United States Department of Agriculture
Foreign Agricultural Service

FACT SHEET

February 2006

SANITARY AND PHYTOSANITARY MEASURES AND THE WORLD TRADE ORGANIZATION

The Uruguay Round's Sanitary and Phytosanitary (SPS) Agreement establishes a multilateral mechanism to protect human, animal, and plant health in World Trade Organization (WTO) member countries. As a WTO member, this Agreement protects U.S. exporters from other countries' use of health-related measures to disguise barriers to trade.

Definition of an SPS Measure: In the context of the SPS Agreement, SPS measures refer to any measure, procedure, requirement, or regulation, taken by governments to protect human, animal, or plant life or health from the risks arising from the spread of pests, diseases, disease-causing organisms, or from additives, toxins, or contaminants found in food, beverages, or feedstuffs.

History of the Agreement: Virtually all countries, including the United States, supported the development of new and strengthened SPS rules in the Uruguay Round. Before the Uruguay Round, trade rules for SPS measures were so vague that countries could protect domestic producers from international competition by establishing import restrictions justified only by the country's assertion that the measure existed for "health reasons." These restrictions were of particular significance for U.S. agriculture, as countries could cite unfounded risks of a pest or disease as reason to keep out U.S. exports. With the Uruguay Round's removal of other agricultural market access barriers, rules for disciplining the use of SPS measures became even more important.

The SPS Agreement contains 14 articles and three annexes covering basic rights and obligations; harmonization; equivalency; risk assessments; pest- or disease-free areas; transparency; control, inspection, and approval procedures; technical assistance; special and differential treatment; consultations and dispute settlement; administration; and implementation.

Since the inception of the Agreement in 1995, the WTO Committee for SPS Measures (formed in accordance with Article 12 of the Uruguay Round Agreement on SPS Measures) has met at least three times each year and addressed more than 204 trade issues from 1995 to 2004.

Core Disciplines: To eliminate disguised trade restrictions, the Agreement allows countries to set their own standards. SPS

measures must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life, or health. The regulations should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail. The nature and magnitude of the perceived risk must be clearly established so that the SPS measure is commensurate with the risk. The Agreement also contains procedures for managing risk to limit unnecessary restrictions on international trade. Countries are encouraged to establish a consistent approach to the concept of appropriate levels of protection and to allow imports when the exporting country objectively demonstrates that it has controlled possible risks. Finally, countries must notify their trading partners when they intend to establish SPS measures and seek their comments on proposed laws. Important principles incorporated into the SPS text include the following.

Basic SPS Rights: Article 2 of the SPS Agreement recognizes the sovereign right of each country to set its own food safety, and animal and plant health standards. While encouraging countries to use international standards, the SPS text clearly recognizes that, under certain circumstances, countries have the right to maintain standards that are stricter than international standards to protect human, animal, and plant health, as long as the more stringent standard is justified by science. In addition, while all SPS measures must be based on a risk assessment, a country has the right to decide the appropriate level of risk, subject to the condition that any arbitrary or unjustified distinction does not result in discrimination or a disguised restriction on trade.

Harmonization: Article 3 of the SPS Agreement recognizes the Codex Alimentarius Commission (CODEX), the International Office of Epizootics (OIE), and the International Plant Protection Convention (IPPC) for their expertise in setting standards. The Agreement states that harmonization between nations will be promoted by following the standards set by these three international scientific organizations.

Equivalency: Article 4 recognizes that different methods may be used to achieve the same level of health protection. If an exporting country's measures achieve the importing member's appropriate level of sanitary and phytosanitary protection, then those measures may be acceptable, even if they differ from those used by the importing country.

Risk Assessment: Article 5 of the Agreement covers assessment of risk and determination of the appropriate level of SPS protection. A risk assessment is the technical assessment of the nature and magnitude of risk. It involves an effort to quantify the specific level of risk posed by a substance or situation. Countries are obligated to ensure that SPS measures are based on risk assessment, taking into account techniques developed by the relevant international organizations.

Pest- or Disease-Free Status: As addressed in Article 6, pest- or disease-free status has traditionally been considered on a country-by-country basis or by political boundaries. The SPS text establishes an "area within a country" or a "regionalization" approach. In other words, exports should be possible from a particular area within a country if a country can demonstrate that the area is, and is likely to remain, free of a pest or disease, even if the surrounding areas of the country are not free of the pest or disease.

Transparency: The transparency provisions of the Agreement are outlined in Article 7 and Annex B. Transparency refers to the manner in which health-related measures are formulated and adopted by countries. Since the inception of the Agreement, members have notified over 5,000 SPS measures. Countries should notify the WTO of any changes in health-related measures that may have a significant impact on trade. Countries are to set up offices called "Enquiry Points" to respond to requests for additional information on new or existing measures.

Sanitary and Phytosanitary Committee: To administer the Agreement, Article 12 created the WTO Committee for SPS Measures. This committee serves as a forum for consultations between countries on specific SPS issues.

