

THE RELATIONSHIP BETWEEN THE TRADE FACILITATION AGREEMENT AND THE AGREEMENT ON THE APPLICATION OF SANITARY AND PHYTOSANITARY MEASURES (SPS AGREEMENT)¹

1 INTRODUCTION: AGREEMENT ON TRADE FACILITATION

1.1. Trade facilitation, which in a nutshell could be described as simplification of trade procedures in order to move goods in cross-border trade more efficiently, became a topic of discussion at the WTO's Singapore Ministerial Conference in December 1996 (see the Singapore Ministerial Declaration, paragraph 21). After several years of exploratory work, Members formally agreed to launch negotiations on trade facilitation in July 2004 (see Annex D of the so-called "July Package" of 2004). Under the 2004 negotiating mandate, Members were directed to clarify and improve GATT Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations).²

1.2. After almost ten years of negotiations, the Trade Facilitation Agreement (TFA) was concluded in December 2013 at the Bali Ministerial Conference as part of a wider Bali package³ and a Protocol of Amendment⁴ was adopted in November 2014 to insert the new Agreement into Annex 1A of the WTO Agreement. The TFA entered into force on 22 February 2017, following its ratification by two-thirds of WTO Members.

1.3. The provisions of the TFA are laid out in three sections. Section I contains a series of provisions covering border-related procedures, processes and other disciplines. Section II of the Agreement contains special and differential treatment provisions for developing and least developed country Members. Section III includes a number of provisions related to the overall implementation of the Agreement, including institutional arrangements such as the establishment of the WTO Committee on Trade Facilitation as well as of national committees to facilitate domestic coordination and implementation of the Agreement. It also contains a number of final provisions, addressing *inter alia* the relationship between the TFA and other WTO Agreements.

1.4. The structure of Section I is as follows:

- Article 1: Publication and availability of information
- Article 2: Opportunity to comment, information before entry into force and consultations
- Article 3: Advance rulings
- Article 4: Procedures for appeal or review
- Article 5: Other measures to enhance impartiality, non-discrimination and transparency
- Article 6: Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties
- Article 7: Release and clearance of goods
- Article 8: Border agency cooperation
- Article 9: Movement of goods intended for import under customs control
- Article 10: Formalities connected with importation, exportation and transit
- Article 11: Freedom of transit
- Article 12: Customs cooperation

¹ At its meeting in July 2018, the SPS Committee requested that the Secretariat revise and update this background note following the adoption and entry into force of the Trade Facilitation Agreement.

² http://www.wto.org/english/tratop_e/tradfa_e/tradfa_intro_e.htm.

³ Members adopted a slightly revised final text of the TFA in July 2014, incorporating some editorial, non-substantive modifications. See WTO document WT/L/931.

⁴ WTO document WT/L/940.

2 RELATIONSHIP BETWEEN THE TFA AND THE SPS AGREEMENT

2.1. The TFA aims to expedite the movement, release and clearance of goods and to reduce transaction costs in trade. While most provisions of the TFA are to be implemented by customs authorities, many also apply to other agencies that deal with international trade, including SPS agencies. The TFA therefore raises interesting questions regarding its relationship with the SPS Agreement, given that many SPS controls are implemented at the border.

2.2. An example is the TFA provision on perishable goods (Article 7.9), according to which Members *inter alia* are to release perishable goods within the shortest possible time. However, such prompt release of goods in accordance with the TFA could potentially undermine Members' right to take measures to protect human, animal, and plant health in accordance with the SPS Agreement. Another example is the TFA obligation to publish promptly all import, export or transit procedures, including fees (Article 1). If such an import, export or transit procedure is an SPS measure taken to protect human, animal or plant health, the SPS Agreement and its transparency provisions would also apply to the measure in question.

2.3. The above and other possible intersections between the TFA and the SPS Agreement are, however, addressed in the Final Provisions of the TFA, contained in Section III. Article 24.6 states that "nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures". This provision would seem to allow for areas in which the TFA goes beyond the SPS Agreement and can contribute to facilitating trade in goods subject to SPS controls (for example by streamlining SPS measures and their application), without diminishing Members' existing right to take science-based measures to protect human, animal or plant life or health within their territories.

