WTO Agreement on the Application of SPS Measures

Background & coverage

Hanna Vitikkala
Hanna.Vitikkala@wto.org
## Negotiating Trade Rounds

<table>
<thead>
<tr>
<th>Year</th>
<th>Place / name</th>
<th>Subjects covered</th>
<th>#</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td>Geneva</td>
<td>Tariffs</td>
<td>23</td>
</tr>
<tr>
<td>1949</td>
<td>Annecy</td>
<td>Tariffs</td>
<td>13</td>
</tr>
<tr>
<td>1951</td>
<td>Torquay</td>
<td>Tariffs</td>
<td>38</td>
</tr>
<tr>
<td>1956</td>
<td>Geneva</td>
<td>Tariffs</td>
<td>26</td>
</tr>
<tr>
<td>1960-1961</td>
<td>Geneva (Dillon Round)</td>
<td>Tariffs</td>
<td>26</td>
</tr>
<tr>
<td>1964-1967</td>
<td>Geneva (Kennedy Round)</td>
<td>Tariffs and anti-dumping measures</td>
<td>62</td>
</tr>
<tr>
<td>1973-1979</td>
<td>Geneva (Tokyo Round)</td>
<td>Tariffs, NTBs, “framework agreements”</td>
<td>102</td>
</tr>
<tr>
<td>1986-1994</td>
<td>Geneva (Uruguay Round)</td>
<td>Tariffs, NTBs, rules, services, IP, DSU, textiles, agriculture, creation of WTO, etc.</td>
<td>123</td>
</tr>
<tr>
<td>2001 -</td>
<td>Geneva (DDA)</td>
<td>(the above) + environment, + ?</td>
<td>153</td>
</tr>
</tbody>
</table>

Source: WTO
Overall tariff on industrial products

\[ \approx 40\% \]

> 4\%

- 1947 GATT established
- 1962 Pre-Kennedy Round
- 1972 Post-Kennedy Round
- 1987 Post-Tokyo Round
- 1995 Post-Uruguay Round
Use of non-tariff measures?

1947 1995

tariffs

NTBs
## Negotiating Trade Rounds

<table>
<thead>
<tr>
<th>Year</th>
<th>Place / name</th>
<th>Subjects covered</th>
<th>#</th>
</tr>
</thead>
<tbody>
<tr>
<td>1947</td>
<td>Geneva</td>
<td>Tariffs</td>
<td>23</td>
</tr>
<tr>
<td>1949</td>
<td>Annecy</td>
<td>Tariffs</td>
<td>13</td>
</tr>
<tr>
<td>1951</td>
<td>Torquay</td>
<td>Tariffs</td>
<td>38</td>
</tr>
<tr>
<td>1956</td>
<td>Geneva</td>
<td>Tariffs</td>
<td>26</td>
</tr>
<tr>
<td>1960-1961</td>
<td>Geneva (Dillon Round)</td>
<td>Tariffs</td>
<td>26</td>
</tr>
<tr>
<td>1964-1967</td>
<td>Geneva (Kennedy Round)</td>
<td>Tariffs and anti-dumping measures</td>
<td>62</td>
</tr>
<tr>
<td>1973-1979</td>
<td>Geneva (Tokyo Round)</td>
<td>Tariffs, NTBs, “framework agreements”</td>
<td>102</td>
</tr>
<tr>
<td>1986-1994</td>
<td>Geneva (Uruguay Round)</td>
<td>Tariffs, NTBs, rules, services, IP, DSU, textiles, agriculture, creation of WTO, etc.</td>
<td>123</td>
</tr>
<tr>
<td>2001 -</td>
<td>Geneva (DDA)</td>
<td>(the above) + environment, + ?</td>
<td>153</td>
</tr>
</tbody>
</table>

Source: WTO
Technical barriers to trade

- Sanitary and phytosanitary measures
- Trade-related intellectual Property rights
- Subsidies
- Quantitative restrictions
- Government purchase
- Trade in services
The SPS Agreement is one of the WTO's Multilateral Agreements on trade in goods, contained in Annex 1A of the WTO Agreement.

The basic structure of the WTO Agreements

<table>
<thead>
<tr>
<th>Umbrella</th>
<th>The Agreement Establishing the WTO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Multilateral Trade Agreements</td>
<td>Goods (Annex 1A)</td>
</tr>
<tr>
<td>Apply to all Members</td>
<td></td>
</tr>
<tr>
<td>Agreements</td>
<td>GATT 1994</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dispute Settlement</th>
<th>Dispute Settlement Understanding – DSU (Annex 2)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plurilateral Commitments</td>
<td>Plurilateral Trade Agreements (Annex 4)</td>
</tr>
</tbody>
</table>
Why an Agreement on SPS?

