How to address SPS & TBT trade problems?

Gretchen H. Stanton
Agriculture and Commodities Division
World Trade Organization
Resolving Trade Problems - Exercise

Sour Grapes
Ways to Address Trade Concerns

1. Bilateral and/or Regional Efforts

2. SPS/TBT Committee – Specific Trade Concerns

3. *Good Offices by the Chair of the SPS Committee*

4. WTO Dispute Settlement System
Bilateral and/or Regional Efforts

Suggested Actions:

- Contact Enquiry Point
- Informal discussions on the margins of the SPS/ TBT Committee meetings
- Request information through diplomatic channels
Request an Explanation

• SPS Article 5.8
  “an explanation of the reasons for such SPS measure may be requested and shall be provided by the Member maintaining the measure.”

• TBT Article 2.5
  “… shall, upon the request of another Member, explain the justification of the technical regulation...”
Ways to Address SPS Trade Concerns

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2. SPS/TBT Committee – Specific Trade Concerns

3. Good Offices by the Chair of the SPS Committee

4. WTO Dispute Settlement System
What is a Specific Trade Concern?

A specific **trade complaint** raised by Members in the SPS/TBT Committee in relation to **SPS/TBT measures maintained by other Member(s).**

(whether draft measures or measures currently in force)

- All Members can raise a specific complaint about SPS/TBT measures imposed by other Members in the SPS/TBT Committee.
Suggested Actions:

- Consult previous Specific Trade Concerns (STCs)
- Communicate intention to raise an STC
  
  At least 11 calendar days before the meeting
  - In writing
  - Inform the other Member concerned
- Seek support from other interested Members
- Present the STC at the SPS/TBT Committee Meeting
382 Total (+21 in 2015)

G/SPS/GEN/204/Rev.15
TBT Specific Trade Concerns

1995-2014

453 Total
STCs by sector

**TBT**
- Agriculture: 65%
- Non-Agriculture: 6%
- Agriculture and Non-Agriculture: 29%

**SPS**
- Agriculture: 6%
- Non-Agriculture: 94%

Source: WTR 2012, Section C.2(d)
SPS Specific Trade Concerns by Subject (1995-2014)

- **Animal Health**: 39%
- **Food Safety**: 31%
- **Plant Health**: 25%
- **Other**: 5%

Source: G/SPS/GEN/204/Rev.15,
SPS Information Management System (http://spsims.wto.org)
**Number of Members**

- **Members Maintaining the Measure**
  - Developed Countries: 213
  - Developing Countries: 197
  - Least-Developed Countries: 1

- **Supporting Members**
  - Developed Countries: 183
  - Developing Countries: 277
  - Least-Developed Countries: 3

- **Members Raising the Issue**
  - Developed Countries: 223
  - Developing Countries: 215
  - Least-Developed Countries: 5

*G/SPS/GEN/204/Rev.15*
# Top 10 Members Maintaining Measures Complained Against (1995-2014) - SPS

<table>
<thead>
<tr>
<th>Member</th>
<th>Number of STCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union</td>
<td>78</td>
</tr>
<tr>
<td>United States</td>
<td>45</td>
</tr>
<tr>
<td>Japan</td>
<td>29</td>
</tr>
<tr>
<td>China</td>
<td>24</td>
</tr>
<tr>
<td>Australia</td>
<td>17</td>
</tr>
<tr>
<td>Brazil</td>
<td>15</td>
</tr>
<tr>
<td>Indonesia</td>
<td>13</td>
</tr>
<tr>
<td>Korea, Republic of</td>
<td>13</td>
</tr>
<tr>
<td>Canada</td>
<td>11</td>
</tr>
<tr>
<td>Mexico</td>
<td>11</td>
</tr>
</tbody>
</table>

SPS Information Management System (http://spsims.wto.org)
## Top 10 Members Raising Specific Trade Concerns (1995-2014) - SPS

