International harmonization in the SPS Agreement, an overview

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Outline

1. Harmonization in the SPS Agreement
2. Monitoring the process of international harmonization in the SPS Committee
3. Transparency and international harmonization
4. Q & A
Harmonization in the SPS Agreement

Objective?

Preamble

…further the use of harmonized SPS measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations …
Harmonization in the SPS Agreement
Annex A.2

What is harmonization?

Annex A.2 – Definition
The establishment, recognition and application of common sanitary and phytosanitary measures by different Members
Harmonization in the SPS Agreement
Annex A.3

Which international standards?

Standard-setting organizations

- food safety
- animal health and zoonoses
- plant health

Codex = Joint FAO/WHO Codex Alimentarius Commission
OIE = World Organisation for Animal Health
IPPC = International Plant Protection Convention (FAO)
Harmonization in the SPS Agreement

Article 3

What does it say?

**Article 3.1:** To **harmonize** SPS measures… Members **shall base** their SPS measures on international standards, guidelines and recommendations, .... except as otherwise provided for in this Agreement, and in particular in paragraph 3

**Article 3.2:** Measures that **conform to** international standards **shall be deemed to be necessary** to protect human, animal or plant life or health, and **presumed to be consistent** with the relevant provisions of this Agreement....
Alternatives to harmonization?

Article 3.3

• if there is a **scientific justification**
• as a consequence of an appropriate level of protection, in conformity with Article 5 (risk assessment)
Harmonization in the SPS Agreement
Article 3

How to comply?

International Standards
(Art. 3.1, 3.2)

Does a relevant international standard exist?

Is the measure “based on” a relevant international standard?

Does the measure “conform to” the international standard?

OR

Risk Assessment
(Art. 3.3, 5.1)

Does the measure result in a higher level of protection than that achieved by the international standard?

Is this measure based on a risk assessment?
Harmonization in the SPS Agreement
Disputes – selected take-aways

“Based on” international standards – Measure adopts some but not necessarily all elements

“Based on” – founded, built upon, supported by the relevant international standard; cannot contradict the international standard

Presumption of consistency – “conform to” ≠ “based on”

If an SPS measure incorporates all the elements of the international standard, it “conforms to”

Right to be stricter than international standards if measure justified with risk assessment

No particular distinction between "standards", "guidelines" and "recommendations"

Amendments to standards – latest science
Monitoring the process of international harmonization in the SPS Committee

**Article 3.5**
- Refers to 12.1 and 12.4
- ...develop a procedure to monitor the process of international harmonization
- ...coordinate efforts in this regard with the relevant international organization

**Article 12.1**
- [SPS Committee]...shall carry out the functions necessary to implement the provisions of this Agreement and the furtherance of its objectives, in particular with respect to harmonization

**Article 12.4**
- ...develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations
- ...establish a list of international standards, guidelines or recommendations relating to SPS measures which the Committee determines to have a major trade impact
Monitoring the process of international harmonization in the SPS Committee

G/SPS/11/Rev.1 – Revision of the Procedure to Monitor The Process of International Harmonization

- Nov. 2004 – Revised
- June 2006 - Extended indefinitely; reviewed under the periodic review of the SPS Agreement
SPS Monitoring Procedure (G/SPS/11/Rev.1)

How does it work?

- **Aim of encouraging** Members to use international standards
- **Identifying** where there is a major impact on trade resulting from the non-use of standards
- Help to understand *when* an international standard, guideline or recommendation is needed by:
  - Identifying the required international standard
  - Information from Members on their use or non-use
SPS Monitoring Procedure (G/SPS/11/Rev.1)

How should it work?

Scope of Monitoring limited to Standards, Guidelines and Recommendations developed by Codex, OIE, IPPC (par. 4)

Members should submit concrete examples of problems with a significant trade impact related to the use or non-use of international standards. Describe, whether it is the result of:

(a) non-use of an existing standard; or
(b) absence or inappropriateness of existing standard

A list of standards, guidelines or recommendations which have a major impact on international trade shall be established and reviewed at each meeting of the Committee
Para. 9

The Committee may invite Codex, OIE, IPPC to provide further information in writing or through presentations on any standard under consideration, incl. with regard to any changes or ongoing revisions.

