

# Impact of Regulations and Restrictions of Sanitary and Phytosanitary measures (SPS) on Public Health: An International Scenario



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## Abstract

The progressive liberalisation of world trade through, for example, successive rounds of General Agreement on Tariffs and Trade (GATT) negotiations and the establishment of the World Trade Organisation (WTO), however, has created opportunities for developing countries to access more easily developed country markets. In particular, recent efforts to reduce barriers to trade in agricultural and food products, including tariffs, quantitative restrictions and other trade barriers through the Uruguay Round, should facilitate enhanced export performance for traditional and non- traditional products. This paper presents an appraisal of the impact of SPS measures on developing countries and its impact on health and food and also an attempts to identify the specific problems that developing countries have in meeting SPS requirements in developed country markets, in particular the European Union (EU), and the degree to which the SPS Agreement can help to overcome these problems.

**Keywords:** Regulations and Restrictions, Liberalisation

## Introduction

Governments set standards to fulfil a variety of purposes, including the traditional ones such as minimizing risks and raising efficiency, as well as others, such as encouraging technological progress. Rules and regulations are also established in response to changes in public demand.<sup>1</sup>

## Aim of the Study

This study presents an assessment of the impact of International sanitary and Phytosanitary measures on Public health and how and analyze the appropriateness of risk assessment rules defined under Sanitary and Phytosanitary measures (SPS). SPS Agreement is one of the new elements in the WTO system and represents a part of the package of multilateral agreements, which WTO members are required to comply with. The main aim of the study is to find out the difference between of developed and developing countries while adopting these measures for the sake of public health.

The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) is one of the multilateral trade agreements, which all members of the World Trade Organization (WTO) are committed to observe. As the membership of the WTO grows, the principles embodied in the SPS Agreement are becoming de facto international rules governing the domestic and foreign trade of foods, feeds and other agricultural commodities. The compliance with the obligations of the SPS Agreement as well as the exercise of rights accorded by the Agreement are a key to ensuring food safety and animal and plant health in all countries, while promoting free trade and development.<sup>2</sup> The Uruguay Round of the Multilateral Trade Negotiations was successfully concluded in 1994. In January 1995, the WTO was established with its headquarters located in Geneva, Switzerland, replacing the Secretariat of the GATT (General Agreement on Tariffs and Trade). Although the long-standing framework of the GATT continues to exist in the form of GATT 1994, the WTO has seen a number of new rules added and the coordination mechanisms reinforced. SPS Agreement is one of the new elements in the WTO system and constitutes a part of the package of multilateral agreements, which WTO members are required to comply with. The SPS Agreement has its root in

the Technical Barriers to Trade (TBT) Agreement established by the Tokyo Round, as a Plurilateral agreement. The SPS Agreement can also be considered as complementing Article XX (b) of the GATT 1947, which allows contracting parties to apply measures "necessary to protect human, animal or plant life or health".<sup>3</sup> While this article was open to a range of different interpretations, the SPS Agreement has brought about, for the first time, more concrete and specific rules based on scientific approaches in this area. The main goal of the SPS Agreement is to prevent domestic SPS measures having unnecessary negative effects on international trade and their being misused for protectionist purposes. However, the Agreement fully recognizes the legitimate interest of countries in setting up rules to protect food safety and animal and plant health. More specifically, the SPS Agreement covers measures adopted by countries to protect human or animal life from food-borne risks; human health from animal or plant-carried diseases; and animal and plants from pests and diseases. Therefore, the specific aims of SPS measures are to ensure food safety and to prevent the spread of diseases among animals and plants. SPS measures can take the form of inspection of products, permission to use only certain additives in food, determination of maximum levels of pesticide residues, designation of disease-free areas, quarantine requirements, import bans, etc.<sup>4</sup> The SPS Agreement has 14 Articles, containing the rights and obligations that WTO members have agreed to. The SPS Agreement also has three annexes giving definitions of various terms, and elaborating on certain obligations in the body of the SPS Agreement.<sup>5</sup> These terms represent some of the key principles in the SPS Agreement. The SPS Agreement is administered by the Committee on Sanitary and Phytosanitary Measures (the 'SPS Committee'), in which all WTO members can participate. The SPS Committee is a forum for consultations where WTO members regularly come together to discuss SPS measures and their effects on trade, to oversee implementation of the SPS Agreement, and to seek to avoid potential dispute. Responsibility for implementing the SPS Agreement usually lies with the government departments and national repositories that have the expertise and information relevant to plant and animal health, as well as food safety matters. The implementing bodies typically include the National Plant Protection Organization (NPPO) and the equivalent animal health and food safety authorities.<sup>6</sup> Under the SPS Agreement member nations are obligated to notify and allow for comments on proposed standards affecting trade, among other obligations relevant to regulations affecting imported foods. The SPS Agreement applies only to SPS measures that may directly or indirectly affect international trade, and does not apply to measures that have no trade effect or are imposed by a private company or trade association.<sup>7</sup>