<table>
<thead>
<tr>
<th>Member</th>
<th>Number of STCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>83</td>
</tr>
<tr>
<td>European Union</td>
<td>77</td>
</tr>
<tr>
<td>Argentina</td>
<td>42</td>
</tr>
<tr>
<td>China</td>
<td>32</td>
</tr>
<tr>
<td>Brazil</td>
<td>28</td>
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<tr>
<td>Canada</td>
<td>24</td>
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<tr>
<td>India</td>
<td>20</td>
</tr>
<tr>
<td>Australia</td>
<td>9</td>
</tr>
<tr>
<td>Chile</td>
<td>9</td>
</tr>
<tr>
<td>Ecuador</td>
<td>9</td>
</tr>
</tbody>
</table>

SPS Information Management System (http://spsims.wto.org)
Top 10 Members Maintaining Measures Complained Against (1995-2013) - TBT

- EU: 89
- China: 45
- US: 44
- Korea: 30
- India: 20
- Brazil: 19
- Indonesia: 17
- Mexico: 12
- Japan: 11
- Canada: 10

TBT Information Management System (http://tbtims.wto.org)
TBT Notifications by Objective

- Protection of Human health or Safety: 5961
- Prevention of deceptive practices: 1807
- Protection of the environment: 1441
- Quality requirements: 1269
- Consumer Info: 517
- Lowering or removal of trade barriers: 337
- Adoption of Domestic Law: 293
- Harmonization: 280
- Protection of animal or plant life or health: 215
- Trade facilitation: 196
- Cost saving and increasing productivity: 65
- National Security: 39
- Not Specified: 37

TBT Information Management System (http://tbtims.wto.org)
### SPS Specific Trade Concerns

<table>
<thead>
<tr>
<th>Member</th>
<th>SPS STCs raised</th>
<th>SPS STCs supported</th>
<th>SPS measure maintained</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese Taipei</td>
<td>2</td>
<td>2</td>
<td>9</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>2</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>India</td>
<td>21</td>
<td>9</td>
<td>11</td>
</tr>
<tr>
<td>Indonesia</td>
<td>4</td>
<td>6</td>
<td>13</td>
</tr>
<tr>
<td>Pakistan</td>
<td>1</td>
<td>5</td>
<td>0</td>
</tr>
<tr>
<td>Member</td>
<td>SPS STCs raised</td>
<td>SPS STCs supported</td>
<td>SPS measure maintained</td>
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<tr>
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<td>--------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Philippines</td>
<td>5</td>
<td>14</td>
<td>3</td>
</tr>
<tr>
<td>Singapore</td>
<td>0</td>
<td>1</td>
<td>2</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>1</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Thailand</td>
<td>9</td>
<td>7</td>
<td>3</td>
</tr>
<tr>
<td>Vietnam</td>
<td>0</td>
<td>3</td>
<td>1</td>
</tr>
</tbody>
</table>
## TBT Specific Trade Concerns

<table>
<thead>
<tr>
<th>Member</th>
<th>TBT STCs raised</th>
<th>TBT measure maintained</th>
</tr>
</thead>
<tbody>
<tr>
<td>Chinese Taipei</td>
<td>4</td>
<td>7</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>4</td>
<td>2</td>
</tr>
<tr>
<td>India</td>
<td>12</td>
<td>21</td>
</tr>
<tr>
<td>Indonesia</td>
<td>23</td>
<td>20</td>
</tr>
<tr>
<td>Member</td>
<td>TBT STCs raised</td>
<td>TBT measure maintained</td>
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<tr>
<td>------------</td>
<td>----------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>Pakistan</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Philippines</td>
<td>8</td>
<td>1</td>
</tr>
<tr>
<td>Singapore</td>
<td>2</td>
<td>0</td>
</tr>
<tr>
<td>Thailand</td>
<td>11</td>
<td>9</td>
</tr>
<tr>
<td>Vietnam</td>
<td>0</td>
<td>4</td>
</tr>
<tr>
<td>#°</td>
<td>Title</td>
<td>Member raising the concern</td>
</tr>
<tr>
<td>----</td>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>85</td>
<td>Import restrictions on prawns and prawn products; revised generic IRA for prawns and prawn products</td>
<td>China, <strong>Thailand</strong> <em>(raising)</em>; Sri Lanka, Indonesia, Malaysia, Philippines, Viet Nam, European Union <em>(supporting)</em></td>
</tr>
<tr>
<td>231</td>
<td>Restrictions on cinnamon</td>
<td><strong>Sri Lanka</strong> <em>(raising)</em>; China <em>(supporting)</em></td>
</tr>
<tr>
<td>379</td>
<td>Russia's market access requirements for bovine meat in compliance with OIE requirements</td>
<td><strong>India</strong></td>
</tr>
</tbody>
</table>
## Regional Specific Trade Concerns (STCs) 
### TBT - examples

