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The WTO-SPS Agreement General Principles

New CVOs, March 2010
Gabrone



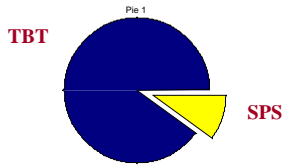

WTO-SPS Agreement Why an SPS Agreement?

- Removal of non-tariff barriers to trade
- GATT article XX(b)
need for clearer rules
- Concentrate on SPS measures




“Technical Barriers to Trade” Coverage of Measures

The SPS and TBT Agreement

Structure of SPS Texts

- Rights
- Obligations and disciplines
- Special provisions
- Dispute settlement



Measures **not** covered by SPS

Measures to protect, for example:

- the environment, *per se*
- consumer interests
- animal welfare

are not covered by the SPS Agreement



Purpose of the Agreement

- Members have rights to take SPS measures to protect human, animal, or plant health
- Based on science!
- Not a disguised restriction to trade!

The Agreement has significant consequences to the OIE



Scientific Justification

- Measures based on scientific principles
- Not maintained without sufficient scientific evidence
- Only applied to the extent necessary to protect health

Article 2:2

OIE

Rights and obligations

- health measures must be based on scientific principles and not maintained without sufficient scientific evidence
- an importing country has the right to adopt health measures to achieve the level of protection it determines appropriate to protect the life and health of its human, animal and plant populations
 - ALOP

OIE

Measures to be based on

- a health measure must be based on an **international standard**, if one exists
 - unless there is scientific justification for a stronger measure
 - or if a country decides it needs a higher level of protection than the standard provides
- in which case, a health measure must be based on a **risk analysis**

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Justified measures

- an SPS measure must not discriminate arbitrarily or unjustifiably between countries where identical or similar conditions exist eg. regarding animal health status
- an SPS measure must not be more trade restrictive than necessary to achieve the importing country's desired level of protection
 - taking into account technical and economic feasibility
 - ie can't just ban imports to protect national industry

OIE

Harmonization

“recognition and application of common sanitary and phytosanitary measures by different Members...”
Annex A, 2

“the relevant international organizations”



Article 3

OIE

Scientific Justification

- Two alternatives
 - Use of international standards
 - Own risk analysis

Article 3:3

OIE

Risk Analysis documentation:

- Provides guidance for decision-makers and adds transparency to the process
- Provides a framework for restrictions imposed on imports (imports restrictions must be commensurate with the documented risk)

Article 5

OIE

Risk Analysis sharing data will:

- Encourage consistency between countries
- While preserving each country's right to determine its own appropriate level of protection

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Equivalence

- Different ways of protecting health in different countries
 - Members shall accept the sanitary or phytosanitary measures of other members as equivalent, even if these measures differ from their own or from those used by other members trading the same product..
- Reasonable access
- Bilateral consultations

Article 4; A:3 (a)

Article 4

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Regionalization

- Allows countries to recognize disease-free and areas of low disease prevalence
- Considers geographic/ecologic borders
- Requires exporting country to have strong veterinary infrastructure
- Exporting country has burden of proof
- Reasonable access

Article 6

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OIE reporting obligations

- OIE Members have international reporting obligations as laid down in the Codes
 - to make available to other members, through the OIE, whatever information is necessary to minimise the spread of important animal diseases and to assist in achieving better worldwide control of these diseases
 - OIE Members have to report the presence of any listed disease, as well as the detection of any epidemiological event of significance

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WTO Dispute mediation procedure

Formal and informal dispute settlement procedures:

- 1) Discussion at meetings of the SPS committee
- 2) Good Offices by the chair of the SPS committee
- 3) WTO settlement Mechanism

WTO settlement Mechanism

Phase 1) Compulsory preliminary stage (consultation process of 60 days to try to find a mutually agreed solution)

If no solution:

Phase 2) Panel established by the Dispute Settlement Body (DSB) proposes a solution to the DSB



OIE

OIE mediation provisions



OIE mediation provisions

- if requested by Member Countries, OIE may act as 'mediator' to help resolve differences on a particular technical issue
 - Science-based, not legal-based, process
 - voluntary
 - outcomes **not binding**, unless agreed at start
- OIE experts discuss issues and aim at finding common ground solution, and not at identifying the "guilty"
- can be alternative or precursor to formal WTO dispute resolution process



Thank you for your attention

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