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International Sanitary and Phytosanitary Measures: Implications on World Trade

Rita Ghial

Assistant Professor, Panjab University, Chandigarh

ABSTRACT

In principle, sanitary and phytosanitary (SPS) measures aim to protect the health of humans, plants and animals, while technical barriers to trade (TBT) ensure product quality and safety. However, governments may overshoot the requirements of health and consumer safety and use SPS and TBT to shield domestic producers from fair competition. Potential abuses of both measures as protectionist tools not only constrain international trade but also consumers' welfare by restricting the choices of goods available to them. Less developed countries do not gain as much when implementing the measures or are disadvantaged in exporting goods, particularly when importers are advanced economies. This paper identifies the problems that limit the participation of developing countries with respect to the way in which it currently operates with the help of case laws.

Keywords: Sanitary and Phytosanitary measures, technical barriers to trade, Developed and Developing Countries, Dispute.

1. INTRODUCTION

The SPS agreement under the Uruguay Round Agreement on Agriculture (URAA) defined Sanitary and Phytosanitary (SPS) standards as measures taken to protect human, animal or plant life or health from risks associated with imported agricultural commodities (WTO, 1995). To prevent the use of SPS standards as a trade obstacle, the agreement stipulates that countries should base their SPS standards on international guidelines and recommendations. It also permits for a country to establish its own SPS standard, above the international level, on a non-discriminatory basis, as long as it can provide a "scientifically justifiable" reason to do so, which should be supported by a risk assessment study. In addition, the agreement allows banning of imports as a precautionary step, until an exporting country confirms its product and place are free from any potential risks that may affect the safety and health of consumers, animals and plants. From a trade perspective one of the most important aspects of SPS measures is their potential distortionary effect. SPS measures are generally applied in a non-discriminatory manner as they usually target products regardless of their origin. However, regulatory and procedural requirements are of particular relevance for poorer countries' exports for two main reasons. First, regulatory measures fall disproportionately in sectors on which poor countries are dependent (i.e. agriculture). Second, compliance with SPS measures is asymmetrical because it requires technical know-how, production facilities, and an infrastructural base that, while usually available in developed and emerging markets, is often lacking in many lower income countries.

The eroding power of nations to use tariff as an agricultural trade barrier, as posited in the URAA, has proliferated the adoption of stringent SPS standards, which are becoming a formidable challenge for developing countries' agricultural trade. As a result, many African countries are experiencing a considerable loss of export revenue due to a failure of compliance to these standards. This loss could be a significant setback for the promotion of the agricultural sector, which is the backbone of the economy for many countries of the continent. The first and only WTO decision applying the SPS Agreement to food regulation has led to numerous problems.

2. SPECIAL PROVISIONS FOR DEVELOPING COUNTRIES

The concept of more favourable treatment for developing countries under the GATT/WTO legal system has undergone various mutations over time. In particular, before the Uruguay Round (UR), special and differential (S&D) treatment for least developed and developing countries were largely restricted to dispensation related to tariffs. The UR incorporated new issues beyond tariffs, and S&D expanded in scope. Under the WTO Agreements, S&D essentially consists of time-limited derogations from the multilateral rules, some exemptions and flexibilities, mainly for LDCs, and technical assistance, in order for national legislation, institutions and economic policy to adjust to the new standards. However, many S&D provisions were couched in "best endeavour" language and have – to date – not been implemented effectively. Recognizing the financial and technical resource constraints of developing countries and their lack of skilled manpower to comply with trading partners' SPS measures, the SPS Agreement

includes certain more favourable provisions relating to the provision of special and differential treatment, as well as to technical assistance in their favour.

3. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

In order for Members to conduct risk assessments and/or gain market access by meeting the required standards of importers, they require advanced scientific national infrastructures, adequate human and financial resources, and a thorough system of control, inspection and approval procedures. Technical cooperation represents a tool that can help countries modernize their food safety and phytosanitary systems and thus upgrade their capacity to implement the SPS Agreement effectively. Technical cooperation should begin with a country diagnosis in order to define the country's own needs and capacities, and once the needs have been defined, to identify priorities. For this purpose, and in order to ensure that the system is demand-driven, the WTO Secretariat has circulated a detailed questionnaire to all developing country Members requesting them to submit specific requests for technical assistance.