3 TFA VS SPS AGREEMENT PROVISIONS

3.1. The text below summarizes the substantive provisions contained in Section I of the TFA and the corresponding provisions of the SPS Agreement. It does not attempt to analyze either agreement in depth, but merely to ease comparisons between the two, and help the reader to ascertain in which respects the TFA goes beyond the SPS Agreement (SPS-plus provisions). See Figure 1 (at the end of the note) for examples of SPS-plus provisions contained in the TFA.

3.1 TFA Article 1: Publication and availability of information

3.2. Under the TFA, Members' obligations regarding publication and availability of information include the following:

- Publishing promptly a range of information related to importation, exportation and transit requirements and procedures (see TFA Article 1.1 a-j);
- Making available through the internet a description of importation, exportation and transit procedures, the required forms and documents, and contact information on enquiry points (whenever practicable, also in one of the official languages of the WTO);
- Establishing an enquiry point (or several) to answer questions from governments, traders and other interested parties, and notifying their contact information; and
- Notifying to the Trade Facilitation Committee the official places and URLs of websites where the Member has made available the above information.

3.3. The SPS Agreement addresses publication and other transparency obligations in its Article 7 and Annex B. Furthermore, the SPS Committee has developed recommended procedures for implementing the transparency obligations of the SPS Agreement to assist Members in fulfilling these obligations (G/SPS/7/Rev.4). Of relevance is also the Doha Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/17), which addresses the SPS requirement to grant a "reasonable interval" between the publication of an SPS measure and its entry into force.

3.4. As regards publication and availability of information, there are several intersections between the TFA and the SPS Agreement:

- The SPS Agreement requires prompt publication of SPS regulations such as laws, decrees or ordinances which are applicable generally (Annex B.1, see also footnote 5);⁵
- The SPS Agreement does not require Members to make their SPS regulations available on the internet, but this is encouraged in the recommended transparency procedures (G/SPS/7/Rev.4, paragraph 4.5);
- Regarding translations, there is no obligation to publish SPS measures in languages other than that of the Member, but developed countries shall, upon request, provide translations of documents related to a specific notification (Annex B.8: G/SPS/7/Rev.4, paragraph 2.21);
- The SPS Agreement requires Members to establish an SPS enquiry point to answer reasonable questions from other Members and provide relevant documents regarding SPS measures, control and inspection procedures, pesticide tolerance, etc. (Annex B.3);
- The SPS Agreement does not require Members to provide the official places or URLs of websites where they have made available SPS-related information, but they are encouraged in the recommended procedures on transparency to provide URLs of websites or hyperlinks to documents related to a notification that have been made available on the internet (G/SPS/7/Rev.4, paragraphs 2.13, 2.16, 2.23, 2.50, 5.2).

3.5. The TFA obligations on publication and availability of information are similar to the corresponding obligations in the SPS Agreement. There are, however, some SPS-plus areas in TFA Article 1. These include:

- The obligation to publish a wide range of information related to importation and exportation requirements and procedures (for instance on the required forms and documents, or on fees and charges), as opposed to the more limited SPS obligation to publish SPS regulations;
- The obligation to make a description of importation, exportation and transit procedures available on the internet and whenever practicable, in one of the WTO official languages. On the SPS side, Members are only encouraged to publish SPS regulations and related documents on the internet – and this encouragement is in the recommended procedures on transparency, not the SPS Agreement itself;
- Both agreements require Members to establish enquiry points to respond to requests for information. The SPS Agreement refers to "reasonable questions from interested Members", whereas in the TFA the reference is to "reasonable enquiries of governments, traders, and other interested parties". Under the SPS Agreement, the obligation is thus limited to replying to questions from other Members, while under the TFA, enquiry points also need to reply to enquiries from the private sector, for example.

3.2 TFA Article 2: Opportunity to comment, information before entry into force and consultations

3.6. Members are to provide opportunities and an appropriate time-period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations related to the movement, release and clearance of goods. Such laws are to be published as early as possible before their entry into force. Members must also provide for regular consultations between border agencies and traders or other stakeholders within their territory.

