

Regionalizing the Rules for Sanitary and Phytosanitary Measures

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Technical regulations can be significant barriers to regional as well as global trade. In some instances, countries entering into preferential trading agreements have elected to harmonize their measures to eliminate such trade impediments, a strategy that has been pursued in sectors such as motor vehicles and measurement instruments in the European Union (Sykes, 1995). Harmonization can increase economic welfare if the resulting gains from trade outweigh the net benefits of existing regulations. This outcome is more likely if the origins of regulatory heterogeneity are the result of chance events, information differences, or interest group capture. However, harmonization is likely to be inefficient if incomes, tastes, and risks are the primary sources of variation in national regulations. In these instances, other forms of regulatory rapprochement are likely to be more appropriate. The customary choice allows regulators in different jurisdictions to adopt different substantive measures subject to mutually agreed-upon constraints, sometimes referred to as “policed decentralization” (Sykes, 1999).

This latter option was chosen by the negotiators of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) in the Uruguay Round. The agreement was negotiated to provide a set of multilateral rules that would recognize the legitimate need for countries to adopt different measures to protect human, animal, and plant health, while establishing a framework to reduce their trade-distorting aspects (see box). The agreement reiterates earlier commitments under the General Agreement on Tariffs and Trade (GATT) to apply technical restrictions only to the extent necessary and to avoid unjustifiable discrimination among members, but also requires regulators to (1) provide notification through the WTO of proposed regulations that affect trade (transparency); (2) use scientific risk assessment to inform regulatory decisions (science-based risk management) while allowing national determination of the level of SPS protection (national sovereignty); (3) recognize that different measures can achieve equivalent safety outcomes (equivalence); and (4) allow imports from regions that are free or nearly free of pests or diseases (regionalization). Adoption of international standards (multilateral harmonization) is encouraged, but not required. In addition to these principles, the agreement establishes a permanent SPS committee to oversee implementation of its provisions. Dispute settlement is available when WTO countries are unable to resolve differences through bilateral negotiations.

The physical and economic diversity of the Western Hemisphere countries is a significant obstacle to harmonization of SPS measures within the FTAA region.¹ Because optimal measures for mitigating the risks of exotic pests and diseases are usually contingent on the climate of the importing country, identical animal and plant health measures for tropical and temperate countries would generally lower economic welfare. Large differences in per capita incomes throughout the region likewise could make harmonization of many food safety measures inappropriate: consumers’ willingness to pay for reductions in risks is a function of income, so harmonizing developed and developing countries’ food safety regulations either “up” or “down” could decrease aggregate consumer welfare in the region.

¹ There are different definitions of harmonization. In this discussion, harmonization is defined as the adoption of identical measures.

Some form of policed decentralization would therefore appear to be a better model for an agreement in a region comprised of heterogeneous countries. This determination, however, still leaves several alternatives open to negotiators. Does the WTO SPS Agreement provide a prototype of policed decentralization that is suitable for the Western Hemisphere, or would a “WTO-plus” agreement which spells out additional rights and/or obligations better serve the interests of FTAA trading partners?

An evaluation of the options before FTAA negotiators logically begins with a review of the implementation of the WTO SPS Agreement, which came into force in 1995. General assessments of this record by FTAA countries are reviewed in the subsequent section of the paper. The final section examines whether modification of the WTO SPS principles themselves or other options could more effectively advance the overarching goal of welfare enhancement through trade in the FTAA region.

Implementation of the WTO SPS Agreement

The SPS Agreement has met with broad approval since it went into effect in 1995. WTO members concurred that there was no need to amend the SPS Agreement following the first formal review of the agreement in 1999 (WTOa, 1999). The absence of any proposals to renegotiate the SPS Agreement in the next round of multilateral trade negotiations also signaled general acceptance of its provisions.²

Beyond these broad assessments, a review of the implementation of the individual provisions of the agreement affords more specific evidence about its achievements and shortcomings, providing a more reliable basis for judging the suitability of these rules for FTAA countries. The record indicates that the multilateral disciplines for transparency and science-based risk management have yielded benefits for the world trading system without compromising legitimate regulatory goals. Fewer gains can be reported under regionalization, equivalence, and multilateral harmonization.

Transparency. There is perhaps more systematic evidence available to gauge fulfillment of the transparency obligations than for any other commitment under the SPS Agreement. These obligations include notification of proposed changes to SPS measures that affect trade, as well as identification of official contact points responsible for providing information about regulatory regimes. The notification requirements constitute the cornerstone of the agreement’s transparency provisions that are intended to facilitate decentralized policing by trading partners to ensure compliance with the SPS Agreement’s substantive provisions.