In the area of SPS, the technical assistance needs of developing countries range from improving their understanding of the applicable rules to the provision of practical training for scientific and technical personnel and the development of a national regulatory framework. In order to be able to meet their obligations and to be able to enforce their rights under the Agreement, developing countries need to acquire technical and scientific capacity as well as adequate field equipment and infrastructure, including technology transfer. Technical assistance should also focus on strengthening the functioning of SPS enquiry points in developing countries and the links between the government/regulatory authorities and other relevant actors at the national level, so as to facilitate exchanges of information, identification of problems and a better representation of national interests at Committee meetings. Article 9.1 states that the provision of technical assistance in favour of developing countries shall be facilitated on a bilateral basis or through the appropriate international organizations. This assistance may take various forms, such as credits, grants and donations.

4. IMPACT OF SPS MEASURES ON DEVELOPING COUNTRIES

The aim of this section is to identify the particular problems that developing countries can have in meeting SPS measures, particularly when exporting to developed countries. Results from the survey of low and lower middle income countries are presented to indicate the impact of SPS measures relative to other restrictions and a number of short case studies are provided as illustration. In many cases, further details are provided in the following detailed country case studies.

Indian Meat Exports to the EU

India was deemed to be Rinderpest free by the OIE in 1995. However, the EU only considers India to be provisionally Rinderpest-free. Further, a number of production areas conform to the OIE's standards for exports from countries with FMD. However, the EU lays down stricter requirements than the OIE for exports from countries with FMD - FMD must have been eradicated in a 100 kilometre area around the production area. At the current time, India is deemed not to satisfy these requirements and exports of fresh meat and meat products are not permitted. In other cases, imports may not be prohibited. However, certain restrictions may be put in place, for example border inspection requirements, that effectively bar imports because of the cost and/or time involved.

Fresh Fish Exports from East Africa to the EU

Exports of fish from East Africa, mainly originating from Lake Victoria, to the EU have grown considerably through the 1990s and become an important element of agricultural and food exports, as well as the means of livelihood for a considerable number of predominantly small-scale fishermen. For example, in the case of Tanzania, fish and fish product exports were around 48,000 tonnes in 1997 and accounted for 10.2 per cent of total exports by value. In December 1997, the EU imposed restrictions on imports of fish from a number of countries bordering Lake Victoria, namely Tanzania, Kenya, Uganda and Mozambique. These restrictions reflected concerns about sanitary standards and the control systems in place in these countries. These restrictions were introduced in two phases. At the end of 1996, Salmonella was detected in imports of fish from the region and subsequently the EU undertook inspection visits. These concluded that the controls in place were inadequate to guarantee that the EU's hygiene requirements were being complied with and in March 1997 imports were subject to Salmonella testing at the port of entry to the EU. These tests were at the importer's expense. Further inspection visits were held in late 1997 at a time when there were elevated levels of Cholera in the region. Sanitary conditions in the supply chain were judged to have not improved and, in particular, the 'competent authority' in Tanzania, Kenya, Uganda and Mozambique was not considered to have adequate controls to ensure that the EU's hygiene standards were being met. Subsequently further restrictions were imposed, involving testing at the port of entry to the EU for *Vibrio cholera* and *Vibrio parahaemolyticus*. It is estimated, in the case of Tanzania for example, that the incomes of fishermen, who had become dependent on exports to the EU, declined by 80 per cent during the period of the second round of restrictions. In certain cases, exports may be required to meet the same SPS standards as domestic suppliers within the EU, but costs of compliance are high. As a result, developing country exporters may require long periods of time to comply.

Vietnamese Fish Exports to the EU

Between 1991 and 1996 a company in Vietnam exported most of its products to the EU, where they had contracts with buyers in Belgium, France, Italy and Spain. Since the EU introduced new sanitary requirements in 1991 and required compliance by 1997, Vietnamese companies were required to obtain approval prior to export. As a result, exports to the EU declined dramatically. The interviewed company's biggest overseas market now is Japan, which accounts for 60 per cent of exports. Although prices are higher in Japan, the company considers the EU as a more stable market and therefore a favourable trading partner. Currently, exports to the EU are 30 per cent of overseas sales. They have a competitive advantage in the form of very low production and labour costs in Vietnam compared to other Asian middle-income countries. But before the company can export larger amounts to the EU, more plants need to be modified in order to comply with the EU's sanitary requirements. In certain cases, the SPS standards laid down by developed countries are incompatible with the normal methods of production in developing countries. In this case, the costs of

compliance act as an absolute barrier to trade; whole systems of production and distribution may need to be changed in order to comply.

Milk Production in India

India is one of the world's largest producers of milk and dairy products. Much of this production, however, is by smallholders who milk by hand and are members of cooperatives that collect milk for processing and further distribution. There are relatively few large-scale producers with mechanised milking facilities. Directive 92/46/EEC lays down sanitary standards for milk production within the EU and Third Countries. This Directive requires that dairy products be manufactured from milk derived from cows that have been kept on farms and which have been mechanically milked. Given the predominance of hand milking in India, this effectively precludes smallholder producers and much of India's milk output from exports to the EU. India is one of the world's largest producers of milk and dairy products. Much of this production, however, is by smallholders who milk by hand and are members of cooperatives that collect milk for processing and further distribution. There are relatively few large-scale producers with mechanised milking facilities.

