



Study Notes

# WTO Agreements

## SPS

www.ixamBee.com

## Overview of SPS Agreement

Purpose	To describe the evolution of the SPS Agreement from earlier GATT negotiations leading to the Uruguay Round and to highlight the development of the SPS in the context of the Uruguay Round negotiations.
Article 1	General Provisions
Article 2	Basic Rights
Article 3	Harmonization
Article 4	Equivalence
Article 5	Risk Assessment
Article 6	Adaptation to Regional Conditions
Article 7	Transparency
Article 8	Control & Inspection/Approval
Article 9	Technical Assistance
Article 10	Special and Differential Treatment
Article 11	Consultations and Dispute Settlement
Article 12	Administration
Article 13	Implementation
Article 14	Final Provisions

## Introduction

- The Agreement on the Application of Sanitary and Phytosanitary Measures (“the SPS Agreement”) sets out the basic rules for **food safety and animal and plant health requirements**.
- It **allows countries to set their own standards**. However, it also specifies that regulations must be based on scientific findings and should be applied only to the extent that they are necessary to protect human, animal or plant life or health; they should not unjustifiably discriminate between countries where similar conditions exist.
- The SPS Agreement aims to provide the balance between the right of governments to protect food safety, plant and animal health, and prevent these sanitary and phytosanitary measures from being **unjustified trade barriers**.
- It came into force on **1 January 1995**.

## What are Sanitary and Phytosanitary measures?

- “Sanitary” refers to human and animal health, including food safety, and “phytosanitary” means plant health.
- Sanitary and phytosanitary measures are defined as any measures applied:

To protect human or animal life or health	From risks arising from additives, contaminants, toxins or disease-causing organisms in their food or beverages;
To protect human life or health	From plants, animals, their products or from entry, establishment or spread of pests

To protect animal or plant life or health	From pests, diseases, or disease-causing organisms; or disease-carrying organisms
To prevent damage to a country	From the entry, establishment or spread of pests

- Sanitary and phytosanitary measures include all laws, decrees, regulations, requirements and procedures related to:
  - ✓ end product criteria;
  - ✓ processes and production procedures;
  - ✓ testing;
  - ✓ inspection;
  - ✓ certification and approval procedures;
  - ✓ quarantine treatments (associated with animal and plant transport and the materials required during their transport);
  - ✓ statistical methods;
  - ✓ sampling procedures;
  - ✓ methods for risk assessment;
  - ✓ packaging and labeling.

### History

- The **Uruguay Round negotiations** were the first to deal with the liberalization of trade in agricultural products. They also included negotiations on reducing non-tariff barriers to international trade in agricultural products
- It resulted in two binding Agreements: The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement)

### Important Definitions

- **Harmonization** - The establishment, recognition and application of common sanitary and phytosanitary measures by Members.
- **International Standards, Guidelines, Recommendations**

For food safety	the terms international standards, guidelines and recommendations refer to those established by the Codex Alimentarius Commission relating to: <ul style="list-style-type: none"> <li>○ food additives;</li> <li>○ veterinary drug and pesticide residues;</li> <li>○ contaminants;</li> <li>○ methods of analysis and sampling; and</li> <li>○ codes and guidelines of hygienic practices.</li> </ul>
For animal health and zoonoses,	these same terms refer to the standards, guidelines and recommendations developed under the auspices of the International Office of Epizootics.
For plant health	they refer to international standards, guidelines and

	recommendations developed under the auspices of the Secretariat of the International Plant Protection Convention.
For matters not covered by these identified Organizations,	standards, guidelines, and recommendations promulgated by other international organizations, open for membership to all WTO Members as identified by the SPS Committee, may be applied.

- **Risk assessment is** defined as - the evaluation of the adverse effects on human and animal health from additives, contaminants, toxins and disease causing organisms in food, beverages and feedstuffs, and/or the likelihood of entry, establishment or spread of a pest or disease and any associated biological and economic consequences.
- **Appropriate Level of Protection** is defined as - the level of protection deemed appropriate by the Member establishing the sanitary and phytosanitary measures to protect human, animal or plant life or health in their territory. This is also referred to as the "Acceptable Level of Risk".
- **Pest or Disease Free Areas** - An area (entire country, part of a country, or all or parts of several countries), as identified by the competent authority, in which a specific pest or disease does not occur.
- **Areas of Low Pest/Disease Prevalence** - An area (entire country, part of a country, or parts of several countries), as identified by the competent authority, in which a specific pest or disease occurs at low levels and which is subject to effective surveillance, control or eradication measures.

### Key Features

- All countries to maintain measures to ensure that food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants.
- These sanitary and phytosanitary measures can take many forms, such as requiring products to come from a **disease-free area, inspection of products, specific treatment or processing of products**, setting allowable maximum levels of pesticide residues or limiting the permitted use of additives in food.
- Sanitary (human and animal health) and phytosanitary (plant health) measures apply to domestically produced food or local animal and plant diseases, as well as to products coming from other countries.

