



INTERNATIONAL LEGAL FRAMEWORK



OUTLINE

1. International Regulatory Framework
2. The SPS Agreement



INTRODUCTION

- The regulatory framework that governs international trade comes under the broad umbrella of the **World Trade Organization**
- Established as a forum for governments to **negotiate trade agreements, facilitate trade** between countries and to **reduce impediments** to trade



WTO

- Established 1st January 1995 (replacing GATT)
- Means to achieve objectives of WTO
 - Trade Liberalization
 - Reduction of tariffs and other barriers to trade and elimination of discriminatory treatment in international trade relations



GATT and SPS

- The GATT had provided some discipline to national food safety and animal and plant health protection measures which affect trade since its creation in 1948.
- **Most favoured nation** clause
- Principle of **national treatment**



GATT Exception

Countries could take measures to protect human, animal, or plant life or health as long as these did not unjustifiably discriminate between countries where the same conditions prevailed or were not designed to be a disguised restriction to trade.



WTO Agreement on the application of Sanitary and Phytosanitary measures

- WTO-SPS agreement was negotiated to **facilitate trade** while allowing countries to put in place measures to **protect health**.
- It sets out the **rights** and **responsibilities** of WTO Members that wish to take action to **restrict imports** in order to **protect human, animal or plant life or health**.



WTO-SPS Agreement

- **SANITARY** – Relating to **Animals** (Food safety animal health)
- **PHYTOSANITARY**- Relating to **plants** (Plant health)



WTO-SPS Agreement

- The agreement requires, however that:
 1. There be **scientific and technical evidence** that a **potential risk** to human, animal or plant health **exists** and that
 1. The measures are applied in such a way as to not overly interfere with trade



SPS Measures

SPS measures may take many forms

Examples:

- Inspection of products
- Requiring that products come from a pest/disease free area
- Specific treatment or processing of products



KEY PROVISIONS of the WTO-SPS AGREEMENT



KEY PROVISIONS

- Sovereignty
- Technical justification
- Harmonization,
- Risk assessment
- Equivalence
- Least Trade Restrictive
- Transparency.
- Regionalization
- Appropriate level of protection
- Technical assistance/special treatment
- Control, inspection and approval procedures
- Consistency



Key Provisions: **Sovereignty**

An importing country has the right to protect human, animal and plant life and health from the introduction of pests and diseases into their territories





Scientific justification *Articles 3 & 5*

- There must be **scientific evidence** to indicate that there is a risk to animal or plant life or health



Key Provisions : Scientific justification

Measures can be scientifically justified in one of **two ways**

1. Conduct a scientific **risk assessment**

Or

1. Based on **international standards**



Whose Standards?

WTO SPS Agreement The '3 sisters'

Standard-setting organisations





Harmonization

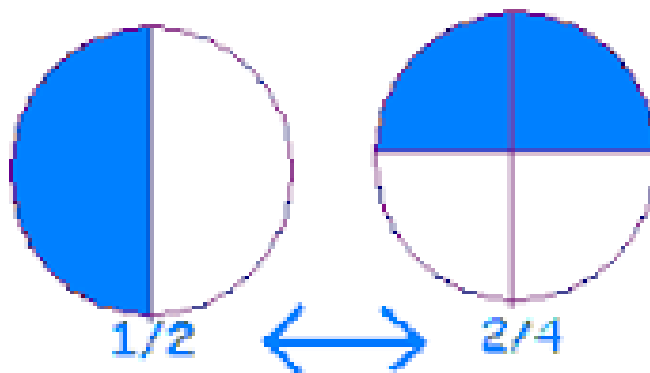
- establishment,
- recognition and
- application of

Common SPS
measures by different
countries.



Key Provisions: **Equivalence**

- An importing country should recognize as equivalent an alternative measure that achieve the same level of protection





Assessment of Risk *Article 5.1*

- Members **shall** ensure that their SPS measures are **based on**
- –an assessment, as appropriate, of the risks to human, animal or plant life or health,
- –taking into account risk assessment techniques developed by the relevant international organizations.



Assessment of Risk *Article 5.1 -5.2*

- non-use of international standard requires risk assessment
- no need to carry out “own” risk assessment
- risk assessment need not be quantitative
- risks must be ascertainable, not just theoretical
- can go beyond controlled lab conditions, assess risk in real world
- risk assessment can consider divergent, minority scientific views



Minimizing Negative Trade Effects *Articles 5.4*

Members *should*,

when determining the appropriate level of
sanitary or phytosanitary protection

take into account the objective of *minimizing
negative trade effects*



Consistency *Articles 5.5*

Members *shall*

avoid **arbitrary** distinctions

↳ in appropriate level of SPS protection (ALOP)
considered in **different** situations

↳ if distinctions result in **discrimination or
disguised restrictions** on trade



Least trade restrictive *Article 5.6*

- Once you have determined the **NEED** for
- an SPS measure

AND

- Have determined the **LEVEL** of protection needed

must select

- **least-trade restrictive measure to achieve *ALOP***
- (technically and economically feasible)



Transparency

- Governments are required to notify other countries of any new or changed sanitary and phytosanitary requirements which affect trade
- Governments assume an obligation of Notification:
 - To the WTO
 - To other member countries



Risk assessment – exception

Article 5.7 – provisional measures

Members may provisionally adopt SPS measures

- ✓ when relevant scientific information is insufficient
- ✓ on the basis of available information

In such circumstances, Members shall

- ✓ seeks to obtain additional information to assess risk
- ✓ review the measure within a reasonable period of time



Thank You

