

## **Standards and regulations: capacity-building for food exports**

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## **Overview of the SPS Agreement**



## Key features of the Agreement



- Scope
- Main objectives
- Justification of measures
  - basis in science
  - harmonisation
  - risk assessment
- Minimising trade restriction
  - adaptation to regional conditions
  - equivalence
- Transparency
- Dispute settlement

## Scope



- The SPS Agreement covers certain kinds of actions taken by governments that potentially affect trade
  - quarantine controls and other biosecurity measures
  - food safety measures like application of food standards
- The common purpose of these measures is to protect human, animal or plant life or health against specified risk

## Main objectives



The basic aim of the SPS Agreement is to maintain the sovereign right of any government to provide the level of health protection it deems appropriate

- while ensuring that these sovereign rights are not misused for protectionist purposes and do not result in unnecessary barriers to international trade

## An SPS measure is intended ...



to protect:

against:

human life or health

risks arising from: additives, contaminants, toxins or disease-causing organisms in food or beverages; or from diseases carried by animals, plants or their products; or from pests

animal life or health

risks arising from: additives, contaminants, toxins or disease-causing organisms in food or feedstuffs; or from pests, diseases, or disease-carrying organisms or disease-causing organisms

## An SPS measure is intended ...



to protect:

against:

plant life or  
health

risks arising from entry,  
establishment or spread of pests,  
diseases, or disease-carrying  
organisms or disease-causing  
organisms

a country

damage caused by the entry,  
establishment or spread of pests

## Types of measures



SPS measures include laws, decrees, regulations, requirements and procedures, and can take many different forms:

- end product criteria
- quarantine measures
- processing/production requirements
- certification
- methods of risk assessment
- inspection procedures
- testing procedures
- approval procedures
- sampling procedures
- food safety-related labelling and packaging requirements

## How is the objective achieved?



- The Agreement achieves its aim by setting out rules for the development and use of SPS measures
  - in effect, it codifies the rights and obligations of WTO Member countries in this field
- The Agreement does not presume that trade is more important than the achievement of health and safety goals
  - legitimate measures are fully protected by the Agreement

## Health protection versus economic protection



- All countries take action, in the form of SPS measures, to protect the health of humans, animals and plants
- Typically, measures are requirements on domestic or imported products
- SPS measures have the ability to shelter domestic producers from foreign competition
- It can be difficult to distinguish legitimate protective measures from SPS measures that are motivated by trade protectionism

## Health protection versus economic protection (continued)



- Domestic stakeholders often apply pressure to their national governments to introduce or maintain SPS measures that will make it more difficult or impossible for imports to be competitive
- In effect the SPS Agreement establishes a mechanism for distinguishing between legitimate and illegitimate SPS measures
- It does this by identifying several ways in which measures can be justified
  - and providing access to the WTO dispute settlement procedure to resolve any disagreements between Members

## Justification of measures



- SPS measures are defined as measures that are intended to protect human, animal or plant life or health against certain, specified kinds of risks. They can only be justified in terms of that objective
  - SPS measures may, incidentally, also have other effects and even other purposes, but these cannot be used to justify them in any way.

## Justification of measures (continued)



- All SPS measures must be based on **scientific principles**, and cannot be maintained without **sufficient scientific evidence**
  - unless they are provisional measures that have been put in place until the relevant information can be collected.
- The SPS Agreement requires that SPS measures have an **objective basis**.

## Justification of measures (continued)



- Measures that are based on relevant international standards, guidelines or recommendations are deemed to be justified
  - and use of such norms is strongly encouraged
- If international standards, guidelines or recommendations are not followed, then measures must be justified by an appropriate risk assessment

## Minimising trade restrictions



- It is a fundamental principle of the Agreement that the appropriate level of protection of human, animal or plant life or health should be achieved in the least trade-restrictive way
- This idea is reflected explicitly in a specific obligation, and also implicitly in two kinds of special circumstances:
  - adaptation to regional conditions
  - equivalence of measures

## Transparency



- For the Agreement to be effective it is essential for each Member to know, or be able to find out, what other Members are doing with their SPS measures, and why
- The Agreement specifies active and passive mechanisms to ensure that this transparency exists. Key elements are:
  - a notification procedure and the establishment of enquiry points
  - a Committee on SPS Measures