Para. 10

The Secretariat should prepare an annual report to the Committee on the list of standards, the major trade impacts identified on use, non-use, or absence of international standard. The Committee will transmit the report to the ISSBs. Members to take this into account, through their participation, in establishing those organizations’ work priorities.
How did it work?

July 1999 – Adoption of 1st Annual Report (G/SPS/13)

Main steps:

- Members identified 9 standards-related issues (1998)
- Secretariat circulated document to gather information from Members on issues identified (G/SPS/W/100, March 1999)
- Responses summarized in 1st Annual Report
- Communication sent to ISSBs asking for their input

Oct. 2000 – 2nd Annual Report, replies from ISSBs (G/SPS/16)
SPS Monitoring Procedure *(G/SPS/11/Rev.1)*

Periodic Reviews of SPS Agreement

- **2nd Review** *(G/SPS/36)*
  - 12 issues raised (1999-2004)
  - Concerns raised by developing Members about ability to actively participate in the development of international standards
  - Codex, OIE, IPPC to establish trust funds to enhance participation
SPS Monitoring Procedure *(G/SPS/11/Rev.1)*

**Periodic Reviews of SPS Agreement**

- **3rd and 4th Reviews** *(G/SPS/53, G/SPS/62)*
  - Procedure under-utilized by Members (2005-2013)
  - July 2012 - Proposal to revise the monitoring procedure:
    - Include in Annual Report issues raised under STCs when related to non-use or absence of international standards
  - Members should ensure full implementation of transparency provisions, including recommendations *(G/SPS/7/Rev.3, 2008)*
    - Indicate if conformity
    - Notify all regulations even when based on / conform to

- **5th Review** *(G/SPS/64 and Add.1, 2014-2019)*
  - Summary of issues (new, previous) considered and responses received from ISSBs (current practice)

- **Latest Annual Report** *(23rd) – G/SPS/GEN/1909, May 2021*
Transparency and international harmonization

SPS notifications referring to an international standard

Recommended Transparency Procedures (G/SPS/7/Rev.4)

5. Title of the notified document: __________________________ Language: __________________________ Number of pages: __________________________

6. Description of content: __________________________

7. Objective and rationale: [□] food safety, [□] animal health, [□] plant protection, [□] protect humans from animal/plant pest or disease, [□] protect territory from other damage from pests.

8. Is there a relevant international standard? If so, identify the standard:
   - Codex Alimentarius Commission (e.g. title or serial number of Codex standard or related text)
   - World Organization for Animal Health (OIE) (e.g. Terrestrial or Aquatic Animal Health Code, chapter number)
   - International Plant Protection Convention (e.g. ISPM number)
   - None
   Does this proposed regulation conform to the relevant international standard? [□] Yes [□] No
   If no, describe, whenever possible, how and why it deviates from the international standard: __________________________

9. Other relevant documents and language(s) in which these are available: __________________________

10. Proposed date of adoption (dd/mm/yy): __________________________
Transparency and international harmonization
STCs and international standards
1995 – 15 Oct. 2021 (Total STCs = 525)

196 STCs
With keyword “International Standards / Harmonization”

37% (196/525)

Animal Health
47%

Food Safety
34%

Plant Health
14%

Other
5%

Source: SPS Information Management System (http://spsims.wto.org)
Transparency and international harmonization
STCs and international standards - Examples

- HPAI-related restrictions on poultry products - request to follow OIE standards, particularly on regionalization

- ...harmonize MRLs with those established by Codex, in accordance with the SPS Agreement

- ...country-wide bans on imports of meat products on grounds of ASF not based on OIE standards or on regionalization principles

- deviation from Codex standards with regard to pesticides
Thank you!

SPS Gateway
http://www.wto.org/sps