The Agreement on the Application of Sanitary and Phytosanitary Measures

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World Trade Organization
Agreement on the Application of Sanitary and Phytosanitary Measures

The right to protect human, animal or plant life or health

Avoiding unnecessary barriers to trade
**SPS Measures**
Definition - Annex A

"**A measure taken to protect:**

<table>
<thead>
<tr>
<th>Category</th>
<th>Protection Against</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human or animal health</td>
<td>risks arising from additives, contaminants, toxins or disease organisms in food, drink, feedstuff</td>
</tr>
<tr>
<td>Human life</td>
<td>plant- or animal-carried diseases</td>
</tr>
<tr>
<td>Animal or plant life</td>
<td>pests, diseases, disease-causing organisms</td>
</tr>
<tr>
<td>A country</td>
<td>other damage caused by entry, establishment or spread of pests</td>
</tr>
</tbody>
</table>
Measures must be based on:

- International standards
- Risk assessment
Scientific justification

Harmonization

Article 3

Standard-setting organizations

food safety
CODEX

animal health
OIE

plant health
IPPC

Codex = Joint FAO/WHO Codex Alimentarius Commission
OIE = World Organisation for Animal Health
IPPC = International Plant Protection Convention (FAO)
Scientific justification

Exception: Provisional measures
Article 5.7

Members may provisionally adopt SPS measures
- when relevant scientific information is insufficient
- on the basis of available information

In such circumstances, Members shall
- seek to obtain additional information to assess risk
- review the measure within a reasonable period of time
Equivalence
Article 4

If the exporting country **objectively demonstrates** that its measures achieve the ALOP of the importing country

Members **shall**

accept SPS measures of other Members as **equivalent**
Pest- or disease-free areas Article 6 (Regionalization)

Members shall ensure that their SPS measures are adapted to the SPS characteristics of an “area”

- all of a country
- part of a country
- all or parts of several countries
Control, Inspection and Approval Procedures
Article 8 and Annex C

- No undue delays
- Information requirements: limited to what is necessary
- No less favourable treatment for imports:
  - Fees – no discrimination, only to cover costs
  - Siting of facilities
- If positive list approach used for food additives, use international standard until a determination is made
Key Provisions of the SPS Agreement

1. Non-discrimination
2. Scientific justification
   • harmonization
   • risk assessment
   • consistency
   • least trade-restrictiveness
3. Equivalence
4. Regionalization
5. Transparency
6. Technical assistance/special treatment
7. Control, inspection and approval procedures
The SPS Committee: What does it do?

- Implementation of SPS Agreement
- Reviews compliance
- Potential trade impacts
- Co-operation with technical organizations
SPS Committee: Who is on it?

- All 159 WTO Members
- Observer governments (accessing members)
- Intergovernmental organizations

4 new WTO Members in 2012:
- Montenegro (April)
- Russia (Aug.)
- Samoa (May)
- Vanuatu (Aug.)

2 new WTO Members in 2013:
- Lao PDR (Feb)
- Tajikistan (March)
SPS Committee Meetings

• 3 regular meetings per year
  ❖ often preceded by informal meetings to discuss specific topics (S&D, Third review, Private Standards, Ad Hoc consultations, etc... )

• Special meetings/workshops
  ❖ for example on transparency-enquiry points, SPS coordination, etc.
SPS Committee:
How to address SPS-related Trade Problems
Remember: Conditions under which a SPS Measure can be taken:

• Restrain trade to protect health

• Measures based on scientific principles (international standards or risk assessment)

• Non-discriminatory

• No disguised restrictions
What series of questions should an exporting country ask when experiencing a SPS trade concern with a trading partner?
Exports impaired due to a SPS measure

- YES
  - Verify if international standards exist
  - No
    - Request explanation of reasons
      - Art. 5.8
        - Risk assessment exists
          - YES
            - Verify if risk assessment complies with the SPS Agreement
              - Yes
                - Seek Technical Assistance
              - No
                - Seek ways to solve the problem: bilateral consultations; Specific Trade Concerns; Dispute Settlement; etc.
            - No
              - Verify if SPS measure is based on the international standard
                - No
                  - Seek ways to solve the problem: bilateral consultations; Specific Trade Concerns; Dispute Settlement; etc.
                - YES
                  - Verify if risk assessment complies with the SPS Agreement
                    - Yes
                      - Seek Technical Assistance
                    - No
                      - No
Ways to Address SPS Trade Concerns

1. Bilateral and/or Regional Efforts
2. SPS Committee – Specific Trade Concerns
3. Good Offices by the Chair of the SPS Committee
4. WTO Dispute Settlement System
1. Bilateral and/or Regional Efforts

Suggested Actions:

• Contact Enquiry Point

• Informal discussions on the margins of the SPS Committee meetings

• Request information through diplomatic channels
Ways to Address SPS Trade Concerns

1. Bilateral and/or Regional Efforts

2. SPS Committee – Specific Trade Concerns

3. Good Offices by the Chair of the SPS Committee

4. WTO Dispute Settlement System
2. SPS Committee – STCs

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 Committee Meeting
Ways to Address SPS Trade Concerns

1. Bilateral and/or Regional Efforts

2. SPS Committee – Specific Trade Concerns

3. Good Offices by the Chair of the SPS Committee

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

Article 12.2

“The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific sanitary or phytosanitary issues. [...]

