

The WTO Agreement on Sanitary and Phytosanitary Measures

This document provides a summary of the general objectives of the Agreement, explains what is meant by “SPS measures”, and sets out the three guiding principles governing them: harmonisation, equivalence and transparency. It also sets out the Agreement’s provisions on Special and Differential Treatment. The three international organisations which play an active role in determining SPS standards are addressed in a separate annex.

I. General Principles and Objectives of the Agreement

1. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), which emerged from the Uruguay Round negotiations and is closely linked to the Agreement on Agriculture, entered into force on 1 January 1995. Essentially, it sets out rules based on Article XX(b) of GATT 1994 relating to “*measures necessary to protect human, animal or plant life or health*” which a member can take as a “general exception” to its open trade commitments.
2. Within this framework, the SPS Agreement aims specifically to answer the two questions each government is justified in asking itself:
 - i. How can we ensure that the products we are importing are fit for consumption and do not endanger the life or health of our country’s citizens, animals and plants?
 - ii. How can we guarantee to our trading partners that the measures we are taking to protect the health and safety of our country’s consumers do not in fact serve to protect our producers?

In other words, the aims of the SPS Agreement are twofold: to affirm Governments’ sovereign right to adopt measures to restrict the imports of products which they have good reason to believe pose a risk to the health of their consumers; and to set up a specific mechanism to ensure that States do not use this sovereign right for implementing disguised non-tariff barriers (NTBs) to international trade. Drawing up an agreement on SPS measures in the framework of the Uruguay Round became all the more necessary since the new Agreement on Agriculture provided for a growing liberalisation of trade in agricultural products. Hence there was a risk that market opening and subsidy reductions would be undermined by additional NTBs.

II. What Is an SPS Measure?

3. Sanitary measures (for the protection of human beings and animals) and phytosanitary measures (for the protection of plant health) are clearly defined in

Annex A of the SPS Agreement. In short, it can be said that SPS measures are those meant to protect the health and life of persons, animals and plants from risks associated with pests, disease-carrying organisms and disease-causing organisms, as well as additives, contaminants and toxins in foods. This includes, naturally, when animals, plants, food, beverages or feedstuffs are brought into a member's territory.

4. From a legal standpoint, governments can adopt SPS measures in the form of decrees, regulations, requirements or other legal procedures. In practice, an SPS measure can take many different forms, including:

- i. Requiring that imported products must come from disease-free areas;
- ii. Inspecting products entering the national territory;
- iii. Requiring specific treatment or processing of products;
- iv. Setting an allowable maximum level of pesticides;
- v. Authorising the use of only certain additives in the processing of food.

5. By their very nature, SPS measures can constitute obstacles to trade between WTO members. That is why the Agreement sets out three strict conditions with which any member wishing to apply an SPS measure must comply, in order to minimise the measures' impact on international trade:

- i. The aim of the measure must truly be to protect the life and health of living organisms on a member's national territory, rather than to indirectly protect national producers;
- ii. Any SPS measure must be based on scientific evidence and proof¹;
- iii. The principle of non-discrimination, common to any commitment in the context of WTO agreements, must also apply to SPS measures. In other words, SPS measures must not *"arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members."* (Art. 2.3).

III. The Three Main Principles Governing SPS Measures: Harmonisation, Equivalence, and Transparency

A) Harmonisation

6. One of the key objectives of the Agreement is to achieve the greatest possible harmonisation of SPS measures at the international level, in order to prevent the development of individual and potentially arbitrary measures. WTO members are encouraged to comply with the *"standards, guidelines and recommendations"* drawn up by three international organisations universally recognised in the food and agriculture sectors: the **Codex Alimentarius Commission** (Codex) for human health, the **International Plant Protection Convention** (IPPC) for plant health, and the **International Office of Epizootics** (IOE, now known as the World Organization for Animal Health). The aim is to recognise national SPS measures that have been drawn up in accordance with the standards, guidelines and recommendations of these three organisations as compatible with the provisions of the SPS Agreement.

¹ The Agreement provides for an exception to this fundamental rule: in the case of an emergency, a government may adopt SPS measures before sufficient scientific evidence is gathered or available.

