

Issue Note

Sanitary & PhytoSanitary Issues in the WTO: Negotiations, Developments and LDCs & Developing Countries' Concerns

Provided by



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The note will focus on Sanitary & PhytoSanitary (SPS) issues in the context of the World Trade Agreement. SPS measures concern the application of food safety and animal and plant health regulations. It will inform on the previous WTO negotiations, the agreement content, and bodies dealing with SPS issues and more importantly who are (should be) the beneficiaries of the SPS agreement.

“The SPS Agreement aims to achieve a balance between the right of WTO members to implement legitimate health protection policies and the goal of allowing the smooth flow of goods across international borders without unnecessary restrictions.”¹

Consideration of SPS issues throughout WTO Negotiations

The World Trade Organization (WTO) based in Geneva is a recent institution settled in 1995 thanks to a GATT's (General Agreement on Tariff and Trade, 1947) reform under the *Uruguay round* (1986-1994). The **Agreement**

on the **Application of Sanitary and Phytosanitary Measures** (the "SPS Agreement") became effective with the establishment of the WTO so are new agreements covering trade services, intellectual property, agriculture, textile...

SPS issues were first covered by GATT rules (1947) through Article I and III. Article I "General Most-Favored-Nation Treatment" required non-discriminatory treatment of imported products

¹ https://www.wto.org/english/thewto_e/20y_e/sps_brochure20y_e.pdf

from different foreign suppliers and Article III “National Treatment on Internal Taxation and Regulation” required that such products be treated no less favorably than domestically produced goods with respect to any laws or requirement affecting their trade². GATT holds an exception which allowed countries to take measures in order to protect human, animal and plant health (Article XX:b)³.

In the *Tokyo round* (1974-79) an **Agreement on Technical Barriers to Trade** was negotiated (TBT agreement or “Standards Code”). It seeks to ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade⁴. This agreement was not attended to covered SPS issues yet it covered technical requirements resulting from food safety and animal, plant health.

The Agreement of SPS Measures effective since 1995, set out the basic rules for food safety, animal and plant health standards. The objective is to reduce possible barriers to trade which are increased by fears that SPS measures could be used for protectionist purposes.

TBT and SPS agreements have common elements, so it is critical to identify whether a measure is SPS or TBT before creating a dispute.

Overview of the WTO SPS Agreements and the “Three Sisters”

WTO members should have a good understanding of the SPS agreement’s content

and are invited to set their own standards. The standards should be based on the recognized international ones settled by other organizations, particularly those of the “three sisters” and regulations should be based on science in order to protect human, animal and plant health. More important again, they should create not arbitrarily or unjustifiably discrimination between countries, where identical or similar conditions must prevail.

Agreement on the Application of SPS Measures: Content overview⁵

- Art.1 General Provisions.

The Agreement applies to all SPS measures which may, directly or indirectly, affect international trade. SPS agreement should not affect the TBT one.

- Art.2 Basic Rights and Obligations

Members have the right to take SPS necessary measures, based on scientific principles. Measures should not arbitrarily or unjustifiably discriminate Members and shall not be applied as a disguised restriction on international trade.

- Art.3 Harmonization

To harmonize SPS measures on a wider basis possible, Members shall base their SPS measures on international standards, guidelines or recommendations.

- Art. 4 Equivalence

Members shall accept the SPS measures of other Members as equivalent, even if these measures differ from their own or from ones used by other Members trading the same product.

² https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm

³ https://www.wto.org/english/docs_e/legal_e/qatt47_02_e.htm

⁴ https://www.wto.org/english/docs_e/legal_e/ursum_e.htm#dAgreement

⁵ https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm

- Art.5 Assessment of Risk and Determination of the Appropriate Level of SPS Protection

SPS measures are based on a risk assessment, taken into account techniques developed by the relevant international organizations.

- Art.6 Adaptation to Regional conditions (Including Pest-or Disease- Free Areas and Areas of Low Pest or Disease Prevalence)

Members shall ensure that their SPS measures are adapted to the SPS characteristics of the area from which the product originated and to which the product is destined.

- Art.7 Transparency

Members shall notify any modification of their SPS measures to other members.

- Art.8 Control, Inspection and Approval Procedures

Members shall observe the provisions of Annex C of the Agreement in the control operations.

- Art.9 Technical Assistance

Members agree to facilitate the provision of technical assistance to developing country and Least Developed Country (LDCs) Members, either bilaterally or through the appropriate international organizations (The “Three sisters”).