Procedure currently under discussion in the SPS Committee (G/SPS/W/259/Rev.7)
Ways to Address SPS Trade Concerns

1. Bilateral and/or Regional Efforts
2. SPS Committee – Specific Trade Concerns
3. Good Offices by the Chair of the SPS Committee
4. WTO Dispute Settlement System
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 notifies WTO Secretariat that a dispute exists
Implementation & monitoring role of the SPS Committee

- 368 “STCs” (end 2013)
- Raised in SPS Committee
- Request clarification from Enquiry Point
- Bilateral consultations
- Request formal consultations
- Dispute(s)
- 10 (+ 2 on-going) Disputes
- ≈ 16,000 “SPS notifications” (end 2013)
Specific Trade Concerns by Subject 
(1995-2012)

- Animal Health: 40%
- Food Safety: 30%
- Plant Health: 24%
- Other: 6%

G/SPS/GEN/204/Rev.13
## Top 10 Members Maintaining Measures Complained Against

<table>
<thead>
<tr>
<th>Member</th>
<th>Number of STCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>European Union</td>
<td>67</td>
</tr>
<tr>
<td>United States</td>
<td>40</td>
</tr>
<tr>
<td>Japan</td>
<td>27</td>
</tr>
<tr>
<td>China</td>
<td>20</td>
</tr>
<tr>
<td>Australia</td>
<td>16</td>
</tr>
<tr>
<td>Brazil</td>
<td>14</td>
</tr>
<tr>
<td>Indonesia</td>
<td>13</td>
</tr>
<tr>
<td>Korea, Republic of</td>
<td>12</td>
</tr>
<tr>
<td>Canada</td>
<td>11</td>
</tr>
<tr>
<td>Mexico</td>
<td>11</td>
</tr>
</tbody>
</table>

As of 4 March 2013
## Top 10 Members Raising Specific Trade Concerns

<table>
<thead>
<tr>
<th>Member</th>
<th>Number of STCs</th>
</tr>
</thead>
<tbody>
<tr>
<td>United States</td>
<td>80</td>
</tr>
<tr>
<td>European Union</td>
<td>71</td>
</tr>
<tr>
<td>Argentina</td>
<td>39</td>
</tr>
<tr>
<td>China</td>
<td>28</td>
</tr>
<tr>
<td>Brazil</td>
<td>25</td>
</tr>
<tr>
<td>Canada</td>
<td>24</td>
</tr>
<tr>
<td>India</td>
<td>13</td>
</tr>
<tr>
<td>Australia</td>
<td>9</td>
</tr>
<tr>
<td>Thailand</td>
<td>9</td>
</tr>
<tr>
<td>Chile</td>
<td>8</td>
</tr>
</tbody>
</table>

As of 4 March 2013
STCs – Examples

<table>
<thead>
<tr>
<th>MEASURE</th>
<th>RAISING</th>
<th>AGAINST</th>
<th>SUPPORTING</th>
<th>FIRST DATE RAISED</th>
</tr>
</thead>
<tbody>
<tr>
<td>Import procedures for fruits and vegetables</td>
<td>EU</td>
<td>USA</td>
<td>Argentina</td>
<td>01/06/2005</td>
</tr>
<tr>
<td>Restrictions on poultry and poultry products because of avian influenza</td>
<td>Chile</td>
<td>Albania, Croatia</td>
<td>USA</td>
<td>20/10/2010</td>
</tr>
<tr>
<td>Restrictions on table grapes, apples and pears</td>
<td>South Africa</td>
<td>Thailand</td>
<td>Senegal</td>
<td>19/10/2011</td>
</tr>
<tr>
<td>Import restrictions on beef due to BSE</td>
<td>Brazil</td>
<td>China</td>
<td></td>
<td>16/10/2013</td>
</tr>
<tr>
<td>Import restrictions on fishery products due to nuclear contamination</td>
<td>Japan</td>
<td>Korea</td>
<td></td>
<td>16/10/2013</td>
</tr>
</tbody>
</table>
Where to get more information?

SPS gateway
http://www.wto.org/sps

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

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