World food and agriculture trade:

- In 2014, **US$ 1765 billion** of agricultural products traded
- **US$ 1486 billion** food traded (2014)

But, on the other hand...
• Loss of confidence between trading partners
• Trade bans, more severe import controls ...
• Heavy economic losses for producers and exporters
• Loss of consumers’ confidence!!!
Video “Trading Safely” by STDF
What is the objective of the SPS Agreement?

Recognizing the right to protect human, animal, plant life or health

Avoiding unnecessary barriers to trade
A measure taken to protect:

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</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>Territory of Member</td>
<td>other damage caused by entry, establishment or spread of pests</td>
</tr>
</tbody>
</table>
Card 13:
Scope, Annex a, para. 1

Humans

Animals

Plants

Territory

Additives, contaminants, etc. in food or feed

Animal-carried diseases

Pests, diseases
1. Humans

- Limits on residues in fish & shellfish
- Limits on aflatoxin residues in nuts
2. Animals

measure to prevent introduction of FMD
3. Plants

measure to prevent introduction of fruit flies
measure to prevent introduction of zebra mussels through ballast water of ships
Minimum size of fruit?

Use of anti-pest sprays?

Packaging?
Each group receives a set of 20 cards
Each card has a **recto** and a **verso** side containing two options referring to a provision referenced in the SPS Agreement
Each group must discuss and choose which side of the card it believes contains the correct provision as referenced in the SPS Agreement
Please choose the “correct side” of the card, i.e. the right SPS provision for all 20 cards.
Refer to the specific Article of the SPS Agreement (where applicable)
Review:

Basic Provisions of the SPS Agreement
Card 1: What is the **objective** of the SPS Agreement

1a **Under certain conditions** Members may implement measures which restrict trade in food products.

1b **Members shall not** implement measures which restrict trade in food products.
Card 1:
What is the objective of the SPS Agreement?

Recognizing the right to protect human, animal, plant life or health

Avoiding unnecessary barriers to trade
“Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement”
“Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement”
Card 2: Scientific Justification

2a Governments must base their SPS measures on appropriate *scientific evidence*.

2b Governments must base their SPS measures on *economic principles*. 
Scientific justification, Article 2.2

Based on scientific principles

Not maintained without sufficient scientific evidence

One exception – provisional measures
Card 3: Non-discrimination

3a SPS measures shall not differentiate between national and foreign sources of supply.

3b Under certain conditions, SPS measures may differentiate between national and foreign sources of supply.
Lesson 2: Brief introduction to the basic obligations under the SPS Agreement

Card 3: Non-discrimination, Article 2.3
No *unjustifiable* differentiation

– between national and foreign sources of supply
Card 4: Non-discrimination

4a SPS measures shall not differentiate between different foreign sources of supply.

4b Under certain conditions, SPS measures may differentiate between different foreign sources of supply.
Lesson 2: Brief introduction to the basic obligations under the SPS Agreement

Card 4: Non-discrimination

e.g. Avian Influenza
Card 4: Non-discrimination

Country A

Country B

Country C

FMD

FMD-free

e.g. Foot & Mouth Disease (FMD)
Card 5: Harmonization

5a Codex, IPPC, OIE, WHO and ISO develop the international standards explicitly recognized in the SPS Agreement.

5b Codex, IPPC, and OIE develop the international standards explicitly recognized in the SPS Agreement.
Card 5:  
Harmonization, Annex A, para. 3

animal health  
OIE

food safety  
CODEX

plant health  
IPPC
Card 6: Scientific Justification

6a SPS measures which conform to an international standard are **presumed to be consistent** with the SPS Agreement.

6b SPS measures which conform to an international standard **must be proven to be consistent** with the SPS Agreement.
Card 6: Harmonization, Article 3.2
Card 7: Equivalence

7a An importing Member shall accept an exporting Member's measure as equivalent if it achieves the importer's ALOP.

7b An importing Member shall accept an exporting Member's measure as equivalent only if it is the same as the importer's measure.
Card 7: Equivalence, Article 4

“More than one way to kill a fruit fly”

Committee Guidelines (G/SPS/19/Rev.2)

Upcoming workshop
Card 8 - Risk assessment

8a Economic and biological consequences must be considered for risk assessments relating to **food safety, and risks to animal or plant life or health.**

8b Economic and biological consequences must only be considered for risk assessments relating to **risks to animal or plant life or health.**
“No price tag on human health”
9a The appropriate level of protection (ALOP) and the acceptable level of risk are two different concepts.

