of the previous meeting when the Committee adopts a tentative agenda for its next meeting or by notifying the Secretariat at least eleven (11) days before the meeting that it wants an item to be included in the agenda.

140. The Chairperson indicated that Members should submit, in writing, any comments and suggestions on the draft report on the Third Review before 16 December 2009. This would permit the Secretariat to circulate a revised draft report for consideration and adoption by the Committee at its meeting in March 2010.

X. MONITORING ON THE USE OF INTERNATIONAL STANDARDS

(a) New Issues

(i) *Lack of Implementation of MRL for Ractopamine by Codex – Concerns of Brazil*

141. The representative of Brazil noted that extensive discussions on this matter occurred during the last two sessions of the Codex Alimentarius Commission and at the 18th session of the Codex Committee on Residues of Veterinary Drugs in Foods. Despite the evidence presented by JECFA, an MRL had not been adopted by the Codex. Brazil was concerned about the repeated postponement of a decision in spite of the existence of strong scientific evidence in favour of the adoption of this MRL. Since an MRL was needed in order to facilitate international trade, Brazil hoped that a decision would be made at the next meeting of the Codex Commission.

142. The representative of Canada noted that Canadian exporters had also experienced trade difficulties in several markets due to the absence of an MRL for ractopamine. In 2005 Health Canada approved the use of ractopamine in swine feed and established an MRL for ractopamine in pork. Canada supported the adoption by Codex of the proposed MRLs for ractopamine and was pleased when, in September 2007, the Codex Committee on Residues of Veterinary Drugs in Foods recommended the adoption of ractopamine MRLs at step 8. Canada was disappointed that this was not adopted at the 2009 Codex Commission meeting and expressed hope that it would be adopted at the 2010 meeting.

143. The representative of the United States stated that adoption of international standards for ractopamine should be an important priority for all WTO Members. Years of scientific evidence proved that ractopamine could be used safely. Ractopamine had been approved by over 25 countries and was currently at Step 8 in the Codex process. Some Members, however, imposed ractopamine bans without sufficient scientific evidence to support them. Codex had not adopted the draft MRLs at the 2009 Commission meeting because of a request from a major trading partner that one further scientific review be done by JECFA. The United States urged that trading partner to provide JECFA with the necessary information so that this study could be completed, and expressed the hope that the Codex Commission would move forward with adoption of the standard once that study was complete.

144. The representative of the European Communities noted that last year the European Food Safety Agency (EFSA), which was responsible for risk assessment, gave a standard opinion regarding the harmfulness of this substance. China had also conducted a study on the effect of ractopamine on the tissue of pigs. The Codex Commission decided that JECFA should evaluate the Chinese studies before coming to a decision with respect to the MRL for ractopamine.

145. The representative of China noted his authorities' commitment to ensuring that the international standard on ractopamine was of the highest quality. China would continue to actively participate in the Codex standard development process by carrying out experiments and sharing data with JECFA. The representative of Norway supported the interventions of the European Communities and China, stressing the need for JECFA to evaluate the last data submitted by China before coming to a final conclusion.

146. The representative of Australia agreed with the interventions of Brazil, Canada and the United States on this issue. Codex had made a risk management decision based on a risk assessment of the available data, and Australia supported the adoption of the draft proposed MRL for ractopamine.

147. The representative of the Codex noted that JECFA had conducted an evaluation in accordance with the procedure in place for veterinary drugs. As noted by Australia, the risk management decision made by the Committee on Residues of Veterinary Drugs was then forwarded to the Codex Commission, but at the Commission there was no consensus. Rather, at the Commission session delegates referred to further studies and scientific data on the matter. It was agreed that JECFA would review the data that it had not previously reviewed. Two meetings of JECFA were scheduled for 2010 and they would make every effort to have the outcome of the review of this data available for the next session of the Commission in July 2010.

148. In response to a question from Chile regarding bovine somatotrophin (BST), the representative of the Codex noted that although the proposed MRL had been retained at Stage 8 for the past nine years, there was no request by Codex members to change this status.