3.7. The SPS Agreement obliges Members to establish an SPS national notification authority responsible for the implementation of the notification procedures. These procedures require Members to publish a notice at an early stage to alert other Members to the proposal to introduce a particular regulation. Members must also notify other Members about draft SPS regulations by using pre-set notification formats,⁶ and allow "a reasonable time" for comments (Annex B.5). The recommended transparency procedures clarify that such reasonable period of time should normally be at least sixty calendar days (G/SPS/7/Rev.4, paragraph 2.8).⁷ Any comments submitted by other

⁵ See also dispute case *Japan – Agricultural Products II* (DS76), in which the Appellate Body recalled that the publication requirement also applies to other generally applied instruments that are similar in character to those explicitly referred to in the illustrative list of footnote 5 to Annex B.1.

⁶ Available at http://www.wto.org/english/tratop_e/sps_e/transparency_toolkit_e.htm.

⁷ Annex B.6 contains different provisions for situations involving urgent problems of health protection. In these situations, Members are required to notify other Members immediately that a regulation has been taken. They do not need to allow a comment period before the regulation is finalized, although they should still

Members should be discussed, upon request, and taken into account in finalizing the regulation. In addition, Members must allow a reasonable interval between the publication of an SPS regulation and its entry into force (except in urgent circumstances). According to the Doha Decision on Implementation-Related Issues and Concerns, this "reasonable interval" shall normally mean a period of not less than six months (WT/MIN(01)/17, paragraph 3.2).

3.8. Thus, for the most part TFA Article 2 contains obligations that are already covered in more detail in the SPS Agreement and in the Doha Decision; however, the obligation to provide for regular consultations between border agencies, traders and other stakeholders could be classified as an SPS-plus provision.

3.3 TFA Article 3: Advance rulings

3.9. An advance ruling is a written decision provided by a Member to an applicant (exporter or importer) prior to the importation of a good that sets forth the treatment that the Member will provide to the goods at the time of importation with regard to tariff classification and origin. TFA Article 3 obliges Members to issue advance rulings in a time-bound manner, and to notify applicants if they decline to issue a ruling. Members are also encouraged to provide advance rulings on "any additional matters for which they consider it appropriate" to issue one (TFA Article 3.9(b)(iv)). Such advance rulings on "additional matters" can presumably also include SPS-related advance rulings regarding, for instance, SPS procedures to be applied at the time of importation.

3.10. The SPS Agreement does not address the issue of advance rulings. Therefore, the TFA encouragement to provide advance rulings on "additional matters for which a Member considers it appropriate" (besides tariff classification and origin) could be classified as an SPS-plus provision.

3.4 TFA Article 4: Procedures for appeal or review

3.11. Members are required to provide for administrative and/or judicial appeal of administrative decisions issued by customs (TFA Article 4.1). They are also encouraged to provide for such appeal or review for administrative decisions issued by "relevant border agencies other than customs" (TFA Article 4.6). These can include agencies in charge of SPS procedures.

3.12. The SPS Agreement addresses the question of appeal and review in its Annex C, paragraph 1(i), which requires Members to adopt a procedure to review complaints concerning the operation of control, inspection and approval procedures, and to take corrective action when a complaint is justified. Accordingly, as regards review procedures, the TFA does not seem to add new obligations, although it adds specificity to the obligations contained in the SPS Agreement.

3.5 TFA Article 5: Other measures to enhance impartiality, non-discrimination and transparency

3.13. TFA Article 5 aims to enhance impartiality, non-discrimination and transparency. It contains provisions covering systems designed to increase controls on imports following detection of violations, also called import/rapid alert systems (paragraph 1); detention of goods (paragraph 2); and test procedures (paragraph 3).

3.14. TFA Article 5.1 deals with systems designed to increase controls on imports following detection of violations. It encourages basing such enhanced controls on risk, and applying them uniformly only to those points of entry where the relevant SPS conditions apply. It also obliges Members to promptly terminate the enhanced controls when circumstances change, or if a less trade-restrictive alternative is available, and to announce such terminations transparently. This Article applies specifically to controls and inspections of foods, beverages and feedstuffs with the objective of protecting human, animal or plant life or health. Such an alert system could thus, by definition, also be covered by the SPS Agreement. Since the SPS Agreement does not contain any specific disciplines for enhanced controls, TFA Article 5.1 could be considered as an SPS-plus provision.

allow other Members to submit comments, discuss these comments upon request, and take the results of these discussions into account.

