

# Trade Policy

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# European Union and Vietnam Free Trade Agreement: Sanitary and Phytosanitary

## ARTICLE 6.2

### Objectives

The objectives of this Chapter are to:

- (a) enhance the effective implementation of the principles and disciplines of the SPS Agreement and international standards, guidelines and recommendations developed by relevant international organisations;
- (b) protect human, animal or plant life or health in the territory of each Party while facilitating trade between the Parties and to ensure that SPS measures adopted by each Party do not create unnecessary obstacles to trade;
- (c) strengthen communication and cooperation on, and resolution of SPS matters that affect trade between the Parties and other agreed matters of mutual interest; and
- (d) promote greater transparency and understanding in the application of each Party's SPS measures.

## ARTICLE 6.6

### Import Requirements and Procedures

2. Each Party shall adopt only measures that are scientifically justified, consistent with the risk involved and that represent the least restrictive measures available and result in minimum impediment to trade.
3. The importing Party shall ensure that its import requirements and procedures are applied in a proportional and non-discriminatory manner.
4. The import procedures shall aim at minimising negative trade effects and expedite the clearance process while complying with the importing Party's requirements and procedures.
5. The importing Party shall ensure full transparency of its import requirements and procedures.
6. The exporting Party shall ensure compliance with the import requirements of the importing Party.
7. Each Party shall establish and update lists of regulated pests, using scientific terminology, and make such lists available to the other Party.

## ARTICLE 6.7

### Verifications

1. In order to obtain or maintain confidence in the effective implementation of this Chapter, the importing Party has the right to carry out verifications, including:

(a) by conducting verification visits to the exporting Party to verify all or part of the exporting Party's control system, in accordance with the relevant international standards, guidelines and recommendations of the Codex Alimentarius, OIE and IPPC; the expenses of such verification visits shall be borne by the Party carrying out the verification visit; and

(b) by information requests to the exporting Party about its control system and the results of the controls carried out under that system.

2. Each Party shall provide the other Party with the results and conclusions of the verification visits carried out in the territory of the other Party.

# ARTICLE 6.10

## Equivalence

1. The Parties recognise that the application of equivalence in Article 4 of the SPS Agreement is an important tool for trade facilitation and has mutual benefits for both exporting and importing countries.
2. Equivalence can be accepted for a specific SPS measure or measures related to a certain product or categories of products, or on a systems-wide basis.
3. The importing Party shall accept the SPS measures and systems of the exporting Party as equivalent if the exporting Party objectively demonstrates that its measures achieve the importing Party's appropriate level of SPS protection. To facilitate a determination of equivalence, the importing Party shall, upon request, explain the objective of any relevant SPS measures to the other Party.

Transparency of complex regulation: How should  
WTO trade policy reviews deal with sanitary and  
phytosanitary policies?

# The Big Idea

Sanitary and phytosanitary (SPS) measures that protect human, animal, and plant health are impeding trade and provoking high-profile disputes.... If reviews motivate countries to improve their policy-making processes, this will contribute to making SPS regulation less trade restrictive and more effective in protecting health. To reach this objective, special trade policy reviews dedicated exclusively to SPS regulation would have to be introduced as a complement to the current reviews of countries' overall trade policies. Such a move could serve as a model for establishing further issue-specific reviews that address technical barriers to trade, trade in services, and other complex regulatory challenges.



# What is the Problem With Sanitary Standards?

- Sanitary and phytosanitary (SPS) measures protect human, animal, and plant health.
- First, they impede trade.
- Second, SPS measures repeatedly provoke high-profile disputes.
- SPS measures should be designed to be as trade-friendly as possible without impinging on their health objectives and an adequate balance should be found where trade-offs are unavoidable.

# What is the Problem With Sanitary Standards? cont

- There is little systematic evidence as to what extent governments set overly trade-restrictive SPS measures in order to shield domestic producers from competition or to avoid political pressure from consumers and other stakeholders, such as environmentalists.
- So there is a real problem with SPS regulation. And it may well become more troublesome in the future as countries gear up their food safety laws. Around the world, SPS requirements have been tightened in recent years.

# What is the Problem With Sanitary Standards? cont

- First, WTO panels and the Appellate Body are overwhelmed with the technical complexity of SPS cases.
- Second, rulings that find SPS procedures or measures in contravention of WTO law tend to be perceived as an infringement on sovereignty and an unbalanced prioritization of trade over non-trade values.
- Third, governments encounter difficulties in complying with rulings on SPS measures that enjoy strong public support. Delayed compliance or non-compliance, in turn, undermines the authority of the dispute settlement system

# What is the Problem With Sanitary Standards? cont

- ...the multilateral system will have to rely on persuasion and other 'soft' approaches as a complement to the deterrence of binding SPS disciplines and quasi-judicial enforcement
- This network of international cooperation between experts helps to develop shared standards and methods, and it strengthens the role of independent experts in countries' domestic policy-making practices.
- Another soft approach adopted by these international institutions is technical assistance that improves capacities of public administrations and private businesses in developing countries.
- This can make developing countries' SPS policies more efficient and less trade distorting, and it can enable developing countries' exporters to meet more demanding foreign standards.