(b) Issues Previously Raised

(i) *Draft NAPPO Regional Standard: Guidelines for Regulating the Movement of Ships and Cargoes Aboard those Ships from Areas Infested with the Asian Gypsy Moth (RSPM N 33) – Concerns of China*

149. The representative of China noted that this was the fourth time that it was raising this concern in an SPS Committee meeting. The "Guidelines for Regulating the Movement of Ships and Cargo from Areas Infested with the Asian Gypsy Moth" had been approved by the North American Plant Protection Organization (NAPPO) on 10 August 2009 with immediate effect. The Guidelines identified risk management options for the movement of ships and cargo from areas infected with Asian Gypsy Moth, such as inspection, systemic approaches, pest-free areas, certification, rejection of the shipment, refusal of entry etc. The guideline did not mention specific countries but stated that the pest was "present in temperate Asia, has been reported east of the Ural Mountains, but no definitive distribution information in eastern Europe is available." China reiterated its serious concerns regarding this standard, and the hope that the member countries of NAPPO would take these concerns and comments into consideration when developing specific implementation actions, in order to minimize the adverse impact of their SPS measures on international trade.

150. The representative of Korea supported China's intervention and noted that this standard was adopted without any critical reflection of concerned parties' comments, although this standard could have a negative impact on their trade. Korea therefore asked NAPPO member countries to implement the standard in a manner which would minimize the negative impact on trade in accordance with the

SPS Agreement and the relevant international standard. These measures should reflect the role and responsibility of the exporting and importing country in a balanced manner.

151. The representative of Japan supported the views of China and Korea. Japan intended to consult with NAPPO and its member countries on the implementation of this standard to ensure that the measure was economically and technically feasible and not more trade restrictive than necessary.

152. The representative of Canada noted that the NAPPO measure on AGM was being put in place to control the risk to North America's forests. NAPPO representatives had been diligent in ensuring that all concerned stakeholders, including the shipping industry, had been consulted. The standard would be phased in with full implementation taking place in March 2012. The measure had taken all possible SPS measures into consideration and had been developed to be no more trade restrictive than necessary to manage the risk. Furthermore, all NAPPO member countries were working with affected Members to come up with appropriate implementation plans and a number of Members had already participated in these meetings. The risk of introduction of AGM was acute. In 2009, Canadian authorities had detected egg masses, each containing thousands of eggs, on ten ships travelling from the region.

153. The representative of Chile questioned whether this issue belonged under the agenda item related to the monitoring of the use of international standards. Was it appropriate for the SPS Committee to raise this matter with NAPPO since it was not one of the three Sisters? Chile suggested that these types of issues could be addressed under specific trade concerns.

154. The representative of the IPPC indicated that although regional plant protection organizations were recognized in the IPPC Convention and often the regional organizations deposited a regional standards with the IPPC, this did not make these an international standard. The IPPC work programme included consideration of the need for an international standard on the movement of pests via ship containers and vessels. In such situations, the IPPC might use a regional standard as the basis for the development of an international standard.

XI. CONCERNS WITH PRIVATE AND COMMERCIAL STANDARDS

(a) Report on Chairperson's Consultations

155. The Chairperson informed the Committee that on Tuesday 27 October, she had held consultations with the ad hoc working group on private standards for the fourth time. Although she had not intended to consult with the group prior to the Committee meetings, a number of participants had requested such consultations. The representatives of the Codex, OIE and IPPC had also attended the meeting.

156. The meeting had given the Members an opportunity to consider the Secretariat document entitled "Possible Actions for the SPS Committee Regarding Private Standards" (G/SPS/W/247) and the MERCOSUR document entitled "Legal Framework for Private Standards in the WTO" (G/SPS/W/246). The OIE, IPPC and Codex had also provided updates with respect to their work on private standards.

157. The Secretariat had explained that the report in G/SPS/W/247 represented the third step of the Committee's endeavour to undertake a three-step study on the effects of private standards. The first phase was the circulation to Members of a questionnaire on private standards. The second step was the preparation of a descriptive report, summarizing the replies to the questionnaire. This third step put together a compilation of possible actions by the SPS Committee and/or Members to enhance the benefits of private standards and address identified concerns. The report drew upon the Committee's discussions to date, Members' written contributions, and the descriptive report, keeping in mind the

limitations pointed out by Members on various occasions. Some of the possible actions focused on more practical approaches and others addressed legal and systemic questions.

158. The representative of the Codex had noted that the Codex Alimentarius Commission had discussed the issue of private standards during its last session and would revert to it at its next session in July 2010. Many delegations had expressed concerns with the recommendations of an FAO/WHO paper prepared by consultants, including its suggestions that Codex adapt its own procedures to the changing circumstances. It had been pointed out that Codex standards needed to be benchmarks for all food safety standards. Delegations had raised concerns in particular related to the compliance and certification costs. A further study would be prepared to analyze the costs and benefits of private standards and Codex would also look at the speed of its standard-setting activities.

