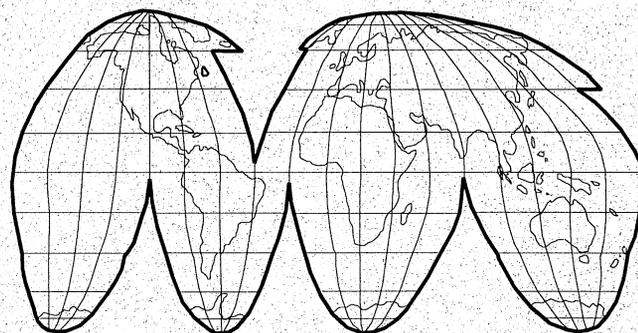

Understanding Technical Barriers to Agricultural Trade

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Implications of the WTO Agreement on Sanitary and Phytosanitary Measures*

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To better understand the implications of the World Trade Organization [WTO] Agreement on the Application of Sanitary and Phytosanitary Measures [SPS Agreement] it would be useful to first briefly review the negotiating history, and then the major provisions of the SPS Agreement.

The impetus to negotiate an agreement on food safety and plant/animal health restrictions came from the drive to make profound changes in world agricultural trading practices one of the major results of the Uruguay Round [UR] of multilateral trade negotiations. Negotiators in the agricultural sector were concerned that, should they succeed (as they eventually did) in eliminating the right of governments to impose quotas and other non-tariff barriers on imports of agricultural goods, pressures would increase on governments to use other means, such as sanitary requirements, to restrict import competition.

Who Was Responsible for Developing the SPS Agreement?

The negotiators took as their starting point the 1979 Tokyo Round Agreement on Technical Barriers to Trade [TBT Agreement or Standards Code]. This limited-membership agreement covered all technical regulations and standards, including those imposed for sanitary objectives. It encouraged the governments who had signed to make as much use of internationally-developed standards as was “appropriate.” The TBT Agreement also included obligations for the advance notification of proposed new requirements, and for the establishment of national “Enquiry Points” to respond to all requests for information on technical regulations.

Various countries also had some specific concerns in mind. A few years prior to the 1986 beginning of the UR negotiations, the United States [US] had unsuccessfully tried to use the TBT Agreement to challenge the European Community’s ban on imports of beef from cattle treated with growth-enhancing hormones. Because the 1979 TBT Agreement applied only to final product requirements and not to production and processing methods, the US complaint was thrown out. At the same time, a number of Latin American countries including Argentina, Uruguay, and Chile, saw in this negotiation an opportunity to change long-standing restrictions related to Foot-and-Mouth disease which effectively barred their meat from the lucrative markets of North America and eastern Asia, especially Japan.

*The views expressed here are those of the author and do not necessarily reflect the views of the WTO.

Shortly into the negotiations, the US banned imports of certain European wines because of residues of the fungicide procimidone, which although widely used, had never been registered and approved for use in the US. This incident further heightened European interests in the negotiations. A number of other countries with strong agricultural export interests (including Australia, Canada and New Zealand), major import interests (Japan), or historical involvement with the Standards Code (the Nordic countries) became very active in this opportunity to make clear what trade restrictions could or could not be imposed in the name of food safety and animal/plant health protection.

What Is In the SPS Agreement?

A look at the provisions of the SPS Agreement reveals the major issues facing the negotiators. The first issue concerned the scope of the agreement. It was quickly agreed that food safety, animal health protection, and plant protection should be included. However, the European Community pushed strongly, but ultimately unsuccessfully, for the inclusion of animal welfare, of certain environmental concerns linked to agricultural production, and for “consumer concerns.” Consumer concerns were the underlying argument put forward by the Community for imposing its ban on hormone-treatment of cattle.