3.15. TFA Article 5.2 obliges Members to inform the carrier or importer about detention of imported goods for inspection. Article 5.3 addresses opportunities for second tests if a first test shows an adverse finding. The SPS Agreement is silent on both issues, so TFA Articles 5.2 and 5.3 could be classified as SPS-plus provisions.

3.6 TFA Article 6: Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties

3.16. TFA Article 6 regulates fees and charges other than import and export duties and certain internal taxes (VAT, sales taxes and excise duties, among others). Border charges such as those levied in connection with SPS control, inspection and approval procedures would seem to fall within its scope of application. The requirements are that Members publish information on such fees and charges in accordance with TFA Article 1, accord an adequate time between the publication of new or amended fees and charges and their entry into force, and periodically review the charges with a view to reducing their number and diversity (TFA Article 6.1). TFA Article 6.2 deals with fees and charges for customs processing, and Article 6.3 addresses penalty disciplines, which would seem to be less relevant in an SPS context.

3.17. The SPS Agreement also regulates fees levied for control, inspection and approval procedures in its Annex C, paragraph 1(f). Such fees must be equitable to those charged on like domestic products or products originating in any other Member, and should not be higher than the actual cost of the service. Annex C, paragraph 1(f) is less detailed than the TF provisions on fees and charges. However, Annex C is to be read together with Article 8 of the SPS Agreement, which stipulates that control, inspection and approval procedures must not be "inconsistent with the provisions of the Agreement". Thus, it would seem that at least some control, inspection and approval procedures would be subject to the entire SPS Agreement, not just Annex C.

3.18. In adding more specificity on transparency and requiring periodic review of fees and charges, TFA Article 6 goes beyond Annex C and Article 8 of the SPS Agreement and as such, could be classified as an SPS-plus provision.

3.7 TFA Article 7: Release and clearance of goods

3.19. This detailed article sets out the procedures which Members are to establish or maintain for the release and clearance of goods for import, export or transit. It regulates:

- Pre-arrival processing of import documentation and other formalities (to speed up release once the goods have arrived);
- Electronic payment;
- Release of goods before final determination of customs duties and other charges;
- Risk management to concentrate customs controls on high-risk consignments and expedite the release of low-risk consignments;
- Post-clearance audit to demonstrate compliance with customs and other related laws and regulations;
- Establishment and publication of average release times;
- Additional trade facilitation measures for authorised ("trusted") operators who meet specific criteria, such as a good record of compliance, a system of managing records, etc.;
- Allowing for expedited shipments of, at least, goods entering through air cargo facilities (concerning, in particular, express delivery operators); and
- Releasing perishable goods within the shortest possible time, giving them priority in inspections, allowing for proper storage pending release, and communicating reasons for any delay.

3.20. In Annex C, the SPS Agreement contains disciplines for control, inspection and approval procedures, requiring for example that they be undertaken without undue delay. However, TFA Article 7 contains more specific requirements than the SPS Agreement in many of the areas above, and could thus be classified as SPS-plus.

3.21. Expediting the release and clearance of goods in compliance with the TFA could potentially undermine Members' rights to implement SPS controls in accordance with the SPS Agreement. However, TFA Article 7 qualifies the obligation by the phrase "nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner

not otherwise inconsistent with the Member's WTO rights and obligations" (TFA Article 7.3.6, see also TFA Article 7.8.3). In addition, TFA Article 24.6 also stipulates that the TF Agreement does not diminish Member's rights and obligations under the SPS Agreement.

3.8 TFA Article 8: Border agency cooperation

3.22. TFA Article 8 requires each Member to ensure that its customs and other border authorities and agencies cooperate with one another and coordinate their activities in order to facilitate trade. It also requires Members to cooperate with neighbouring Members with a view to coordinating procedures at border crossings to facilitate trade. According to the Article, such cooperation and coordination may include:

- Alignment of working days and hours;
- Alignment of procedures and formalities;
- Development and sharing of common facilities;
- Joint controls;
- Establishment of one stop border post control.

3.23. The SPS Agreement contains no such provisions, and as such, TFA Article 8 could be considered an SPS-plus provision.