## Dispute settlement



- Effective implementation of the Agreement requires legal procedures for enforcement
- The WTO has a dispute settlement mechanism that allows a Member to challenge the actions of another Member
  - compliance is reinforced by provisions for penalties
- The WTO's Dispute Settlement Understanding applies to the SPS Agreement

## Overview of the TBT Agreement



## TBT History



- Tokyo Round (1970s): “Standards Code”
  - voluntary participation
- New TBT Agreement: since 1995
  - mandatory for all WTO Members

## TBT definitions



- **Technical regulations** are mandatory
- **Standards** are not mandatory
- **Conformity Assessment Procedures (CAP)** are used to determine that requirements in technical regulations and standards are met

## Conformity assessment



- manufacturer's declaration of conformity
  - "first party"
- conformity assessment by government
  - "second party"
- conformity assessment by independent private body
  - "third party"

## International standard-setting organisations



- the International Organization for Standardization (ISO)
- the International Telecommunication Union (ITU)
- the International Electrotechnical Commission (IEC)
- the Codex Alimentarius Commission

## TBT basic principles



- right to adopt technical regulations, standards and conformity assessment procedures
- non-discrimination
- no unnecessary obstacles to trade
- harmonization
- equivalence
- recognition/mutual recognition
- transparency

## Principles: non-discrimination



- Most-favoured nation:
  - equal treatment for like goods from different countries
- National treatment
  - equal treatment for like foreign and domestic products
- Applies to preparation, adoption and application

## Principles: no unnecessary obstacles to trade



- Legitimate objective:
  - national security
  - prevention of deceptive practices
  - human health or safety
  - animal and plant life or health
  - environment
- Not more trade restrictive than necessary
  - risks of non-fulfilment
  - relevant factors: scientific and technical information, processing technology, intended end-uses of product

## Principles: harmonisation



- Different standards reduce economies of scale, increase conformity assessment costs, increase information and surprise costs.
- Use of international standards required
  - exceptions:
    - climatic, geographic or technological problems
    - national security, health and safety, etc.
- Participation in standardizing bodies required

## Principles: equivalence



- Consider recognition of other Members' regulations as equivalent, even though different
  - equivalence does not mean sameness

## Principles: (mutual) recognition

- accept other Members' conformity assessment results
  - mutual recognition encouraged

## Principles: transparency



- Required to notify -
  - implementation of TBT Agreement
  - regulations and CAPs if
    - not based on international standard, and
    - significant effect on trade
  - standards through ISO/IEC
  - bilateral and multilateral agreements

## Principles: transparency (cont.)



- Enquiry Points
  - provide information on
    - technical regulations and standards
    - conformity assessment procedures
    - membership in standardizing bodies
    - bilateral or multilateral arrangements
- TBT Committee
  - forum for questions and consultations
    - for example, discussion of GMOs

## Code of Good Practice



- adopted by bodies setting non-mandatory standards (central government, local or non-governmental)
- applies almost the same principles that apply to mandatory regulations
- avoid duplication
- transparency

Annex 3

## Technical assistance



Members to provide advice /assistance\* on

- preparing regulations
- meeting other Members' regulations
- assessing conformity
- establishing relevant bodies
- participating in international bodies

\* *Priority for least-developed countries*

## Special and differential treatment for developing countries



*All Members to:*

- take into account special needs of developing countries
- facilitate participation in international standard setting
- facilitate development of international standards for products of special interest for developing countries

*Developing-country members:*

- only use international standards if appropriate
- time-limited exceptions



## Improving market access for exports



### Comply, contest or complain?

- Market access conditions are set by importers
  - who must conform with SPS and TBT Agreements
- Exporters have a choice:
  - comply with the importing country's requirements
  - negotiate with the importing country for easier or more convenient access conditions
  - complain to the WTO's Dispute Settlement Body

## Compliance



- Few SPS/TBT requirements in importing countries can be varied in the short term
  - importers have formal procedures to follow
  - measures are embedded in a political/economic environment (see durian!).
- Compliance can be very difficult and complex
  - requiring complementary public and private sector activities that must be sustained over time.
- Building of public sector SPS capacity to support exports requires planning.