While transparency does not guarantee that countries will not misuse SPS measures, it contributes to the smooth functioning of the world trading system by facilitating both compliance and complaints by trading partners. Compliance is aided when advance notice of new or modified measures provides an opportunity for firms to change production methods to meet new import requirements, thereby minimizing disruptions that such changes can cause to trade flows. More than 2,500 notifications were submitted between 1995 and 2001, far more than the number submitted under prior GATT obligations.³

² Nonetheless, in the WTO “implementation negotiations” leading up to the Doha Ministerial Conference, WTO members agreed to several initiatives to improve implementation of the SPS agreement (as well as other WTO agreements) to help developing countries. The WTO initiated these negotiations to address the needs of developing countries in May 2000 after the Seattle Ministerial Conference failed to launch a new round of trade negotiations. Details of the entire “implementation package” agreed to by WTO members at Doha can be found in WTO(b), 2001.

³ Countries notified only 168 measures to prevent risks to public health and safety between 1980 and 1990 under the TBT Agreement, and fewer than half of those notifications concerned SPS regulations (GATT).

WTO Agreement: Principal Provisions of the Agreement on the Application of Sanitary and Phytosanitary Measures

The SPS Agreement requires:

- Science-based risk management (Articles 2 and 5): SPS measures must be based upon scientific principles and sufficient scientific evidence; more particularly, measures must be based on a risk assessment. Measures should be chosen so as to minimize distortions to trade and must be no more trade restrictive than necessary to achieve a country's "appropriate level of protection." Members are to avoid variation in the levels of health protection provided by its measures if this variation creates a disguised restriction on trade. Countries may adopt a provisional measure to avoid risk, but must seek information and carry out a risk assessment to justify permanent use of a trade-restricting measure.
- Equivalence (Article 4): A WTO member must accept that the SPS measures of another country are equivalent to its own if it is objectively demonstrated that the exporter's measures achieve the importer's appropriate level of protection, even if the measures themselves differ.
- Regionalization (Article 6): A country is required to allow imports from regions that are free or nearly free of pests or diseases.

These obligations are balanced by a recognition of:

- National sovereignty (Article 3): A country may choose a measure that differs from the international standard to achieve its appropriate level of protection as long as it complies with the other rules of the Agreement. This recognizes that individual nations may be unwilling to subscribe to uniform measures for all hazards.

The Agreement endorses:

- Harmonization (Article 3): Members are urged (but not required) to adopt international standards. A country that does adopt the standards of the three designated international organizations is presumed to be in compliance with its WTO obligations.

The Agreement also establishes enforcement mechanisms, including:

- Notification: A WTO member is required to publish its regulations and provide a mechanism for answering questions from trading partners.
- WTO SPS Committee: The WTO Committee meets three to four times a year to develop guidelines and discuss contentious SPS measures on a continuing basis.

Dispute settlement: Mechanisms include formal consultations between the parties to a dispute, followed by adjudication by a WTO panel if required. Decisions by trade dispute panels may be appealed to the WTO Appellate Body.

Although one-third of Western Hemisphere countries (primarily Caribbean islands) have not submitted any notifications to the WTO, all of the major agricultural exporting and importing countries in the region, including the United States, Canada, Mexico, Argentina, Brazil and Chile, routinely notify proposed measures. The United States alone accounted for more than 500 notifications over the 1995-2001 period, while a few developing countries such as Paraguay only submitted one.

Notifications also provide an opportunity for trading partners to raise objections or questions about the legitimacy or design of a proposed measure, possibly averting a trade dispute. WTO members have registered 187 interventions in the SPS Committee between 1995 and 2001 that reference complaints or questions about notified measures.⁴ The tabulation of these interventions by region indicates that FTAA countries fully exercised their rights under the transparency provisions: these countries were twice as likely to be the source (85) rather than the target (48) of complaints (table 8-1). The majority of their complaints were against the measures of European countries. Similarly, the regulations of FTAA countries drew more complaints from European countries than from any other region. Intraregional disputes (20) ranked second as both the source and target of Western Hemisphere complaints.

Globally, 30 percent of the interventions cited food safety measures, more than for any other type of regulation (table 8-2). Another 27 percent of the complaints targeted measures related to transmissible spongiform encephalopathies (TSEs).⁵ Plant and animal health measures respectively accounted for 22 percent and 18 percent of the complaints, while the remaining 3 percent of the committee complaints identified other concerns.