3.9 TFA Article 9: Movement of goods intended for import under customs control

3.24. TFA Article 9 requires Members, to the extent practicable, to allow goods intended for import to be moved under customs control from the point of entry to another customs office. The SPS Agreement does not address this issue, and this provision could thus be characterized as an SPS-plus provision.

3.25. Allowing goods to be moved between customs offices could potentially raise some SPS concerns relating to the entry, establishment or spread of pests or diseases. However, TFA Article 9 qualifies the obligation by the phrase "shall [allow for movement of goods], to the extent practicable, and provided all regulatory requirements have been met". In addition, as noted before, TFA Article 24.6 stipulates that the TFA does not diminish Members' rights and obligations under the SPS Agreement.

3.10 TFA Article 10: Formalities connected with importation, exportation and transit

3.26. This detailed article aims to minimize the incidence and complexity of import, export and transit formalities and to decrease and simplify document requirements. It regulates:

- Formalities and documentation requirements, requiring Members to review such requirements and ensure that they are aimed at rapid release and clearance (particularly of perishable goods), aim to reduce time and cost of compliance for traders, restrict trade as little as possible, and remove such requirements if no longer needed;
- Acceptance of paper or electronic copies of supporting documents required for import;
- Use of international standards as a basis for importation, exportation or transit formalities;
- Establishment of single windows, enabling traders to submit documentation through a single entry point;
- Preshipment inspections, requiring Members to eliminate them in relation to tariff classification and customs valuation and encouraging them not to expand the use of other preshipment inspections. Preshipment inspections for SPS-purposes are nevertheless not precluded in accordance with footnote 12 to TFA Article 10.5.2;
- Use of customs brokers, prohibiting introduction of measures that make the use of customs brokers mandatory in import/export operations;
- Common border procedures and uniform documentation requirements. However, TFA Article 10.7.2(e) explicitly states that Members are not precluded from differentiating procedures and documentation requirements in a manner consistent with the SPS Agreement;
- Rejection of goods on account of failure to meet SPS regulations or other technical regulations. The importer is to be allowed, subject to the Member's laws and regulations, to re-consign or to return the rejected goods to the exporter or a person designated by the exporter – however, if the importer fails to act within a reasonable period of time, the competent authority may "take a different course of action to deal with such non-compliant goods"; and
- Temporary admission of goods, including for inward and outward processing.

3.27. Many of the provisions in TFA Article 10 could be classified as SPS-plus – an example is the obligation to review formalities and document requirements with a view to reducing them, or the obligation to allow, as a first option, the importer to re-consign or return goods rejected on the grounds of SPS concerns.

3.28. TFA Article 10.3 encourages Members to use international standards as a basis for import, export or transit formalities and procedures, but does not identify any specific international standards or standard-setting bodies. The SPS Agreement explicitly refers to the standards, guidelines and recommendations developed by Codex, OIE and IPPC, and some of their standards may be considered relevant in the context of TFA Article 10.3 as well. In addition, Members may need to consider additional international standards in relation to import, export or transit procedures.

3.29. Minimizing formalities connected with importation and exportation and transit in compliance with the TFA could limit Members' right to implement SPS controls in accordance with the SPS Agreement. However, TFA Article 10 includes qualifiers that explicitly allow for preshipment inspections for SPS purposes (footnote 12 to TFA Article 10.5.2), and that allow Members to apply different procedures and documentation requirements in a manner consistent with the SPS Agreement (TFA Article 10.7.2(e)). In addition, as noted before, TFA Article 24.6 stipulates that the TFA does not diminish Members' rights and obligations under the SPS Agreement.

3.11 TFA Article 11: Freedom of transit

3.30. This detailed article requires Members to treat goods in transit no less favourably than if they were being transported directly from their place of origin to their destination. Regulations or formalities in connection with transit traffic must be the least trade restrictive possible, and not be applied in a manner which would constitute disguised restrictions. Members are encouraged to cooperate with one another with a view to enhancing freedom of transit (as regards charges, formalities and legal requirements, and practical operation of transit regimes). Other obligations include, *inter alia*, to make available, where practicable, physically separate infrastructure for transit; and to allow for advance filing and processing of transit documentation.

3.31. TFA Article 11.8 explicitly prohibits application of technical regulations and conformity assessment procedures within the meaning of the TBT Agreement to goods in transit. TFA Article 11.8 does not make reference to the SPS Agreement, presumably recognizing that Members may need to apply SPS measures to goods in transit to address pest or disease risks.

