WTO Agreement on Sanitary and Phytosanitary Measures

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Delhi, 28-29 October 2013
Why an Agreement SPS?

- Before 1995: GATT Art. XX (b) & TBT
- Agreement on Agriculture:
  - Lower tariffs
  - Lower domestic support
  - Lower export subsidies
- Linking health protection, protectionism and trade measures
- Sets clear rules
- More details, rights and obligations
Importance of SPS Measures

Tariffs and Non-Tariff Barriers to Trade

- 1947 GATT established
- 1962 Pre-Kennedy Round
- 1972 Post-Kennedy Round
- 1987 Post-Tokyo Round
- 1995 Post-Uruguay Round

Average Tariff %

- 40%
- > 4%
The SPS Agreement

- The Agreement entered into force with the establishment of the World Trade Organization on 1 January 1995.
- It sets out basic rules for food safety and animal and plant health requirements.
- Allows countries to set own standards but regulations should be based on scientific evidence.
Main Purpose of Agreement:

- to maintain the sovereign right of any Member to provide the level of health protection it deems appropriate,

- but, to ensure that these sovereign rights are not misused for purely protectionist purposes, do not result in *unnecessary* barriers to international trade, and are not *inconsistent* with the SPS Agreement.
Structure of the Agreement

Basic provisions

- Article 1 - scope
- Article 2 - rights and obligations
- Article 3 - harmonisation
- Article 5 - risk analysis
- Article 7 – transparency

“Special” provisions

- Article 4 - equivalence
- Article 6 - regionalisation
- Article 8 - control, inspection and approval procedures

Developing country provisions

- Article 9 - technical assistance
- Article 10 - special and differential treatment
- Article 14 - entry into force

Machinery provisions

- Article 11 - dispute settlement
- Article 12 - administration
- Article 13 - implementation
The WTO/SPS Agreement

Minimization of negative effects on trade

MAIN PRINCIPLES

- Non-discrimination
- Measures based on science
- Transparency
- Harmonization
- Equivalence
- Risk assessment
- Recognition of pest- or disease-free areas
Basic rights and obligations
Article 2

Harmonization
Article 3

Risk assessment
Article 5

Expert advice
Article 11.2

International organizations
Article 12.3
Basic rights and obligations I

Article 2

WTO members have the **right** to adopt measures to protect human, animal or plant life or health (article 2.2)

But

These must not constitute unjustifiable **discrimination** between Members or a disguised **restriction** on international Trade (article 2.3)
Basic rights and obligations II

Article 2.2

“Members shall ensure that any sanitary or phytosanitary measure is:

1. applied only to the extent necessary
2. based on scientific principles
3. not maintained without sufficient scientific evidence
4. ... except as provided for in paragraph 7 of Article 5.”
Article 3: Harmonization

“To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their SPS measures on international standards, guidelines or recommendations ...”

Article 3.1
Article 3: Harmonization II

International standards

“The relevant international organizations”

food safety

animal health

plant health

CODEX

OIE

IPPC
Article 3: Harmonization III

Standard-Setting Organizations

- food safety
  - CODEX
- animal health
  - OIE
- plant health
  - IPPC

The “3 sisters”

Codex = joint FAO/WHO Codex Alimentarius Commission
OIE = Office international des epizooties
IPPC = International Plant Protection Convention (FAO)
Article 3: Harmonization IV

Examples of standards

Codex:
MRL on pesticide *cyhexatin* in apples: 0.2 mg/kg

OIE:
Recommendations for importation from a country free from avian influenza

IPPC:
Systems approach for pest risk management of fruit flies
Article 4: Equivalence

- An importing country must allow an exporting country to use different measures from those used or specified by the importing country if the different measures have the same effect in achieving the importing country’s appropriate level of protection.

- The exporting country must be able to objectively demonstrate equivalence.
Article 4: Equivalence II

WTO Members are obligated to:

- Accept SPS measures of other Members as equivalent to their own, even if different, if exporting country objectively demonstrates to importing country that its measures achieve importing country’s appropriate level of SPS protection.

- Enter into consultations upon request with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specific SPS measures.
Article 5: Risk assessment

Food-borne risk

Evaluation of potential for adverse effects on human or animal health.

Disease or pest risk

Evaluation of the likelihood of entry, spread and establishment according to the SPS measures which might be applied and the associated biological and economic consequences.
Article 5: Risk assessment II

Examples of standards

Food safety
- Evaluation of the potential for adverse effects on human/animal health.
- Arising from presence of additives, contaminants, toxins etc.