At the same time, the US and others wanted to make sure that unlike the Tokyo Round TBT Agreement, all measures would be covered, including production and processing methods. Hence the SPS Agreement defines its scope on the basis of the objective of a measure, in contrast to the type of measure approach of the TBT Agreement. The SPS Agreement covers all measures taken for the purpose of protecting human or animal life or health from food-borne risks; humans from animal-carried diseases (zoonoses) and plant-carried diseases; plants and animals from pests or diseases; and the territory of a country from the spread of a pest or disease.

Other technical requirements on food trade, including quality, labeling, packaging, nutritional requirements, etc., are covered by the new TBT Agreement, which was re-negotiated during the UR.

To allow health protection without protectionism, according to the SPS Agreement, governments can restrict trade only when and to the extent necessary to protect health. To this end, sanitary (human and animal health) and phytosanitary (plant health) measures must be based on scientific findings and can be challenged on the basis of available scientific information. Governments are essentially given two alternatives to achieve this: they are encouraged to base their requirements on international standards, or where there are no relevant international standards or the government chooses not to use them, they must base their measures on an assessment of the risks involved.

The SPS Agreement explicitly refers to the Codex Alimentarius Commission standards on microbiological contamination, pesticide residues, veterinary drug residues and food additives as the relevant international standards for food safety. The recommendations, of the Office International des Epizootics [OIE -- the World Animal Health Organization] are

recognized as the relevant standards for animal health issues, while those developed under the International Plant Protection Convention [IPPC] are referred to for plant protection. Measures which are based on these international standards, guidelines and recommendations are presumed to meet the requirements of the SPS Agreement.

If governments choose not to use an international standard, or if a relevant standard doesn't exist, then the SPS Agreement indicates which types of factors must be considered in a risk assessment. The decision as to what constitutes an acceptable level of risk remains with the government, but they must be transparent about their process and results, and consistent in the decisions they make regarding acceptable risks.

Another key provision is the obligation for governments to recognize that different measures may result in similar levels of health protection -- that is, the equivalency of measures used by exporting countries. Furthermore, governments must also recognize that pest- or disease-free areas may occur within countries or across several countries, independent of national borders. Requirements for imports must take into account these pest- or disease-free areas and treat them as such.

The SPS Agreement also includes the provisions for advance notification of proposed measures and for the creation of information (Enquiry) points in all countries that had first been established under the old TBT Agreement. In its first 18 months of operation, nearly 400 notifications of proposed SPS measures were circulated by the WTO Secretariat.

The administration of standards, the actual inspection and testing procedures, paper work requirements, etc., must not be done in a manner which discriminates against imports or acts as a barrier to trade in itself. Importantly, all of the obligations under this agreement apply also to sanitary or phytosanitary requirements at sub-national (state, provincial, departmental) levels, as long as these have an effect on international trade.

What Has Changed and What It Means

Although sanitary and phytosanitary measures which affected trade were, strictly speaking, always covered by the General Agreement on Tariffs and Trade [GATT], the applicable rules were vague and inconclusive. The new SPS Agreement clarifies both the right of governments to take health protective actions, and the conditions which must be met to ensure that these are not unjustified barriers to trade. It thus makes clear the basis for challenging sanitary and phytosanitary restrictions on trade.

Already this clarification of rights and obligations is beginning to make a difference. A number of governments have begun to change long-standing restrictions which they may now consider vulnerable to challenges under the new rules. Importantly, although there were virtually no trade disputes on SPS measures during the 47 years of GATT, in the first 18 months of the new WTO/SPS Agreement, seven formal complaints have been lodged under the dispute settlement procedures. Three of the complaints involve very specific technical requirements (inspection procedures for fresh fruits; shelf-life requirements on processed

meats; treatment requirements of bottled water), while two others concern restrictions linked to a fish disease, and the final two regard the European Community's ban on imports of meat treated with growth-promoting hormones. Dispute settlement panels have been asked to examine these latter two complaints, and a first decision by the panel is likely in early 1997. The other complaints remain at the bilateral consultations step, and hopefully will be resolved without recourse to a dispute settlement panel -- but that remains to be seen.