- Art.10 Special and Differential Treatment

Members shall take account the special needs of developing country Members, and in particular LDCs members. Longer time-frames should be granted to those members on their products of interests so that they can maintain their export opportunities.

- Art.11 Consultations and Dispute Settlement

Dispute will be settled by the Dispute Settlement body.

- Art 12. Administration

A Committee on SPS issues is hereby established. The Committee is responsible for facilitating consultations and negotiations between the Members and will work closely with the “Three sisters” supports.

- Art 13. Implementation

WTO is a member-driven Organization; Members are therefore obliged to respect its rules.

- Art.14 Final Provisions

The LDCs Members may delay application of the provisions of this Agreement for a period of five years following the date of entry into force of the WTO Agreement.

The “Three sisters”⁶

● *Codex Alimentarius Commission, FAO/WHO*

The Codex Alimentarius Commission located in Rome is a science-based organization and a subsidiary organ of the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). The SPS agreement designates the Codex as the authority for food safety evaluation and harmonization. The organization draft international food safety standards. Through harmonization, there would be fewer trade barriers and freer movement of food products between countries. It would benefit farmers and their families and also help to reduce hunger and poverty. The Codex has developed over 200 standards covering processed, semi-processed or unprocessed foods intended for sale for the consumer or for intermediate processing; over 40 hygienic and technological codes of practice; evaluated over

⁶ https://www.wto.org/english/thewto_e/coher_e/coher_e.htm and <http://de.slideshare.net/PeterGallagher/an-overview-of-the-sps-agreement>

1000 food additives and 54 veterinary drugs; set more than 3000 maximum levels for pesticide residues; and specified over 30 guidelines for contaminants.

● *World Organization for Animal Health (OIE)*

Founded in 1924, OIE has 6 main missions which are achieved through different set of activities, including the establishment of standards, guidelines and recommendations pertaining to animal health. One of the missions is "to safeguard world trade by publishing health standards for international trade in animals and animal products, within its mandate under the WTO SPS Agreement". The general principles of the OIE are related to risk analysis methodology (four components): import risk assessment, assessment of veterinary services, zoning/regionalisation, surveillance and monitoring.

● *International Plant Protection Convention (IPPC)*

IPPC is a multilateral treaty for international cooperation in plant protection. Its secretariat is based at the FAO in Rome. The Convention provides the application of measures by governments to protect their plant resources from harmful pests which may be introduced through international trade. The Convention has been updated in relation with the SPS Agreement. The SPS Agreement identifies the IPPC as the reference organization developing international standards for plant health (phytosanitary) measures. IPPC work includes standards on pest risk analysis, requirements for the establishment of pest-free areas, and others which give specific guidance on topics related to the SPS Agreement.

Some of the Instruments and Bodies Dealing with SPS Issues

Under the SPS Agreement, countries are required to designate a single central government authority responsible for implementing, on a national level, the notification requirements of the SPS Agreement. This is the **SPS National Notification Authority (NNA)**.

The **Committee** on SPS issues was settled under the SPS agreement (Art.12, SPS agreement). The SPS Committee holds usually 3 meetings each year which are open to all WTO Members and representative of International intergovernmental organizations such as Codex, OIE, IPPC, WHO, FAO, United Nation Conferences on Trade and Development (UNCTAD) and the International standards Organizations (ISO) are invited as observers to join their meetings.

Each of the **"Three sisters"** focus on one aspect of the SPS issues, whether it is food safety, human and animal and plants health, detailed in the previous section.

The **Standards and Trade Development Facility (STDF)** is a joint initiative of the WTO, World Bank, FAO, World Health Organization and the World Organization for Animal Health. It aims to assist developing countries establish and implement SPS standards to ensure health protection and facilitate trade expansion. It also aims to act as a forum for coordination and information sharing on SPS-related technical assistance.

SPS National Enquiry Point (NEP) is a place/system that all Members should implement in their countries. It allows other Members to get any information on the SPS measures applicable on export and import products. It also provides information on control and inspection procedures, risk assessment procedures...

SPS Notification Submission System (SPS NSS) is a website where NNA can fill out and submit SPS notifications online.

SPS Information Management System (IMS) provides access to documents and records relevant under the WTO's SPS Agreement. It allows users to track information on SPS measures that Members have notified to the WTO.⁷

Effects of SPS Measures on Agricultural Products' Export

In 2013, developing countries represent three quarter of the WTO's Members. It also represents 43 per cent of good exchange and 34 per cent of services exchange in the international trade. Developing countries mostly trade between each other (52 per cent) (*International Trade Statistics 2014*, WTO).