Pests / diseases
- Likelihood of entry or spread of a pest or disease according to the SPS measures which might be applied.
- And of the associated potential biological and economic consequences.
Article 5: Risk assessment III

No methodology but:

- Take into account “risk assessment techniques developed by the relevant international organizations” (Art. 5.1)

- Certain scientific and technical factors, such as: relevant ecological and environmental conditions (Art. 5.2)
Article 6: Adaptation to regional conditions

- Measures are to be adapted to the sanitary and phytosanitary characteristics of the area from which a product originates and the area to which it is going.

- Regions free of pests or diseases (or of low prevalence) are to be recognised as such and access conditions to be set accordingly.
Example

- A country that grows cattle may have intermittent outbreaks of foot and mouth disease in one part of the country, where animals are vaccinated against the disease.

- The remainder of the country may be effectively walled off from the disease by restrictions on the movement of cattle and other animals, meat, fodder and so forth.

- If the country wants to export beef to Europe, it may be able to export meat on the bone from the FMD-free area, and only boneless meat from the area where it is still necessary to vaccinate.
Article 7: Transparency

- Article 7
- Article 5.8
- Article 12
- Annex B
  - Publication of regulation
  - Enquiry points
  - Notification procedures
Article 7: Transparency II

- All SPS regulations (including laws, decrees or ordinances) adopted must be published promptly in such a way as to enable interested parties to become acquainted with the regulations.

- Except in urgent circumstances, exporters are to be given a reasonable period of time between SPS regulation publication and entry into force in order to adapt products and methods of production to changed requirements.
Article 7: Transparency III

When an international standard does not exist, or where a proposed SPS measure is substantially different from the international measure, the adopting country must:

- Publish a notice
- Notify relevant details through WTO
- Provide copies of measure on request
- Allow time to make comments on content of proposed measure
## Past five years

**Completed accessions and notification activity**

<table>
<thead>
<tr>
<th>Member</th>
<th>Year of accession</th>
<th>Regular SPS</th>
<th>Emergency SPS</th>
</tr>
</thead>
<tbody>
<tr>
<td>Lao PDR</td>
<td>2013</td>
<td>1</td>
<td>0</td>
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<tr>
<td>Tajikistan</td>
<td>2013</td>
<td>0</td>
<td>0</td>
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<tr>
<td>Russian Federation</td>
<td>2012</td>
<td>20</td>
<td>10</td>
</tr>
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<td>Samoa</td>
<td>2012</td>
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<td>0</td>
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<tr>
<td>Vanuatu</td>
<td>2005</td>
<td>11</td>
<td>8</td>
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<td>Ukraine</td>
<td>2004</td>
<td>25</td>
<td>67</td>
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<tr>
<td>Cape Verde</td>
<td>2004</td>
<td>0</td>
<td>0</td>
</tr>
</tbody>
</table>
Notifications submitted by year
Totals: 9,791 regular / 1,420 emergency / 3,322 corr./add.
What do you think?

A:
Under certain conditions, WTO Members may implement measures which restrict trade in food products.

B:
WTO Members shall not implement measures which restrict trade in food products.
What are these “certain conditions”?
What is a sanitary or phytosanitary measure?

Annex A

TO PROTECT...

- Human or animal life or health

FROM

- Additives, contaminants, toxins or disease organisms in foods, drink, feedstuffs

- Human life or health

FROM

- Plant- or animal carried diseases (zoonoses)

- Animal or plant life or health

FROM

- Pests, diseases, disease-causing organisms

- A country

FROM

- Other damage caused by entry, establishment or spread of pests
Some examples ...

TO PROTECT...

Human or animal life or health

FROM

Additives, contaminants, toxins or disease organisms in foods, drink, feedstuffs

Human life or health

Residue limits in seafood

Aflatoxin limits in nuts

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Some examples ...

TO PROTECT ...

Human life or health  FROM  Plant- or animal carried diseases (zoonoses)

Requirement for rabies vaccination  Avian influenza

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Some examples ...

TO PROTECT ...

Animal or plant life or health

FROM

Pests, diseases, disease-causing organisms

Foot-and-mouth disease
Prevent the spread of fruit fly

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Some examples ...

To protect ...