7. Nevertheless, all members maintain a right to adopt different SPS measures from those recommended by the three organisations. In other words, a national SPS measure cannot be considered to be in breach of the Agreement just because it differs from international standards, guidelines or recommendations. A member could thus perfectly well adopt a measure which confers greater protection than that provided under international standards. In this case, however – as well as in the case where no international standard exists – the member may be required to explain the risk assessment method used and provide the scientific evidence which led it to adopt that measure.

8. The mechanism for the assessment of the actual risk involved is addressed in the detailed provisions of Article 5. Members thus have the obligation to employ risk assessment and management methods that are quantitative, carefully documented and, in particular, based on scientific evidence. Once a WTO member has determined its level of acceptable risk, it must adopt a measure which has the least possible negative impact on trade.

B) Equivalence

9. The Agreement encourages the mutual recognition, or “equivalence”, of SPS measures. Where it is recognised that there are different ways to ensure a given level of sanitary and phytosanitary safety, the Agreement provides that members must accept other members’ SPS measures as equivalent to their own if the same level of protection is achieved. In other words, it is implicitly recognised that measures which are less technologically sophisticated than others can still perfectly well achieve the same level of SPS protection for the same product. It is also recognised that the criteria applying to the same product could vary from one member to the next depending on the relevant prevailing geographical and climate conditions, and, in the case of bigger countries, from one region to the next. Nevertheless, in the case of doubt or dispute, it is the responsibility of the exporting member to provide the evidence to prove that its SPS measure for a given product indeed guarantees the same level of protection as that provided by its trading partner.

10. The Agreement also encourages members to consult each other in order to reach regional bilateral or multilateral agreement for recognising the equivalence of SPS measures, testing methods or compliance certificates. Such efforts should lead to improved use of resources, particularly for countries sharing the same climate, technology or development conditions.

C) Transparency

11. In order for the system to work effectively, it is vital that each member has access to complete and precise information on its trading partners’ SPS practices, particularly when these differ from international standards. That is why the detailed transparency rules in Annex B impose upon all members the obligation of notification of any new regulation or change to laws already in force, where these might differ from international standards. Moreover, each member must establish a national “enquiry point” to provide information on its current SPS legislation and procedures.

IV. Special and Differential Treatment (S&D)

12. During the Uruguay Round, the participants understood that some obligations in the agreements being negotiated would be difficult to implement in developing countries and, especially, least-developed countries (LDCs). That is why a set of

provisions in favour of those two categories of countries was incorporated into the text of the SPS Agreement.

13. The Agreement's preamble recognises that developing countries and LDCs may encounter "special difficulties", both in complying with the SPS measures of countries to which they are exporting their products – consequently restricting their trade prospects – *and* in formulating and administering SPS measures to be applied to their own imports. To remedy this situation, the Agreement provides (Art. 9) that the other WTO members must "assist" developing countries in their endeavours to formulate and implement SPS measures and "take account" of these countries' special needs when setting out their own legislation (Art. 10.1).

14. After fourteen years, provisions offering time-limited exceptions to the implementation of SPS obligations are now largely academic. They have given way to a more pragmatic approach to handling developing country difficulties, resting largely on the delivery of technical assistance. Accession negotiations always include specific commitments on the implementation of SPS obligations, including longer or shorter timeframes depending on level of development.

15. Nevertheless, Article 10.2 provides for developing members to benefit from "longer time-frames" to adjust to new SPS measures affecting their export interests. A decision at the Doha Ministerial Conference clarified this as to mean, normally, not less than six months. Similarly, to provide a cushion for exporters in developing countries, Paragraph 2 in Annex B (transparency) provides for a "reasonable interval" between the publication of new SPS regulations and their entry into force. Again, Ministers in Doha clarified this to mean, normally, not less than six months.

16. The volume of SPS technical assistance has grown significantly during the life of the Agreement. Delivered through bilateral donor programmes, through the multilateral agencies and the private sector, considerable help is now available for developing countries both to implement the Agreement and adapt to the demands of importing countries which impose ever more stringent SPS conditions on their trade. The Standards and Trade Development Facility (STDF) was established within the WTO after the Doha Ministerial Conference. A joint initiative of a number of agencies², the STDF seeks to coordinate the work of technical assistance providers and finance its own projects in developing countries.

17. The record in observing the S&D requirements is considered in the second of these two briefs, notably in the context of the current Third Review of the operation of the SPS Agreement.