The SPS Agreement explicitly recognizes the right of governments to take measures to protect human, animal and plant health, as long as these are based on science, are necessary for the protection of

health, and do not unjustifiably discriminate among foreign sources of supply. Likewise, governments determine the food safety levels and animal and plant health protection in their countries. Neither the WTO nor any other international body does this. The SPS Agreement does, however, encourage governments to "harmonize" or base their national measures on the international standards, guidelines Sanitary and Phytosanitary Measures and recommendations developed in other international organizations. These organizations are: for food safety, the joint FAO/WHO Codex Alimentarius Commission (Codex); for animal health, the World Organization for Animal Health (previously known as the Office International des Epizooties - OIE); and for plant health, the International Plant Protection Convention (IPPC), based in FAO. Most WTO member governments have long participated in the work of these organizations to set limits for pesticides, contaminants or additives in food and to reduce the effects of pests and diseases on animal and plant health. The work of these technical organizations is scrutinized and reviewed internationally. One problem is that international standards are often so stringent that many countries have difficulties implementing them. But being encouraged to use international standards does not mean that countries have to accept them as a floor or ceiling for national standards. National standards do not violate the SPS Agreement simply by differing from international norms. Governments can set requirements that are stricter than the international standards. However, if governments do set their own standards, they may be required to justify their higher standards if the difference gives rise to a trade dispute. Their justification must be based on an analysis of scientific evidence and the risks involved.

The SPS Agreement accepts that food safety and animal and plant health regulations do not necessarily have to be set by the highest governmental authority. Differences within a country are allowed. However, if these differences affect international trade, they have to meet the same requirements as if they were set by the national government. The national government remains responsible for implementing the SPS Agreement, and should ensure that state or provincial governments also observe it. Governments should use the services of non-governmental institutions only if these comply with the SPS Agreement. No, the SPS Agreement allows countries to give food safety, animal and plant health priority over trade, provided they can demonstrate that their food safety and health requirements are based on science. Each country has the right to assess the risks and determine what it considers to be an appropriate level of food safety and animal and plant health. Once a country has decided on its acceptable level of risk, there are often a number of alternative measures which may be used to achieve this protection (such as treatment, quarantine or increased inspection). The SPS Agreement says that when a government chooses among the alternatives, it must use Sanitary and Phytosanitary measures which do not restrict trade any more than is necessary to achieve its objectives

to protect health, assuming the measures are technically and economically feasible. For example, if a country faces a risk because of an exotic pest entering with its imports, it could ban the imports or it could require the exporters to fumigate the shipment.

#### **International trade and Public health**

The SPS Agreement is essentially about health and international trade. International trade and travel have expanded significantly in the past 50 years. This has increased the movement of products that may pose health risks. The SPS Agreement recognises the need for WTO members to protect themselves from the risks posed by the entry of pests and diseases, but also seeks to minimise any negative effects of SPS measures on trade. The health aspect of the SPS Agreement basically means that WTO members can protect human, animal or plant life or health by applying measures to manage the risks associated with imports. The measures usually take the form of quarantine or food safety requirements.<sup>8</sup> It allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail. Food labels are an essential source of information for consumers to enable them to have effective control and choice over what they eat -- whether it is for health, safety, religious, or ethical reasons. Current labeling initiatives favored by consumers are quite varied. For example, the Transatlantic Consumer Dialogue, a coalition of more than 60 consumer organizations in the United States and Europe, has recently recommended both mandatory labeling for all genetically engineered foods and ingredients and mandatory nutrition labeling for all food products.<sup>9</sup> The United States and the European Union have each claimed that such food labeling requirements could be illegal trade barriers under the current rules of the World Trade Organization. Depending on its rationale, a mandatory food labeling regulation could be held by the WTO to be illegal under the Agreement on Technical Barriers to Trade and/or the Agreement on the Application of Sanitary and Phytosanitary Measures.

Member countries are encouraged to use international standards, guidelines and recommendations where they exist. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary.<sup>10</sup> The agreement still allows countries to use different standards and different methods of inspecting products. The international trade aspect of the SPS Agreement basically means that, in seeking to protect health, WTO members must not use SPS measures that are: unnecessary, not science-based, arbitrary, or which constitute a disguised restriction on international trade. While rules and regulations can facilitate and enhance trade by increasing the confidence of consumers in imported

products, they may also serve as barriers to trade, particularly for exporters in countries where the lack of monitoring, testing, and certification infrastructure makes it difficult to demonstrate compliance with import requirements. Indeed, developing countries have long been concerned by their trading partners' use of health, safety and environment measures for protectionist purposes.<sup>11</sup> In certain cases higher food safety standards are applied to imports than domestic supplies, for example where higher risks are associated with supplies from other countries. However, even where food safety standards are neutral, they can impede trade in agricultural and food products.