159. The representative of the OIE had informed the working group that an ad hoc expert working group would meet in November to prepare a report based on replies to a questionnaire circulated to OIE members regarding the effects of private standards, both for animal welfare and animal health. The 66 responses received to date had suggested that the main concerns were the costs of compliance, the lack of scientific basis and multiplicity of standards, and the lack of transparency/consultative mechanisms in developing private standards. Some benefits had also been identified such as the fact that private standards could, in some cases, assist the implementation of official standards. Overall, however, there was clear recognition of the fact that claims of sanitary safety should not be used to gain marketing advantage. The report of the working group would be submitted to the Terrestrial Code Commission for consideration in February and the report of that Commission, which would be available publicly at the end of March, would be considered during the OIE General Assembly in May 2010.

160. The Chairperson of the IPPC had noted that although the issue of private standards had been raised at their annual meeting in April 2008, no work was currently being done on private standards as they related to plant health.

161. The representative of Argentina had introduced the MERCOSUR document and called on the SPS Committee to address the issue of private standards to ensure a predictable trading environment since private standards were the new conditions of market access.

162. Some Members were concerned that the Committee could risk basing its discussions on incorrect information contained in the descriptive report and proposed to revise it. Others pointed out that trying to collect more information on the effects of private standards would not change significantly the types of actions that the Committee could undertake regarding this issue. It was also suggested that the Committee's discussions were already having a positive impact on the actions by some of the private standard-setting entities and that the momentum needed to be maintained.

163. There had been some suggestions regarding the nomenclature used for the different steps of the study on private standards. The second step had been initially called a "descriptive report", whereas it should more appropriately be called a "compilation of replies". The third step had been initially called an "analytical report". However, the report did not provide a detailed or in-depth analysis of types and effects of private standards. Rather, it focused on possible actions for the Committee or Members. Therefore, it would be more appropriate to call it an "identification of possible actions".

164. It was noted that while there were differences among Members as to what the SPS Committee could do on the issue of private standards, this reflected differing views on the appropriate role governments should play in private business transactions, not differences in the development status of Members. In addition, it was apparent that many private companies and traders around the globe were not aware of the differences between governmental SPS requirements and private standards.

165. It had been suggested that the Committee could prioritize and sequence its work by identifying which actions could be further elaborated and pursued in the short run and which could be discussed further. Some Members also suggested that some of the actions could be merged.

166. In concluding her oral report on the consultations, the Chairperson indicated that the working group proposed the following:

- that the working group continue to pursue its work on private standards;
- that all Members be invited to submit written comments on document G/SPS/W/247 by 16 December, indicating in particular any sequencing they would like to see in discussing all the possible actions already identified, providing the reasons behind the proposed sequencing;
- that the Secretariat consider the suggestions on changing the titles of what had been called the "descriptive" and "analytical" reports;
- to request the Secretariat to revise the report on possible actions in light of Members' oral and written comments, taking into account any updates from the three Sisters; and
- that the Chair consult again with the ad hoc working group prior to the March meeting of the SPS Committee to review the revised draft report.

167. The representative of Japan requested that the restricted status of G/SPS/W/247 be maintained at least until after the Committee's consideration of this document at the next meeting.

168. The Secretariat clarified that a restricted document was circulated only to Members and observer governments of the WTO. It was not made public and did not appear on the WTO public website. These documents remained restricted for 60 days after the date of circulation and then could be maintained restricted upon the request of a Member, but only for a certain length of time.

169. The representative of the European Communities noted that Switzerland had circulated a constructive document shedding new light on the discussions. The document had not been considered by the working group because Switzerland was not a member of this group.

170. The representative of Argentina noted that more discussion was required in the informal group but the objective of the next meeting in March should be to adopt a timetable or steps based on information supplied by Members to the Secretariat.

171. The Chairperson noted that any Member could present a paper on private standards in the SPS Committee. The Member would also be invited to present its document to the ad hoc working group. However, the membership of the ad hoc working group would remain the same.