<table>
<thead>
<tr>
<th>#</th>
<th>Title</th>
<th>Member(s) concerned</th>
<th>Members maintaining the measure</th>
<th>First date raised</th>
</tr>
</thead>
<tbody>
<tr>
<td>466</td>
<td>China – Registration fees for Drugs and Medical Device Products</td>
<td>Canada, US, Korea</td>
<td>China</td>
<td>17/06/2015</td>
</tr>
<tr>
<td>367</td>
<td>India – Electronics and Information Technology Goods</td>
<td>Canada, EU, Japan, Korea, Norway, Switzerland, US</td>
<td>India</td>
<td>18/03/2015</td>
</tr>
<tr>
<td>467</td>
<td>Chinese Taipei - GMO Labelling</td>
<td>Canada, New Zealand, USA</td>
<td>Chinese Taipei</td>
<td>17/06/2015</td>
</tr>
</tbody>
</table>
Ways to Address SPS Trade Concerns

1. Bilateral and/or Regional Efforts

2. SPS/TBT Committee – Specific Trade Concerns

3. Good Offices by the Chair of the SPS Committee

4. WTO Dispute Settlement System
Good Offices of the Chair of the SPS Committee

Working procedures of Committee (March 1995), provide that:

“With respect to any matter which has been raised under the Agreement, the Chairperson, may, at the request of the Members directly concerned, **assist** them in dealing with the matter in question...”

Procedure adopted in the SPS Committee

G/SPS/61
Review of TBT and SPS measures

Request clarification from Enquiry Point

Bilateral consultations

TBT

〜 20,350 TBT notifications

〜 472 “STCs”

5 Disputes (with Panel and AB reports)

SPS

〜 14,600 SPS notifications

〜 403 “STCs”

12 Disputes (with Panel reports)

Dispute(s)

(not raised formally)
Ways to Address SPS Trade Concerns

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2. SPS Committee – Specific Trade Concerns

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4. WTO Dispute Settlement System
What is a WTO dispute?

- Arises when a Member believes another is violating an agreement or commitment made
- Only involves governments
- Not a WTO dispute until the Member country notifies WTO Secretariat that a dispute exists
4. WTO Dispute Settlement System - Main Stages

I. Consultation phase

II. Panel review

III. [AB review]

IV. Adoption of report(s) by the DSB

V. Implementation

Good offices, conciliation and mediation possible at any moment
The Panel Process

EXPERTS → PANEL → WTO Dispute Settlement Body → APPEAL → Appellate Body

DSU Art. 21.5 - evaluating compliance
Dispute Timetable

1 Year

Consultations (60 days)
Panel appointment (20 days)
Final report to parties
Final report to Members
DSB adopts report
DSB adopts appeals report