### Protection or Protectionism

- Sanitary and phytosanitary measures, by their very nature, may **result in restrictions on trade**.
- All governments accept the fact that some trade restrictions may be necessary to ensure food safety and animal and plant health protection.

- However, governments are sometimes pressured to go beyond what is needed for health protection and to use sanitary and phytosanitary restrictions to shield domestic producers from economic competition.
- Such pressure is likely to increase as other trade barriers are reduced as a result of the Uruguay Round agreements.
- A sanitary or phytosanitary restriction which is not actually required for health reasons can be a very effective protectionist device, and because of its technical complexity, a particularly deceptive and difficult barrier to challenge.
- The Agreement on Sanitary and Phytosanitary Measures (SPS) builds on previous GATT rules to restrict the use of unjustified sanitary and phytosanitary measures for the purpose of trade protection.
- The basic aim of the SPS Agreement is to maintain the sovereign right of any government to provide the level of health protection it deems appropriate, but to ensure that these sovereign rights are not misused for protectionist purposes and do not result in unnecessary barriers to international trade

### Justification of Measures

- The SPS Agreement, while permitting governments to maintain appropriate sanitary and phytosanitary protection, **reduces possible arbitrariness of decisions and encourages consistent decision-making.**
- It requires that sanitary and phytosanitary measures be applied for no other purpose than that of ensuring food safety and animal and plant health.
- Measures to ensure food safety and to protect the health of animals and plants should be based as far as possible on the analysis and assessment of objective and accurate scientific data.

### International Standards

- The SPS Agreement encourages governments to establish national SPS measures **consistent with international standards**, guidelines and recommendations. This process is often referred to as "**harmonization**".
- The **WTO itself does not and will not develop such standards**. However, most of the WTO's member governments (132 at the date of drafting) participate in the development of these standards in other international bodies.
- The standards are developed by leading scientists in the field and governmental experts on health protection and are subject to international scrutiny and review.
- International standards are often higher than the national requirements of many countries, including developed countries, but the SPS Agreement explicitly permits governments to choose not to use the international standards.
- However, if the national requirement results in a greater restriction of trade, a country may be asked to provide scientific justification, demonstrating that the relevant

international standard would not result in the level of health protection that the country wants to provide.

### Adapting to conditions

- Due to differences in climate, existing pests or diseases, or food safety conditions, it is not always appropriate to impose the same sanitary and phytosanitary requirements on food, animal or plant products coming from different countries.
- Therefore, sanitary and phytosanitary measures sometimes vary, depending on the country of origin of the food, animal or plant product concerned. This is taken into account in the SPS Agreement.
- Governments should also recognize disease-free areas which may not correspond to political boundaries, and appropriately adapt their requirements to products from these areas.
- The agreement, however, checks unjustified discrimination in the use of sanitary and phytosanitary measures, whether in favour of domestic producers or among foreign suppliers.

### Alternative Measures

- An acceptable level of risk can often be achieved in alternative ways.
- Among the alternatives — and on the assumption that they are technically and economically feasible and provide the same level of food safety or animal and plant health — governments should select those which are not more trade restrictive than required to meet their health objective.
- Furthermore, if another country can show that the measures it applies provide the same level of health protection, these should be accepted as equivalent.
- This helps ensure that protection is maintained while providing the greatest quantity and variety of safe foodstuffs for consumers, the best availability of safe inputs for producers, and healthy economic competition.

### Risk Assessment

- The SPS Agreement increases the transparency of sanitary and phytosanitary measures.
- Countries must establish SPS measures on the basis of an appropriate assessment of the actual risks involved, and, if requested, make known what factors they took into consideration, the assessment procedures they used and the level of risk they determined to be acceptable.

## Transparency

- Governments are required to notify other countries of any new or changed sanitary and phytosanitary requirements which affect trade, and to set up offices (called "Enquiry Points") to respond to requests for more information on new or existing measures.
- They also must open to scrutiny how they apply their food safety and animal and plant health regulations.
- The systematic communication of information and exchange of experiences among the WTO's member governments provides a better basis for national standards.
- Such increased transparency also protects the interests of consumers, as well as of trading partners, from hidden protectionism through unnecessary technical requirements.

## Committee on Sanitary and Phytosanitary Measures

- Article 12 of the SPS Agreement establishes a Committee on Sanitary and Phytosanitary Measures to provide a regular forum for consultations. The SPS Committee reaches its decisions by consensus.
- It has the mandate to carry out the functions necessary to implement the provisions of the SPS Agreement and to encourage and facilitate ad hoc consultations or negotiations among members on specific SPS issues.
- The SPS Committee reports to the Council for Trade in Goods.
- The SPS Committee reviews compliance with the agreement, discusses matters with potential trade impacts, and maintains close co-operation with the appropriate technical organizations.
- In a trade dispute regarding a sanitary or phytosanitary measure, the normal WTO dispute settlement procedures are used, and advice from appropriate scientific experts can be sought.
- The SPS Committee usually holds three regular meetings each year. It also regularly holds informal meetings, and special meetings or workshops to address particular issues.
- ***The SPS committee is currently chaired by Greg MacDonald, Canada***