#### **Developing Countries: Operation, Participation and Problems**

Developing countries typically implement qualitatively or quantitatively lower SPS standards than developed countries, in principle the SPS Agreement should help to facilitate trade from developing to developed countries by improving transparency, promoting harmonisation and preventing the implementation of SPS measures that cannot be justified scientifically. Much of this is dependent, however, on the ability of developing countries to effectively participate in the Agreement.<sup>12</sup> A major problem faced by developing countries is access to the resources required to comply with SPS standards in developed countries. These include information on SPS standards themselves, scientific and technical expertise, appropriate technologies, skilled labour, general finance etc. If these resources are not available locally, they may need to be obtained overseas, significantly increasing the costs of compliance. For example, for small and medium-sized companies these costs are likely to be prohibitive. At the current time, India is not approved for the export of fresh and frozen meat to the EU. However, some companies have been upgrading their sanitary standards in order to comply with the EU's requirements in anticipation of approval at a later date (when parts of India are accepted as FMD-free). One company that was interviewed reported problems obtaining the required technical expertise and modern processing equipment to comply. They had had to bring in experts from New Zealand and Australia and import equipment at great cost. To recoup these costs, the entire output of the company had to be exported to higher value markets, in particular the Middle East.<sup>13</sup> Developing countries are frequently limited in their ability to participate effectively in the transparency mechanisms of the SPS Agreement. For example, they may find it difficult to assess and formulate an appropriate response to notifications of new SPS measures in the 60 days which is normally allowed before those measures are implemented.<sup>14</sup> They may also find it difficult to attend meetings of the SPS Committee and, if they do, present a reasoned case backed up by the necessary scientific and/or economic data.<sup>15</sup> In some cases, awareness and understanding of the SPS Agreement amongst government officials is inadequate. In many cases, administrative responsibilities for SPS matters have not been clearly defined and may be inappropriate

given the need to recognise and respond to SPS notifications that are of potential interest to national economic interests in a short space. In certain cases developing countries lack the scientific expertise necessary to comment on notifications in an informed manner. For example, new SPS measures may address relatively new hazards for which scientific expertise is predominantly based in developed countries. Financial resources are also a serious problem in virtually all developing countries. Developing countries have also expressed concerns about the manner in which the SPS Agreement operates which, it is claimed, constrains their ability to participate effectively. The nature of notification procedures, in particular the length of time between notification and the implementation of new SPS measures and the quantity and quality of information provided with notification. The degree to which developed countries take account of the special needs of developing countries when implementing SPS measures and their willingness to permit additional time for compliance and/or transitional arrangements. The level and quality of technical assistance provided by developed countries to enable developing countries to meet their SPS requirements.<sup>16</sup>

#### **Conclusion and Suggestions**

The SPS Agreement aims to foster discipline in the use of SPS measures to minimise their impact on trade and to establish mechanisms through which Members can obtain redress should measures be implemented which impede their exports and which are not justifiable scientifically. However, developing countries have a number of concerns about the manner in which the Agreement has been implemented to date. Particular concerns are that developed countries take insufficient account of the needs of developing countries when setting SPS requirements, insufficient time is allowed between notification and implementation of SPS requirements and insufficient technical assistance is given to developing countries.<sup>17</sup> Generally, it may be difficult to challenge the need of such an agreement between different nations that aims at providing us with a healthier world. Maintenance of hygienic and safe living conditions is one of the basic rights of human race. Coming together of the different segments of world to formulate this agreement is itself an acceptance of this right. Yet this historically landmark movement, from the time of its inception, has become a cause of conflict between the different factions. The conflicts arise due to the shortcomings present in the implementation process. Often there is clash of interests between the different groups involved, which results in a set of unacceptable actions and the corresponding reactions. Thus the solution to the problem boils down to improving the execution of the concept, and not the principle itself.<sup>18</sup> The first step in this direction would be the formulation of international standards that are based on scientific and empirical evidence, and are acceptable to a majority of the members. While formulating the standards, care should be taken to ensure that the conditions prevalent in both developed as well the developing

countries are given their due importance. From the perspective of the developed countries, they may have to adopt a more sympathetic approach to the whole issue. Simply imposing less stringent standards would not suffice. It is equally important to give equal weights to the voices being raised from the developing countries. Another issue to be addressed by the developed countries is regarding the availability of timely and complete information. This would surely lessen some unnecessary hassles for the exporting countries. Further, imposition of trade barriers under the disguise of SPS Agreement is something that should be condemned in all circumstances. The foregoing discussion suggests that there is a need for developed countries to take greater account of the needs and special circumstances of developing countries when promulgating and applying SPS requirements. In order to achieve the objectives of SPS agreement the developing countries have to bring in some domestic reforms. They have to focus on training their personnel in post harvest quality management practices and food processing activities. Another important reform in this direction with great significance is awareness and imparting education to citizens from school level regarding human, animal and plant health. Apart from it, transparency in the WTO system is also an urgent necessity for better harmonisation. However, the SPS agreement has succeeded in providing a strong platform for trade in agricultural and marine products between nations and helped to some extent in harmonising the standards set by different countries but what is lacking is that while food laws are dynamic in nature the SPS has still not been modified to come in line with these dynamic food security regulations. The SPS and TBT agreements impact on public health brings an emotional side to the debate. These emotions can obscure otherwise clear protectionist policies. To counter this problem the WTO has committed to finding the truth behind the science and evaluating the evidence in an objective fashion.

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