172. The representative of Switzerland indicated that their document (G/SPS/GEN/967) was intended to contribute to the ongoing discussion in the Committee. It outlined the Swiss Government's strategy for ensuring that private voluntary standards contributed positively to sustainable development and did not operate as unnecessary barriers to trade. Switzerland believed that private voluntary standards could provide significant benefits for developing countries. In order for private standards to fulfil their potential, public and private actors must proactively invest in processes to ensure that the special needs of developing countries were met in the implementation of these standards.

173. The representative of MERCOSUR noted that document G/SPS/W/246 expressed the concern of MERCOSUR with respect to the proliferation of private standards and how the advance of these

standards had affected market access in the same manner as regulations. The SPS Committee was considered to be competent to find a solution to the concerns of many Members that private standards were being applied in a manner that rendered the SPS Agreement ineffective.

174. The representative of the OIE noted that as far as health standards were concerned, the OIE did not see a role for private standards since health protection was ensured by the official standards of the three standard-setting organizations. The emphasis should be placed on assisting developing countries to deal with what amounted to a market barrier in many cases. The OIE encouraged all of its members to respond to the OIE questionnaire.

175. In response to a question, the Secretariat noted that the Chairperson's oral reports were for the purpose of informing the Committee about what had happened at a workshop, informal meeting or ad hoc consultation. These reports became part of the final summary report of the Committee meeting. These reports were not presented for adoption by the Committee, but Members had the opportunity to comment on these oral reports to ensure they were complete and correct.

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

176. The Chairperson recalled that in accordance with Paragraph 18 of the Protocol of Accession of the People's Republic of China, the SPS Committee was to undertake an annual review for eight years of the implementation by China of the SPS Agreement. The United States and the European Communities had submitted documents on this subject, G/SPS/GEN/963 and G/SPS/GEN/968, respectively.

177. The representative of the United States observed that the Transitional Review Mechanism allowed Members to assess and understand the progress that China had made in implementing and complying with the WTO Agreements. She raised several issues relating to restrictions on agricultural trade, noting that in most cases the details of the US concerns had been raised under previous agenda items at this meeting. The concerns were: (1) restrictions on pork imposed due to H1N1 outbreak among humans in the United States, and whether China had any scientific evidence to justify these restrictions; (2) BSE-related restrictions on imports of beef and beef products, with a request that China provide additional information on the risk assessment that supported the measures applied to US-origin beef and beef products; (3) BSE-related import restrictions on protein-free tallow; and (4) restrictions related to avian influenza, in particular bans affecting the states of Virginia, Kentucky, Idaho and Arkansas. The representative recalled that several of these issues had already been raised during the 2008 transitional review, however China had provided only limited responses to date.

178. The representative of the United States further requested information on the status of revisions to China's sampling plans and microbiological criteria for food-borne pathogens, as well as the procedures it used to revise national standards. Moreover, the United States was also concerned that China had banned ractopamine without conducting an appropriate risk assessment.

179. The representative of the European Communities shared the concerns of the United States on a number of issues, including: (1) H1N1 related trade requirements on pigs and pig products from several EC member States; and (2) BSE-related trade restrictions, reiterating that OIE standards should be respected. The European Communities also had specific concerns regarding the plant health standards implemented by China. In addition, the European Communities expressed concern for the lack of a notification before the application of the new Chinese food safety legislation and its implementing regulation, and provided comments on a number of chapters of the new legislation. Finally the representative of the European Communities expressed concern on the slow progress of

bilateral negotiations of SPS protocols and inspections that limited market access of EC products to China, especially for meat, fruits and vegetables.

180. The representative of China offered some clarifications and responses to the questions and comments raised by the United States and the European Communities. However, China had received the EC questions only on 24 October and had not had time to prepare the corresponding answers. Nonetheless these issues were being discussed under the bilateral cooperation mechanism and China would continue to work with the European Communities to resolve the issues in an appropriate manner.

181. Regarding US concerns on BSE-related issues on beef, the representative stated that China had conducted many bilateral talks with the United States between senior level politicians as well as technical experts. Based on a risk assessment, China had agreed to import US de-boned beef from animals aged under 30 months. China was willing to address the US beef import concerns through a step-by-step approach. China's beef industry had visited the United States at the invitation of the US beef industry, to purchase eligible beef products. However, the USDA had refused to issue sanitary certificates for those beef products and had thus stopped the purchase. China had made efforts to address the US demands, and the issue could not be furthered without US cooperation.