**TABLE 1: ELEMENTS OF A TPR**

ELEMENT	FUNCTION
Qualitative description	provide non-experts with an overview of the main policies to facilitate understanding of the subsequent analysis, and give insight into the evolution of the system by highlighting policy changes and future regulatory intentions
Quantitative description	facilitate comparison of policies across time and countries through standardization and aggregation
Analysis of trade and welfare effects	offer an impartial and qualified review of the literature to give policymakers and domestic constituents a sense of domestic and international policy effects
Issues raised by trading partners	summarize discussions in working committees and dispute settlement activities in order to spread knowledge about the problems trading partners encounter, their arguments, and independent assessments by panels and the Appellate Body
Policy making processes	make key aspects of the policy-making process comparable across countries, examine them in the light of best practice benchmarks, and adduce existing analysis on the quality of the policy-making process and evidence of capture by special interest groups

**TABLE 2: SPS REGULATION IN TPRS OF THE EU AND THE US**

ELEMENT	FUNCTION
Qualitative description	An overview of the main policies and policy changes is given. But the quality of the description is poor, especially in the case of the EU, so that TPRs are not recommendable starting points to get a legal overview. Future regulatory intentions are only marginally addressed.
Quantitative description	The descriptive analysis is very limited. TPRs regularly include numbers of WTO notifications and listings of countries concerned by import restrictions. US TPRs also give the number of foreign systems that have been recognized as equivalent and they selectively report import inspection rates and volumes as well as shares of rejected imports.
Analysis of trade and welfare effects	Analysis of trade and welfare effects is absent (except for one footnote in an EU review quoted below).
Issues raised by trading partners	Issues raised by trading partners are mentioned rarely and superficially.
Policy making processes	Policy making characteristics are barely discussed. Only some US reviews touch on this issue in a very general manner.

# How Do We Review Sanitary Measures?

- TPRs should put special emphasis on future regulatory intentions...A succinct summary in TPRs can thus make life easier for exporting countries and industries.
- ...the potential of quantitative description is moderate to weak. It is relatively easy to calculate average tariffs, to add up subsidies, and to count antidumping measures.

# How Do We Make Policy for Sanitary Measures?

- TPRs should offer a clear description of how countries arrive at SPS measures – which agencies are involved with which type of measures, which are the agencies' respective tasks for each type of measure, and which framework legislation directs agencies' work.
- Scientific risk assessment is mandated in Article 2.2, requiring that any SPS measure 'is based on scientific principles and is not maintained without sufficient scientific evidence', and in Article 5.1, stipulating that 'Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.'



# How Do We Analyze Risk for Sanitary Measures?

- First, risk assessors cannot produce 'the comprehensive risk assessment' but they need to choose which hazards to analyze
- Second, risk assessment should not only characterize the hazard but also evaluate risk management options
- Third, even if risk assessors are fully transparent about their choices, these choices influence outcomes
- Article 5.5 of the SPS agreement requires that countries avoid arbitrary or unjustifiable distinctions in the levels of protection it considers to be appropriate in different situations.

# How Do We Improve Policy Making for Sanitary Measures?

- First, it would help to clarify what best practices look like on the ground.
- Second, likely users of such information exist who indeed have an interest in ratcheting up policy making processes
- Third, TPR of SPS regulation stands to have an impact is that it will focus the attention of decision-makers, key stakeholders, and the media on SPS issues at the moment when the review is released
- If countries improve their policy-making processes, this will help to prevent excessively trade-restrictive SPS measures from being adopted.

Transparency of complex regulation: How should  
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phytosanitary policies?

Although traditional trade barriers such as tariffs continue to decline, technical and regulatory barriers are increasingly employed to block trade

# What are Technical Barriers to Trade?

- Standards are most commonly associated with the specification and characteristics of particular products, services, and materials
- The existence of a standard does not guarantee final producers or consumers that a product functions as indicated in the technical specifications in a standard
- Standards and regulations differ fundamentally from taxes and quotas on trade
- Tariffs are problematic from an economic analysis standpoint were regulatory barriers target important objectives

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# How Do You Quantify These Standards?

- Tariffs are easy to observe and quantify, technical barriers and standards are difficult to observe and difficult to quantify
- Standards often act to raise costs and restrain trade but does that make them an unfair barrier to trade?
- Regulations and standards are only considered unfair trade barriers based upon a couple of standards:
  - Ending discriminatory treatment
  - Duplicative testing
  - Recognition of foreign standards achieving same standards
  - Making regulation transparent

# Emerging Markets Concerns on Standards

- How do you quantify those costs
  - Vietnamese producers have to meet Japanese, European, and American phytosanitary and sanitary standards for food products
- Emerging markets can build upon health standards as it is not purely a trade issue but builds expertise
- Transfer of expertise in human and financial capital