A country from other damage caused by entry, establishment or spread of pests

- Prevent entry of Zebra mussels via ballast water
- Regulate seeds to avoid entry of weeds
Ways to solve a dispute

1. Preliminary Stage
2. Bilateral Efforts
3. SPS Committee – Specific Trade Concerns
4. Good Offices by the Chair of the SPS Committee
5. Dispute Settlement of OIE and IPPC
6. WTO Dispute Settlement System
38 SPS-related trade disputes since the establishment of WTO

- 18 cases in 1995-2001
- 20 cases in 2002-2012

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38 SPS disputes between 1995-2012

- Among developed countries: 21
- From developed against developing: 5
- From developing against developed: 7
- Among developing countries: 5

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SPS Disputes

Food safety:
US/Canada vs. EC - Hormones (WT/DS26, 48)
China vs. US – Poultry (WT/DS392)

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)

Plant protection:
US vs Japan - Variety Testing (WT/DS76)
US vs. Japan – Fire blight (WT/DS245)
New Zealand vs. Australia - Apples (WT/DS367)
Example case: Measures affecting the import of apples

### Fire Blight (Apples) – the Facts at a Glance

<table>
<thead>
<tr>
<th>Official name</th>
<th>Japan – Measures Affecting the Importation of Apples (WT/DS245)</th>
</tr>
</thead>
</table>
| Parties       | Complainants: United States  
                 Respondent: Japan  
                 Third Parties: Australia, Brazil, Chinese Taipei, EC, New Zealand |
| Under dispute | Japan's set of requirements on apples from the US, including that they come from a fire blight free orchard, surrounded by a buffer zone, undergo at least three annual inspections, chlorine treatment, etc. In order to prevent the entry of Erwinia amylovora, the bacteria which causes fire blight, into Japan. The US claimed that there was no evidence that mature, symptomless apples could serve as a pathway for the disease. |
| Panel         | Mr. Michael Cartland, Chairman (Hong Kong)  
                 Ms. Kathy Ann Brown (St. Lucia)  
                 Mr. Christian Häberli (Switzerland) |
| Experts consulted | Dr. Klaus Geider, Professor of Molecular Genetics and Phytopathology -- Max-Planck-Institut für Zellbiologie, University of Heidelberg, Ladenburg, Germany  
                        Dr. Chris Hale, Science Capability Leader -- Insect Group (Plant Health and Fire Blight)  
                        HortResearch, Auckland, New Zealand  
                        Dr. Chris Hayward, Consultant on Bacterial Plant Diseases -- Indooroopilly, Queensland, Australia  
                        Dr. Ian Smith, Director-General -- European and Mediterranean Plant Protection Organization, Paris, France |
| Calendar      | Panels established: 3 June 2002  
                 Panel report issued: 15 July 2003  
                 Appellate Body report issued: 26 November 2003  
                 Reports adopted by DSB: 9 January 2004  
                 Mutually agreed implementation date: 30 June 2004 |
SPS Information Management System
http://spsims.wto.org

- Document symbol
- Date of distribution
- Members notifying
- Members involved in trade concerns
- Products covered
- Regions / countries likely to be affected
- Objective of notified measure
- Keywords
- Etc.
SPS Information Management System
http://spsims.wto.org

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## Benefits for the business community

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<thead>
<tr>
<th>Exporters’ advantages</th>
<th>Importers’ advantages</th>
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<tbody>
<tr>
<td>Transparency provides essential information</td>
<td>Protection of legitimate national measures</td>
</tr>
<tr>
<td>Prevention of unfair exclusion from market</td>
<td>Avoiding trade disputes</td>
</tr>
<tr>
<td>Market access strategy</td>
<td></td>
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</tbody>
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Afghanistan: Action Plan
Compliance with SPS Agreement

- Prepare a comprehensive plan of action for compliance with SPS Agreement in line with checklist of illustrative SPS issues, contained in WT/ACC/8.
- Assess and analyze existing SPS policy frameworks within the wider context of the WTO SPS Agreement and the international standards set by the Codex, OIE, (IPPC).
- Start the processes to verify whether or not the existing legislation complies with SPS agreement. If not which actions Afghanistan would be obligated to adhere the provisions of the SPS agreement.
  - Revisions of existing Laws on food safety, plant and animal health.
  - In some cases new legislation would be needed to bring the domestic regime in conformity with SPS Agreement.
Establish a dedicated unit to service the negotiation relating to SPS Agreement. The staff could be drawn from the specialist ministries/departments dealing with food safety, animal and plant health.

This unit may continue in existence & take the responsibility SPS notification and function as enquiry point after the accession.

SPS negotiator/ spokesman shall follow regularly the proceedings of SPS committee

Conduct SPS need assessment and Technical Assistance.

Negotiate transition period: Cambodia (3 years – Jan 2008). Nepal (2.5 years - 1 January 2007).
Thank you!
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