3 months

APPEAL
Consistency of SPS Measure

1. Is this an SPS measure? (Art. 1, Annex A)
2. Is there a scientific justification? (Art. 2.2)
   a. Is it based on a relevant international standard (Art. 3) OR
   b. Based on a risk assessment (Art. 5.1-5.3)? OR
   c. Is this a provisional measure under Art. 5.7
3. Is the measure consistent? (Art. 5.5)?
4. Is the measure least trade restrictive (Art. 5.6 /2.2)
5. Was the measure notified? (Art. 7, Annex B)
6. Is any conformity assessment done without undue delay, equitable, etc. (Art. 8, Annex C)
Consistency of a TBT measure

1. Is this a Technical Regulation, CAP or standard?
2. What is the legitimate objective?
3. Is it more restrictive than necessary, taking into account: contribution to objective, trade-restrictiveness, risks of non-fulfilment, alternative measures
4. Is there discrimination? Are there like products? Is there a “legitimate regulatory distinction”?
5. Is there a relevant international standard? Is measure “based on” OR “in accordance” with int’l standard?
6. If CAP, completed expeditiously, equitably, etc.?
7. Was the measure duly notified/published?
Resolving Trade Problems - Exercise

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SPS Dispute Panels

Food safety

US/Canada vs. EC - Hormones (WT/DS26, 48)
(EC vs. US/Canada – Continued Suspension (WT/DS320, 321))

China vs. US – Poultry (WT/DS392)

Canada vs. Korea - BSE (WT/DS391)

Japan vs. Korea – Radionuclides (WT/DS495)

Food safety + plant and animal health (biodiversity considerations)

US/Canada/Argentina vs. EC - GMOs (WT/DS291, 292, 293)
Animal health
Canada / US vs. Australia - Salmon (WT/DS18, 21)
US vs. India – Avian Influenza (WT/DS430)
Argentina vs. US – Foot-and-Mouth Disease (FMD) (WT/DS447)
EU vs - Russia -- African Swine Fever (WT/DS475)

Plant protection
US vs. Japan - Variety Testing (WT/DS76)
US vs. Japan – Fire blight (WT/DS245)
New Zealand vs. Australia - Apples (WT/DS367)
Recent SPS Dispute Requests

• in 2012
  – Argentina’s complaint against US re: measures affecting the importation of fresh lemons (DS 448): In consultations

• in 2014
  – Brazil’s complaint against Indonesia re: measures on importation of chicken meat and chicken products (DS 484): In consultations
<table>
<thead>
<tr>
<th>Case/Art</th>
<th>Scientific justification (2.2 / 5.7)</th>
<th>Harmonization (3.1 – 3.3)</th>
<th>Equivalence (4)</th>
<th>Risk assess. (5.1 - 5.3)</th>
<th>Consistency (5.5)</th>
<th>Least trade restr. (5.6)</th>
<th>Regionalization (Art. 6)</th>
<th>Transparency (7 / Annex B)</th>
<th>Approval proced. (8 / Annex C)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>X (5.7)</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
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Main TBT disputes

- **US vs. Mexico** – *Tuna II* (DS381) – compliance proceedings on-going (2008-...)
- **US vs. Mexico/Canada** – *COOL* (DS386, DS384) – authorization to retaliate requested (2008-...)
- **EC vs. Canada/Norway** – *Seals Products* (DS410) – report(s) adopted with recommendations (2009-...)
- **US vs. Indonesia** – *Clove Cigarettes* (DS406) – mutually acceptable solution notified (2010-2014)
Some recent disputes citing the TBT Agreement

2013

- Australia’s plain packaging requirements on tobacco products: complaints by Cuba (DS 458), Indonesia (DS467), Ukraine (DS434), Honduras (DS435), Dominican Republic (DS441) - Panel composed

2014

- Indonesia’s measures on importation of chicken meat and chicken products (DS 484): complaint by Brazil in consultations

2015

- Russian Federation’s measures affecting the importation of railway equipment: complaint by Ukraine (DS499): in consultations
Where to get more information?

Dispute settlement gateway
http://www.wto.org/english/tratop_e/dispu_e.htm

Panel and Appellate Body report
http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm

SPS gateway
http://www.wto.org/english/tratop_e/sps/_e.htm