182. With regard to the BSE-related issues on other products, the representative of China reported that in March 2008, the quarantine and inspection authorities of China and the United States held a bilateral technical meeting on animal quarantine and inspection. During the meeting, the two sides had in-depth discussions and reached an agreement on the working procedures to move the tallow issue forward. In order to further clarify the definition of protein-free tallow by the OIE, in March 2008 the United States proposed to the OIE that the definition of protein-free tallow be modified; the proposal was approved in August of this year. Chinese experts were now carrying out a risk assessment according to the newly revised OIE standards and they would try to resolve the issue soon.

183. Regarding restrictions related to H1N1, the representative of China, for the sake of time, advised Members to refer to the statement that had been made by the Chinese delegation under the agenda item on specific trade concerns, regarding the reasons for China's adoption of the relevant measure and the work plan for the next stage. China welcomed any input from its trading partners with regards to scientific research that would help it finalize the risk assessment. Based on the conclusions of the risk assessment, China would consider adjusting the temporary measure accordingly.

184. On avian influenza, the representative of China noted that according to OIE rules, all cases of H5 and H7 avian influenza should be communicated to the OIE. This was an indication of the special status of these two types of low pathogenic subtype avian influenza. Due to this situation, China had applied the principle of regionalization, and had suspended the import of poultry and poultry products from certain states of the United States that had relevant outbreaks. The Chinese policy had taken into consideration both risks and the need for trade; and China believed the measures were rational and science-based.

185. The representative of China indicated that documents on the lifting of the ban with respect to avian influenza in the states of Idaho and Kentucky had been submitted to the Chinese expert panel and a risk analysis on the lifting of the ban was now underway. After the conclusion of the assessment, China would communicate the relevant information to the United States in a timely manner. Regarding the lifting of the ban with respect to avian influenza in Virginia, China requested the United States to provide virus strains as soon as possible, so that China could make accurate analysis on the pathological causes of avian influenza in Virginia and the impact of lifting the ban on China. The representative stated that according to the SPS Agreement, an exporting Member has the obligation to provide to the importing Member the evidence needed to complete the risk assessment.

The representative expressed hope that the United States could cooperate with China in providing the virus strains as soon as possible. Regarding the lifting of the ban with respect to avian influenza in Arkansas, the representative reported that China and the United States had held two rounds of technical document exchanges. The Chinese Ministry of Agriculture had now received the supplementary documents provided by the United States and a risk assessment was in process. China would communicate the result to the United States once it was available.

186. With respect to pathogens in poultry products, the representative of China reported that in 2008 the Chinese Ministry of Health had organized, formulated and published, in connection with the Standardization Administration of the People's Republic of China, relevant standards on the inspection of microorganisms in foods, such as the *Inspection of Salmonella, and Microbiological Inspection in Food Hygiene*. The Ministry of Health undertook the formulation and promulgation of food safety standards as from 1 June 2009, in accordance with the new *Food Safety Law of the People's Republic of China*. This law required integrating the current standards in the areas of edible agricultural products, food hygiene and food quality, with the mandatory food standards in the current sectorial standards, and promulgating them as a unified national food safety standard. This task involves many standards and a huge amount of work, therefore, the Ministry of Health would undertake the work with good planning and organization. At present, the Chinese Ministry of Health was working on a safety standard for dairy products in connection with relevant authorities. The revision of the standards on microbiological criteria in food, including fresh and frozen poultry, would be incorporated into the work plan for the next stage. Additionally, China pointed out that a seminar had been organized with the United States on best practices for controlling salmonella in poultry and poultry products. Experts from China and the United States would enhance communication and dialogue in the area of food safety assessment and relevant standards.

187. On the issue of residue standards for ractopamine, the representative of China stated that in October 2007 the Ministry of Agriculture had set up an expert group to conduct a risk assessment on ractopamine. During 2009, the expert group had carried out research work on residue elimination in various varieties and various modes of feeding. The results showed that with the recommended dose of usage, relatively high residue levels remained in edible tissues, especially in the viscera, therefore resulting in higher potential risks for Chinese consumers. The Ministry of Agriculture would continue to work on the risk assessment; however, due to the complexity of the task, no specific time line could be established. On the issue of when China could submit further data on risk assessment to the Codex Alimentarius Commission (CAC), the representative recalled that the 32nd session of the CAC did not adopt the maximum residue level on ractopamine in July 2009, but had decided to return the matter to JECFA for further assessment. China had almost finished analyzing the test data on residue elimination of ractopamine and the testing report would be submitted to JECFA soon.