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5. WIDER IMPLICATIONS OF SPS MEASURES IN DEVELOPED COUNTRIES

As well as the direct costs of compliance, SPS measures in developed countries have wider implications for developing countries. These are summarised below: Economic dependency As is evident from several of the case studies (see particularly the Zimbabwe and Kenyan cases), SPS measures can effectively force exporters, and the in-country institutions that represent them, into very specific production and trading methods. To service this export trade, firms may have to implement specific systems (such as HACCP), or sign up to particular quality assurance schemes that can add significantly to costs. In the extreme, such requirements may tie the exporter to a particular trade (or a particular country - for example, with a specific British retailer). These arrangements tend to be attractive and lucrative in the short term, but can mean that exporters invest relatively heavily in staff, equipment and trading relations, which add to their costs. These may represent a potential burden in the medium to long-term, for example if the trade is halted for any reason. This potentially beneficial improvement in quality management can cause problems if the export market becomes closed for any particular reason (such as the loss of a contract or reduction in demand), and traders have to revert to local markets or nearby export opportunities. Often these alternative markets are relatively lower value, and may not cover the extra fixed costs that have been put into servicing the higher value developed country export trade.

6. PARTICIPATION IN THE SPS AGREEMENT

Although the majority of low and lower middle income countries are members of the WTO, the rate of membership (62%) is significantly lower than amongst upper middle or high income countries (83% and 92% respectively). Likewise the majority of low and lower middle income countries are members of the three major international standards organisations, Codex Alimentarius, OIE and IPPC, although less than 30 per cent are members of the WTO and all three of these organisations. Specific contact points to facilitate communication regarding SPS measures. This involves firstly, a single national 'enquiry point', which is responsible for responding to queries from other Members and providing documents on the application of SPS measures, and secondly, a single national notification authority, which is responsible for all procedures associated with notification of new or amended SPS measures.

7. DISPUTE SETTLEMENT PROCEDURES

Developing countries may find it very difficult to participate in the complaints procedures of the WTO, either as a defendant or a complainant. This reflects many of the issues raised above: limited financial resources; lack of scientific data; and lack of expertise. Therefore, many developing countries feel that they can only resort to dispute settlement as a collective effort or as a partner to a developed country complainant. Many developing countries are also sceptical about the extent to which their interests will be taken into account in the dispute settlement procedures. For example, India is still aggrieved by the changes made by the Appellate body in the recent Shrimp Turtle case. Regardless of whether these views are valid or not, they reveal ascertain scepticism of the dispute settlement process.

8. INTERNATIONAL STANDARDS ORGANISATIONS

To understand the concerns that developing countries have about the nature and role of international standards within the SPS Agreement, it is important to appreciate the process by which standards are set in these organisations. In the case of Codex Alimentarius, for example, a lengthy eight-step procedure is followed before final adoption of a standard. Draft standards are discussed and developed in one of 28 specialist committees, often involving participation from experts drawn from industry as well as government, and adopted at the biannual meetings of the Commission. Until recently most decisions were reached by consensus, even though the Rules of Procedure provide that, if a consensus is not reached, decisions are taken by a majority of the votes cast. These traditional working practices have been subject to increasing strain. The SPS Agreement has significantly increased the relevance of Codex standards; and where Codex standards do not exist but trade tensions do, then there is considerable pressure for standards to be speedily adopted. Thus in Codex's meetings in 1995 and 1997, one and two standards respectively were adopted following a vote. Given the exalted role that the international standards setting organisations have in the SPS Agreement, their decision-making procedures will be the subject of considerable debate in coming years.

9. CONCLUSION

SPS and TBT are legitimate trade policy tools and can contribute to ensuring the safety and health of a nation. In principle, the measures aim to protect the health of humans, plants and animals. However, governments may overshoot the minimum requirements to protect the lives or health of their consumers and use the measures to shield domestic producers from fair competition. Therefore, SPS and TBT retain their potential for being abused as protectionism tools. When such motivation is combined with nationalistic tendencies, it may hamper the growth of international trade and hurt consumers' welfare by limiting their choices. The challenges of compliance in the realm of the WTO dispute settlement mechanisms are comparable to those within other areas of international law. The literature has looked into the nature of the disputes, the reputation of states, the level of legalization, as important aspects motivating higher levels of compliance. Nevertheless, in the case of T&E disputes, timely compliance remains a problem

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