Dispute Settlement: If an exporting country believes an importing country has an unjustified SPS measure, it can first raise the issue in the WTO Committee for SPS Measures. If the exporting country believes no results have been achieved in this venue, it may, under Article 11, use the dispute settlement mechanism of the WTO. This entails consultations between the countries. If no agreement is reached, the issue can be decided by an impartial panel of trade experts. The SPS Agreement encourages the panel to seek technical expertise. If the panel determines that the SPS measure is inconsistent with WTO rules, the importing country must either change the measure or negotiate some form of compensation to the country or countries adversely affected by the unjustified measure. If the importing country fails to make either of these remedies, the complainant will be authorized to retaliate through the WTO process.

Four SPS Issues Elevated to Dispute Settlement Panels: Since 1995, four cases have gone through the dispute settlement process. They are the United States vs. the European Union (EU) on beef hormones, Canada vs. Australia on salmon, the United States vs. Japan on fruit varietals, and the United States vs. Japan Measures Affecting the Importation of Apples.

The United States vs. the EU on Beef Hormones

In 1985, the EU banned the sale of U.S. beef from cattle treated with certain growth hormones. The United States contested the prohibition first under the General Agreement on Tariffs and Trade and then under the new WTO dispute resolution mechanism. In 1997, a dispute settlement panel ruled that the EU ban violated the SPS Agreement. The EU appealed this finding.

In 1998, the WTO Appellate Body upheld most of the panel's findings against the EU, making three points:

1. All the available scientific evidence, including that presented by the EU, as well as by experts consulted by the panel, indicated that the hormones were safe.
2. The Appellate Body upheld the determination that the EU had failed to conduct a risk analysis to meet its obligations under Article 5 of the SPS Agreement.
3. The concept of precaution, although represented in Article 5.7 of the SPS Agreement, does not override any stated obligations, especially not those in Articles 5.1 and 5.2.

Canada vs. Australia on Salmon

In 1975, Australia imposed an import restriction requiring that fresh, chilled, and frozen salmon could enter Australia only after first having been heat treated. In 1995,

arguing that the import restrictions violated the SPS Agreement, Canada requested Article 4.4 consultations.

In March 1997, Canada called for creation of a dispute settlement panel, and the United States reserved the right to participate as a third party. The panel decided that Australia, by conducting a risk assessment limited to certain types of salmon, had maintained a measure not based on a correct risk assessment and had not met its obligations under Articles 5.1 and 2.2 of the SPS Agreement.

The Appellate Body upheld most of the panel's findings against Australia, making two points:

1. Australia limited its import ban to salmon, while tolerating imports of herring used as bait and live ornamental fish. Both posed an equal or greater risk of spreading disease to the very domestic stocks that the salmon ban ostensibly protected.
2. Australia had no controls on the internal movement of salmon products when compared with the import prohibition on ocean-caught Pacific salmon.

United States vs. Japan on Fruit Varietals

In October 1997, the United States brought a formal WTO complaint against Japan for prohibiting imports of fresh apricots, cherries, plums, pears, quince, peaches, apples, and walnuts from the continental United States because the fruits were potential hosts for the coddling moth.

Though common in the United States, this moth is a quarantined pest in Japan. The Japanese rule contained a general exception permitting entry of the products on a variety-by-variety basis, a costly and slow process. The United States urged the dispute settlement panel to find that these measures were not based on science or international standards.

In October 1998, the panel agreed with the U.S. interpretation, making the following points:

1. Japan had violated Article 2.2 by maintaining the same quarantine provisions for all these fruit varieties and not identifying the risks specifically enough.
2. Japan had violated Article 5.6 by using more trade-restrictive varietal testing requirements than were necessary. The panel noted that Japan could have protected itself from the coddling moth by setting a certain fumigant concentration level when treating affected produce.
3. Japan had violated Article 7 by failing to publish its testing requirements.

United States vs. Japan Measures Affecting the Importation of Apples

In 2002, Japan prohibited the import of apples from orchards where fire blight had been detected. Also, Japan required that export orchards be inspected three times yearly for the presence of fire blight and any orchard would be disqualified from exporting to Japan if fire blight was detected within a 500-meter buffer zone.

In 2003, a dispute settlement panel ruled that Japan's phytosanitary measure imposed on imports of apples from the United States was contrary to Article 2.2 of the SPS Agreement, that the measure was not justified under article 5.7 of the SPS Agreement, and that Japan's 1999 Pest Risk Assessment did not meet the requirements of Article 5.1 of the SPS Agreement.

The Appellate Body upheld the Panel's finding in 2003 making two points:

a. Japan's phytosanitary measure at issue was inconsistent with Japan's obligations

under articles 2.2, 5.7, and 5.1 of the SPS Agreement.

b. If the United States only exports mature, symptomless apples, the alternative measure proposed by the United States meets the requirement of Article 5.6 of the SPS Agreement.

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