188. The Chairperson informed the Committee that she would submit a factual report on the review to the Council for Trade in Goods (subsequently circulated as G/SPS/52).

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

189. The Chairperson invited observer organizations to report on matters of interest arising from their work, and thanked those observers that had provided written reports in advance of the meeting.

190. The representative of the OIE presented their report in G/SPS/GEN/971. The OIE was concerned that the existing standards on FMD were not being put into effect in a timely manner. This was of particular concern because diseases such as FMD, BSE and avian influenza had been highlighted in many trade disputes. OIE work on FMD was continuing in two respects. One of these was compartmentalization, whereby determining the status of a particular sub-population and industry sector with regard to FMD freedom could provide a pathway for facilitating trade. The OIE was also

continuing to consider standards based on the treatment of commodities as a mechanism to avoid the requirement for zones to establish disease freedom. This mechanism would be further discussed at the next meeting of the Code Commission and at the General Session in May 2010. The OIE was also considering commodity-based standards with regard to aquatic animals, in particular in the use of antibacterial products in aquatic animals.

191. The representative of IICA highlighted their work on STDF project 108 which was further detailed in G/SPS/GEN/972. The project involved a high level course in microbiological risk evaluation and chemicals in foods for ten countries in the Americas. Manuals of good practice were drawn up for participation in the Codex, IPPC, OIE and the WTO SPS Committee, and these would be provided to Members at the next Committee meeting. More workshops were being planned for ten countries on phytosanitary risks. Specific national activities were also highlighted, such as the application of the PVE (performance, vision and strategy) tool to strengthen official food safety, veterinary and phytosanitary services in Paraguay and would soon be used in Peru for food safety.

192. The representative of the Codex stated that their report highlighted the adoption of codes for reduction of food contamination (G/SPS/GEN/973). The report also provided information on several Codex Committees including on Fish and Fishery Products, on Food Hygiene and the Taskforce on Antimicrobial Resistance.

193. The representative of the IPPC noted that they had just completed the member consultation phase on several draft standards and thanked the countries which helped to compile these comments. A large number of comments had been received on proposed revisions to ISPMs dealing with export certification systems and phytosanitary certificates, which could reflect some of the concerns raised at the SPS Committee. At the end of November, the IPPC would circulate specifications for a number of draft standards on which members would be invited to submit comments. The Standards Committee would likely recommend three new standards for adoption by the CPM. In 2010, there would be two meetings of the Standards Committee, five technical panels, and two expert working group meetings to deal with the import of plant breeding materials and soil and growing media. A bi-annual call for new topics for standards in 2009 resulted in 21 submissions to be reviewed by the Standards Committee. In November the IPPC website would be revised to make room for regional plant protection organizations and international organizations to include information to IPPC members.

194. The representative of the IPPC further reported that the IPPC had received only one request under the dispute settlement process, but this was in the early stages and not yet public. A strategy for national phytosanitary capacity building was being developed and in the next few weeks an expert working group would examine how to finalize this strategy and implement it. The FAO had developed guidelines on the implementation of standards for foresters. The IPPC continued to work with the CBD, especially on invasive alien species and living modified organisms. Information on pest risk analysis training was available on the IPPC website. The IPPC was also continuing to work on the reduction of methyl bromide emissions.

195. The representative of OIRSA highlighted several activities described in G/SPS/GEN/974. These included work carried out in Belize with respect to Huanglongbing; in Honduras regarding areas free from fruit fly; and support to several phytosanitary programmes in Nicaragua, El Salvador and Panama. On 9 October 2009, Guatemala was declared free of Classical Swine Fever. OIRSA training courses were being provided in El Salvador, the Dominican Republic and Nicaragua.

XIV. REQUESTS FOR OBSERVER STATUS

196. The Committee agreed to invite all of the ad hoc observers to participate in the next Committee meeting, including the informal meetings on the review and special and differential treatment.

197. There was no change in the position of Member with respect to the pending requests for observer status from the Asian and Pacific Coconut Community (APCC), Convention on Biological Diversity (CBD), International Vine and Wine Office (OIV) and the Gulf Customs Council Standardization Organization. The Committee decided to revert to these outstanding requests at the next regular meeting.