9b The appropriate level of protection (ALOP) is sometimes called the acceptable level of risk.
Card 9:  
Appropriate level of protection, Annex A, para. 5

Note after Annex A.5
Card 10: Risk assessment - exception

10a In the absence of sufficient scientific evidence, Members may not adopt trade restricting SPS measures.

10b In the absence of sufficient scientific evidence, Members may adopt provisional SPS measures based on available information.
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
Card 11 - Regionalization

11a To gain recognition of a pest- or disease-free area, **an exporting Member** has to provide the necessary proof.

11b An **importing Member** shall recognize a pest- or disease-free area unless it has evidence that the area is not really pest- or disease-free.
Card 11: Regionalization, Article 6

Should trading partners restrict imports from all areas of Country A?

Should trading partners only restrict imports from the Southern part of Country A?

Should trading partners only restrict imports from the Northern part of Country A?
Card 12: When to Notify?

12a A proposed SPS regulation, which will affect international trade, shall be notified when changes can still be made.

12b A proposed SPS regulation, which will affect international trade, shall be notified as soon as it enters into force.
Card 12: Transparency, Article 7 and Annex B

Recommended Transparency Procedures
G/SPS/7/Rev.3

Allow a 60-day comment period
Card 13: TBT Agreement – Coverage

13a Most food labelling requirements and quality regulations are subject to the SPS Agreement.

13b Most food labelling requirements and quality regulations are subject to the TBT Agreement.
It applies to all:

- technical regulations (mandatory)
- standards (voluntary)
- conformity assessment procedures

But: its provisions do **not** apply to SPS measures
SPS or TBT?

SPS Measures

- human or animal health from food-borne risks
- human health from animal- or plant-carried diseases
- animals and plants from pests or diseases
- examples:
  - pesticide residues
  - food additives

TBT Measures

- Nutritional claims
- Food packaging and quality
  - Examples: Minimum size of fruit, labelling …
Card 13: Scope, Annex a, para. 1

- Additives, contaminants, etc. in food or feed
- Animal-carried diseases
- Pests, diseases
- Territory
- Plants
- Animals
- Humans
Card 14: Translations of Notified Regulations?

14a All Members must provide summaries of notified regulations in English, French or Spanish upon request.

14b Developed country Members must provide summaries of notified regulations in English, French or Spanish upon request.
Upon request, developed countries to provide regulation or its summary in English, French, or Spanish.

Members encouraged to share unofficial translations with each other – supplement format.
Card 15: Transparency

15a Members' SPS Enquiry Points shall answer all reasonable questions concerning SPS regulations currently in force only.

15b Members' SPS Enquiry Points shall answer all reasonable questions concerning proposed or adopted SPS regulations.
Article 7 & Annex B, para. 3(a)
National Enquiry Point (NEP)

Provides answers and documentation to all reasonable questions from interested Members regarding any SPS regulation adopted or proposed within its territory.
16a Governments *can* charge fees for control, inspection and approval procedures as long as these are not higher than the actual costs of the service.

16b Governments *cannot* charge any fees for control, inspection and approval procedures on imported products.
“Any fees imposed for the procedures on imported products are equitable in relation to any fees charged on like domestic products or products originating in any other Member and should be no higher than the actual cost of the service.”
Card 17: Technical Assistance

17a  Members agree to facilitate the provision of technical assistance to other Members.

17b  Members are not required to consider requests for technical assistance from developing countries.
“Members agree to facilitate provision of TA...”
help countries comply with SPS measures
technology, research, infrastructure
advice, credits, donations, grants
technical expertise, training, equipment
help countries maintain and expand market access
18a The SPS Committee makes its decisions by **two-thirds majority** of the vote.

18b The SPS Committee makes its decisions by **consensus**.
No Member voices an objection at the meeting
19a The SPS Committee has developed guidance for the implementation of provisions relating to: equivalence, risk assessment, least trade restrictive measures and transparency.

19b The SPS Committee has developed guidance for the implementation of provisions relating to: equivalence, consistency in the level of protection, recognition of pest- or disease-free areas and transparency.
Card 19:

The SPS Committee – Article 12

19B
Card 20: Decisions & Guidelines of the SPS Committee

20a The decisions and guidelines adopted by the SPS Committee are **legally binding** and **must be followed** by governments.

20b The decisions and guidelines adopted by the SPS Committee **cannot add to or detract from** the legal obligations of WTO Members.
Card 20: Committee Decisions, Guidelines …
Key Provisions

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
Thank you!

Hanna Vitikkala
Hanna.Vitikkala@wto.org