3.32. The SPS Agreement applies to goods in transit but does not contain a dedicated article on this. Accordingly, in addressing transit procedures in considerable detail, TFA Article 11 can facilitate transit also for goods that are subject to SPS controls. Examples of SPS-plus elements for goods in transit include the requirement to limit formalities and documentation requirements (TFA Article 11.6), or to allow for advance filing and processing of documentation and data (TFA Article 11.9).

3.12 TFA Article 12: Customs cooperation

3.33. TFA Article 12 defines detailed requirements for improving customs cooperation through sharing information between customs authorities. Members are to exchange information to verify import/export declarations where there is a reason to doubt the accuracy of the declaration, and to share information, among others, on best practices in managing customs compliance. Members are also to provide technical guidance in administering compliance measures.

3.34. Addressing customs procedures and cooperation, TFA Article 12 is not of direct relevance in sanitary and phytosanitary matters. However, in requiring enhanced cooperation between customs officials, the article may also have positive effects on SPS controls.

4 TFA SECTION II: SPECIAL AND DIFFERENTIAL TREATMENT

4.1. TFA Section II contains special and differential treatment provisions for developing and least-developed country Members. These Members have flexibilities in implementing the TFA and are to designate, within specific timelines set out in the Agreement, which commitments they undertake to implement upon entry into force of the Agreement - or within one year for LDCs - (Category A),

which they will implement after a transitional period (Category B) and which they will implement only after a transitional period and capacity building (Category C). Although the SPS Agreement contains articles on special and differential treatment and on technical assistance, the approach taken in the TFA is innovative and goes beyond the relevant SPS Agreement provisions.

5 TFA SECTION III: INSTITUTIONAL ARRANGEMENTS AND FINAL PROVISIONS

5.1. Section III establishes a permanent WTO Committee on Trade Facilitation at the WTO and requires Members to have a national committee to facilitate domestic coordination and implementation of the TFA. It also sets out a few final provisions.

5.1 TFA Article 23.1: WTO Committee on Trade Facilitation

5.2. TFA Article 23.1 establishes a Committee on Trade Facilitation, open for participation by all Members. This Committee is to establish close contacts with other international organizations in the field of trade facilitation, such as the WCO, to secure best available advice and avoid duplication of effort. The TF Committee is also mandated to review the operation and implementation of the TFA four years after its entry into force and periodically thereafter. In addition, it shall encourage and facilitate *ad hoc* discussions among Members on specific issues with a view to reaching a prompt mutually satisfactory solution.

5.3. The functions of the SPS Committee are similar to those of the Trade Facilitation Committee (see SPS Article 12). The SPS Committee has a broad mandate, to carry out the functions necessary to implement the provisions of the SPS Agreement and the furtherance of its objectives. In practice, the SPS Committee provides a valuable forum to exchange information on SPS measures and on the implementation of the Agreement. The Committee's work has concentrated on exchange of information, discussion of specific trade concerns raised by Members, and on strengthening the implementation of the SPS Agreement through sharing of experiences and through development of guidance and recommendations on particular topics and provisions.

5.2 TFA Article 23.2: National Committees on Trade Facilitation

5.4. TFA Article 23.2 requires Members to establish a national committee on trade facilitation, or designate an existing mechanism, to facilitate domestic coordination and implementation of its provisions. While there is no corresponding obligation under the SPS Agreement, many Members have established national SPS committees. Others have established other national mechanisms to facilitate coordination between national agencies involved in the implementation of the SPS Agreement.

5.3 TFA Article 24: Final Provisions

5.5. This article addresses several points related to the implementation of the TFA and its relationship with other WTO Agreements. Article 24.6 clarifies that nothing in the TFA shall be construed as diminishing the obligations of Members under the GATT 1994. In addition, as noted throughout this document, it establishes that nothing in the TFA shall be construed as diminishing the rights and obligations of Members under the TBT and SPS Agreements.

5.6. Article 24 further clarifies that all exceptions and exemptions under the GATT 1994 shall apply to the TFA, and the application of the Dispute Settlement Understanding to the TFA.

Figure 1 – Examples of SPS-plus provisions contained in the TFA