(a) Request from ECOWAS

198. The Secretariat recalled that one objective of the PAN-SPSO project was to increase and facilitate the participation of African countries in the work of Codex, IPPC, OIE and the SPS Committee. Therefore it would be useful if the regional economic commissions had the opportunity to be observers in the SPS Committee. Such a request for observer status had been received from the Economic Community for West African States (ECOWAS). As with previous requests, the Secretariat prepared a brief background document on ECOWAS (G/SPS/GEN/121/Add.4). The Secretariat noted that only one of ECOWAS' 15 members was not yet a member of the WTO. ECOWAS had observer status in Codex, IPPC and OIE and ad hoc observer status in the WTO Committee on Trade and Development.

199. There were no comments from Members with regard to this request. In the circumstances, the Chairperson suggested that the Committee revert to the request from ECOWAS, and any other subsequent requests, at the next Committee meeting.

XV. CHAIRPERSON'S ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS (G/L/897)

200. The Chairperson noted that it was usual at this time of the year for the Chairperson to provide, under her own responsibility, a brief, factual annual report on the activities of this Committee for consideration by the Council for Trade in Goods (CTG). A draft of the annual report was usually provided to Members during the October meeting of the Committee, so that any comments from Members could be addressed before the report was finalized and submitted to the CTG. This year, however, the meeting of the CTG was scheduled for 30 October, and the report of the Committee had to be provided at least ten days prior to the meeting. The Secretariat had therefore circulated the draft of the Chairperson's annual report by fax to all delegations, and solicited Members' comments. On the basis of these comments, the report was finalized and had been submitted to the CTG as document G/L/897.

201. The information in the annual report would be revised to reflect the issues discussed and the outcome of this Committee meeting. Members were invited to submit any further comments on the annual report to the Secretariat by 6 November. The revised report was subsequently circulated as G/L/897/Rev.1.

XVI. OTHER BUSINESS

202. The representative of Colombia informed the Committee of Venezuela's recent decision to stop issuing SPS certificates for certain goods coming from Colombia. The representative of Venezuela requested that Colombia present the details of their concern and assured the Committee

that they would deal with this matter on a bilateral basis. Information from Colombia was subsequently circulated in G/SPS/GEN/983.

XVII. DATE AND AGENDA FOR NEXT MEETING

203. The Chairperson recalled that the next meeting of the Committee was tentatively scheduled for **17-18 March 2010**. Informal meetings on the Review and special and differential treatment were scheduled for **16 March, 2010**.

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

1. Proposed agenda
2. Election of Chairperson
3. Information on relevant activities
 - (a) Information from Members
 - (b) Information from Observer organizations
4. Specific trade concerns
 - (a) New issues
 - (b) Issues previously raised
 - (c) Consideration of specific notifications received
 - (d) Information on resolution of issues in G/SPS/GEN/204/Rev.10
5. Operation of transparency provisions
6. Implementation of special and differential treatment
 - [(a) Report on informal meeting
 - (b) Review of operation of S&D transparency procedure (G/SPS/33)]
7. Equivalence – Article 4
 - (a) Information from Members on their experiences
 - (b) Information from relevant observer organizations
8. Pest- and Disease-free areas – Article 6
 - (a) Information from Members on their pest or disease status
 - (b) Information from Members on their experiences in recognition of pest- or disease-free areas
 - (c) Information from relevant observer organizations
9. Technical assistance and cooperation
 - (a) Information from the Secretariat
 - (b) Information from Members
 - (c) Information from observers
10. Review of the Operation and Implementation of the SPS Agreement
 - (a) Issues arising from the Second Review
 - (b) Use of ad hoc consultations
 - (c) Third Review
 - (i) Report on informal meeting
 - (ii) Consideration of draft report

11. Monitoring of the use of international standards
 - (a) New issues
 - (b) Issues previously raised
 12. Concerns with private and commercial standards
 - (a) Report on Chair's consultations
 13. Observers – Request for observer status
 14. Other business
 15. Date and agenda of next meeting
205. Members were asked to take note of the following deadlines:
- (i) For submitting proposals on issues to be considered by the Committee during the Third Review: **Wednesday, 16 December 2009**;
 - (ii) For submitting comments on the various proposals before the Committee: **Wednesday, 16 December 2009**
 - (iii) For identifying new issues for consideration under the monitoring procedure, AND for requesting that items be put on the agenda: **Thursday, 4, March 2010**
 - (iv) For the distribution of the airgram: **Friday, 5 March, 2010**
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