## Contest/complain



- There are strategies for trying to change import conditions
  - simple or complex.
- A common feature of these strategies should be that activities at the national level are driven by prospects of selling more.

## Elements of a market access strategy (to improve access conditions)



- Identify impediments to exports caused by technical requirements applied by importing countries
- Classify barriers as to whether SPS or TBT measures
- Clarify the issues with the authorities of the importing countries
- Make a priority list of barriers to be addressed

## Elements of a market access strategy (continued)



- Design a program of activities to achieve better market access, starting with the highest priority items
- Implement the program by stages, starting with bilateral initiatives
- Commence multilateral initiatives when appropriate
- Monitor progress and re-design the strategy/program if necessary

## Identifying impediments to exports



- Exports may be limited by technical barriers in various ways:
  - bans on trade in some products
  - restrictions on other products
  - threats of additional restrictions
  - no basis established for imports of new products
- The SPS Agreement requires WTO Members to respond to a request to explain the basis of their restrictions on imports:
  - Article 5.8, and Article 7/Annex B

## Identifying impediments to exports (continued)



- Government agencies and businesses (exporters and intending exporters) should cooperate in identifying the most important barriers to trade:
  - some countries develop and publish lists of the countries which restrict imports of their products, and they up-date the list regularly

## Classifying barriers (SPS or TBT)



- The rights and obligations set out in the SPS and TBT Agreements are similar in principle, but there are important differences in the detail
- For full exercise of rights as a WTO Member, and for developing the market access strategy, it is essential to decide which WTO Agreement is applicable to each specific technical barrier to trade

## Clarifying the issues



- Market access strategy must be based on a clear understanding of the nature of and rationale for each technical barrier
- The main channel for clarifying why barriers are imposed (and what is required to change the situation) is dialogue between the corresponding government agencies in the exporting and importing countries
- Parallel business-to-business contacts may also help

## Making a priority list (1/2)



- Considerations relevant to priority-setting include:
  - is it likely that a barrier can be removed by development and submission of a technical case?
  - will negotiation be enough or will formal dispute settlement action be needed?
  - will success result in a significant increase in beneficial export trade?
  - should preference be given to short-term or long-term gains?

## Making a priority list (continued)



- Resources available to government agencies and business to pursue better market access are limited:
  - how do the costs compare with the potential benefits?
  - what is the best allocation of resources?
- Prioritisation requires the input of government agencies and the businesses that wish to export more.

## Designing a program



- The program for implementing the market access strategy should assign roles to both government agencies and business
- The program should allocate resources according to the agreed priorities
- An appropriate institutional structure is needed to develop and implement the market access agenda
  - allowing both government agencies and business representatives to contribute

## Market access strategy using the SPS and TBT Agreements



### Elements of the strategy – **bilateral**

- Development of market access case based on advice from importing countries of their (legitimate) information needs
- Dialogue with the importing country on agency-to-agency basis
  - to obtain priority for consideration of access request
  - and to minimise processing delays

## Market access strategy using the SPS and TBT Agreements (continued)



### Elements of strategy – **multilateral**

- Discussion in margins of SPS Committee
- Raise as matter of specific trade interest in SPS Committee
- “good offices”
- Formal consultations
- WTO dispute settlement

✓ long  
✓ expensive  
✓ provocative  
✓ effective

## Monitoring/re-designing



- Progress of strategy implementation should be reviewed regularly
  - to note developments
  - to revise priorities
  - to set new goals
  - to change tactics
  - to report to stakeholders

## Who can help?



- 'good offices' of-
  - the WTO secretariat, and
  - the international standard-setting organisations (Codex, OIE, IPPC)
- Trading partners
- Technical assistance
  - capacity building
  - specific studies

## Questions for discussion



- Is this market access strategy approach applicable to your country?
- Who should have responsibility for implementing it?
- What would be the main impediments to implementing such a strategy?
- What are the main arguments against using formal WTO dispute settlement procedures to enhance market access?



Thank you!

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