V. Control, Inspection and Approval Procedures

18. Article 8 of the SPS Agreement, supplemented by its Annex C, spell out the crucial disciplines on the manner in which WTO members go about the control and inspection of food products, establish approval systems and set tolerance levels for additives and contaminants. It is in these areas that many developing countries have found difficulty for their exports and where a number of serious disputes have developed.

² World Bank, FAO, OIE, WHO and WTO

19. Thus Annex C requires that:

- inspection procedures take place without undue delay and in no less favourable manner for imported products than for like domestic products;
- the period required for each procedure is properly communicated and the results made available in a timely manner;
- information requirements are kept to an appropriate minimum and confidentiality respected;
- control, inspection and approval for any individual specimen of a product are limited to what is “reasonable and necessary”;
- fees charged for services related to imported products are appropriate and equitable with those on like domestic products;
- inconvenience – for instance in the setting of testing facilities – is minimised for importers and exporters, and
- a review procedure should exist to consider complaints and take action where justified.

VI. Consultation and Dispute Settlement

20. The Dispute Settlement Understanding of the WTO applies to the SPS Agreement. However, Article 11.2 calls on panels to seek advice from experts where scientific and technical issues are involved. Advisory technical expert groups may be established and relevant international organisations consulted. However, relatively few trade concerns end up as panel cases; most are resolved through bilateral consultation or through clarification in the SPS Committee (see Part Three in the SPS Brief).

Annex – International Organisations Relevant to the SPS Agreement.

The SPS recognizes a role for three international organisations that set standards and make recommendations in the area of sanitary and phytosanitary measures. The need for cooperation between these “Three Sisters” and the WTO was highlighted at the Doha Ministerial Conference. The Director-General was mandated to facilitate the increased participation of developing members in the work of these standard setting organisations and to coordinate with them on SPS-related technical assistance needs. Nevertheless, doubt has been expressed during the 2005 review of the SPS Agreement about the efficacy of cooperative efforts. A special workshop has been scheduled for October 2009 to examine the work of the Three Sisters and how to enhance the relationship between them and the SPS Committee.

1. Codex Alimentarius Commission

Normally referred to as the CODEX, the Commission was established in 1963 by the World Health Organization and the UN Food and Agriculture Organization to generate food safety standards, codes of practice and guidelines. The objective is to protect consumer health and ensuring “fair trade” in food products. Hundreds of standards, including levels of contaminants, residues and additives permitted in many foodstuffs, have been developed by CODEX. It also seeks to coordinate food standards activities at the level of governments and non-governmental organisations. The Commission has 174 member states and is based with the FAO in Rome.

2. World Organization for Animal Health

Referred to in the SPS Agreement by its original name, the International Office of Epizootics (from which, in the French version, comes its acronym, OIE), the World Organization for Animal Health has existed since 1924. It operates through a central bureau in Paris as well as regional and specialist commissions. The OIE supports the work of veterinary services throughout the world and maintains data on animal diseases, including an early warning system. The two OIE trade standards, the *Terrestrial Animal Health Code* and *Aquatic Animal Health Code*, aim to ensure the sanitary safety of international trade in terrestrial animals (mammals, birds and bees) and aquatic animals (fish, molluscs and crustaceans), and their products.

3. International Plant Protection Convention

The IPPC Treaty seeks to promote control measures that will prevent the spread of pests affecting plants and plant products. First adopted by an FAO conference in 1951, the IPPC sets the ground rules for national plant protection organisations. Among the responsibilities of the national organisations is the certification of consignments of plants and plant products to other contracting parties in the light of prevailing phytosanitary requirements. They also provide surveillance and inspection facilities for growing plants and consignments for export. Based in Rome with the FAO, the Convention offers non-binding dispute settlement, as well as facilitating information exchange and providing technical assistance.

Acronyms

FAO	Food and Agriculture Organization
GATT	General Agreement on Tariffs and Trade
IOE	International Office of Epizootics
IPPC	International Plant Protection Convention
LDCs	least-developed countries
NTBs	non-tariff barriers
S&D	Special and Differential Treatment
SPS	Sanitary and Phytosanitary Measures
STDF	Standards and Trade Development Facility
WTO	World Trade Organization