Agriculture is the main economic sector in most developing countries and LDCs. It also represents one of the main source of livelihoods in those countries. Although trade liberalization has increased under GATT and WTO actions, market access for agriculture products are regulated by non-trade measures such as the SPS agreement. In this case, it might be considered as an obstacle to trade and so reduce their foreign export especially those intended to developed markets.

Murina, M. and Nicita, A. (2014), "trading with conditions: The effect of Sanitary and Phytosanitary measures on lower income countries' agricultural exports", *Policy issues in international trade and commodities Research study* for UNCTAD analyses trade relations with EU. According to the study results, there are two dynamics: (1) The EU SPS measures result in relatively higher burdens for LDCs and reduce their agricultural exports by about 3 billion \$US, representing about 14 per cent of agricultural trade from LDCs to the EU; (2)

Participation in a trade agreement seems to support LDCs to overcome the costs of SPS measures. Indeed, these agreements have little effect on reducing SPS compliance costs for developed and developing countries.

Thereby, LDCs need well targeted technical assistance to overcome the cost of compliance related to SPS measures.

Who are (should be) the Beneficiaries of the WTO SPS Agreement?

Consumers from all countries should benefit from this agreement as well as exporters and importers of agricultural products that benefit from the elimination of unjustified barriers to their products.

Developing countries benefit from the SPS Agreement because it provides an international framework for SPS arrangements between countries, regardless of their political and economic strength or technological capacity. Without such an agreement, these countries may not have the leverage to challenge unjustified trade restrictions. The SPS Agreement provides to each governments to accept imported products when they meet their SPS requirements. Thought, for some members the SPS requirements are difficult to meet. The SPS Agreement can provide technical assistance if necessary to help them to improve their people's health, livestock and crops.

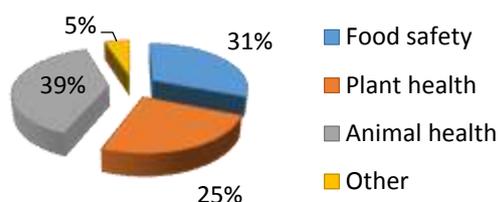
New Specific Trade Concerns (STCs)

Within 21 years of existence of the WTO, over 403 STCs were raised into food safety, animal

⁷ <http://spsims.wto.org/>

and plants health. In 2015, 41 STCs were brought to the Committee’s attention. The 41 STCs content 21 new STCs, 18 previously raise and 2 STCs reported as resolve. According to the Trade concern by subject (Figure 1), most of the SPCs concern animal health in 2015.

Figure 1. Trade concerns by subject in 2015



Source: Committee on SPS measures (2016) *Specific Trade*

Since 2010, only 10 specific trade concerns have been resolved out of 113 STCs that were brought to the Committee’s attention (Table.1). It shows that most of the complaints are spotted by developing countries and LDCs and they mainly denounced developed countries (USA, Japan, Canada, etc.).

In the last month, a number of trade measures dealing with food safety, animal and plants health were reviewed by the SPS Committee. Five of them were dealing with animal health.

The Next meeting planned by the SPS Committee will be held in June 2016.

Table. 1. Resolved Specific Trade Concerns, 2010-2015

SPC number	Description of Measure	Member(s) Maintaining the Measure	Member(s) Raising the Issue
292	Prohibition of ornamental plants larger than 18 inches	USA	Costa Rica
297	Registration requirement for pet food export enterprises	Canada	China
308	Restrictions on bovines and bubalines for reproduction	Brazil	Colombia
311	Restrictions on poultry and poultry products	Albania, Croatia	Chile
312	Restrictions on beef exports due to BSE-related concerns	Mexico	Nicaragua
328	US default MRLs, limits of determination or limits of quantification on basmati rice	USA	India
334	MRLs for roasted and powdered coffee	Chinese Taipei	India
342	Restrictions on shrimp due to anti-oxidant residues	Japan	India
360	Import policy in swallow nests	China	Indonesia
385	General import restrictions due to highly pathogenic avian influenza	Certain Members	European Union

Source: Committee on SPS measures (2016) *Specific Trade concerns, WTO*

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WTO website: www.wto.org

Legal text, https://www.wto.org/english/docs_e/legal_e/gatt47_01_e.htm



CUTS International, Geneva

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