The interventions involving intraregional FTAA complaints differed significantly from the global pattern. Within the FTAA, plant and animal health measures were challenged more often than food safety measures. Only three complaints (all by the United States) identified regional food safety measures as unjustified obstacles to trade. Another distinguishing feature of the FTAA's intraregional disputes is that they were more likely to be resolved in bilateral consultations before advancing to formal dispute settlement proceedings. FTAA countries reported resolution of 35 percent of their intraregional complaints, compared to 23 percent for complaints involving at least one country outside the region (WTOd, 2001). Finally, there was a stark difference between the global and regional number of developed-country complaints against developed-country regulations: globally, it was the largest category, while regionally it was the smallest, suggesting that the United States and Canada have similar approaches to regulating SPS risks.

While progress on regulatory transparency has been one of the more notable successes of the SPS Agreement, many members have identified procedural shortcomings in the current system. Developing countries in particular have requested assistance with translating documents, extension of deadlines to comment on pending measures, and more timely responses to their requests for further information. The WTO SPS Committee revised its recommended notification procedures in 1999 and again in 2002 (WTOe, 1999 and 2002). More recently, controversy arose over *if* as well as *how* certain measures must be notified. Exporters have identified instances in which importers did not notify regulatory actions—even if they severely disrupted trade—because these actions were regarded as implementation of existing regulations rather than new measures. Canada's unexpected embargo of Brazil's processed beef exports in February, 2001, provides one example of a regulatory action that has prompted interest in strengthening or at least clarifying current notification requirements (WTOF, 2001; WTOG, 2001).

Science-based risk management and national sovereignty. The obligation to reference scientific evidence in defense of a trade-restricting measure clearly reduces the degrees of freedom for disingenuous use of SPS regulatory interventions. In each of the four SPS disputes to reach

⁴ Complaints are variously recorded under "information from members," "specific trade concerns," and other business" in the committee minutes.

⁵ TSEs include bovine spongiform encephalopathy (BSE), a zoonoses (i.e., disease affecting both animals and humans) which has been linked to new variant Creutzfeldt Jakob disease (nvCJD) in humans.

the WTO Appellate Body over the 1995-2002 period, the measures at issue were judged to be in violation of the provisions which requires that measures be based on a scientific risk assessment.

However, the impact of the disciplines of the SPS Agreement extends far beyond formal dispute settlement results. While hard to quantify, it is apparent that the agreement has generated broad-based regulatory review by some WTO members, as major agricultural exporters and importers determine whether they and their trading partners are complying with the obligation to base their risk management decisions on scientific assessments. Evidence suggests that regulatory authorities are either unilaterally modifying regulations, or voluntarily modifying regulations after technical exchanges (Roberts, 1998).

To give just two examples of accelerated schedules for making longstanding measures consistent with the science obligations in the SPS Agreement, Japan agreed to rescind its 46-year-old ban on several varieties of tomatoes grown in the United States based on scientific research indicating that they were not afflicted with tobacco blue mold disease (USDA), and the United States ended a 20-year-old dispute with four European countries by agreeing to allow imports of rhododendron in growing media under a new phytosanitary protocol. More systematic reports, while far from comprehensive, reinforce the anecdotal evidence. WTO members collectively have reported 35 negotiated or partial settlements, which have increased access for: exports of Uruguayan beef to Israel; exports of Hungarian apples, pears and quinces to the Slovak Republic; Brazilian exports of gelatin to Norway; and shipments of European Union potatoes to the Czech Republic (WTOd, 2001). Still greater is the number of issues that has been resolved before reaching the Committee. The United States and Australia respectively report resolution of 338 and 240 SPS cases in bilateral negotiations over 5 years (APHIS, 1997-2000; *World Food Chemical News*, 2001). This evidence indicates that enacting regulatory changes that allow greater market access has likely become easier now that the SPS Agreement assures policymakers that their trading partners must conform to the same principles.

It is important to note that while countries must be able to reference scientific evidence to support their risk mitigation measures, the national sovereignty provisions entitle them to adopt the levels of SPS protection of their choice, as long as any variation in the levels of protection does not constitute discrimination or a disguised restriction on trade. The SPS Agreement thus leaves scope for importing countries to maintain or adopt exigent standards, as long as they are consistently rigorous for comparable risks. Conservative measures may be maintained under the agreement even when these measures fail to increase domestic welfare. To cite but one example, New Zealand decided to maintain a ban on imports of bone-in poultry cuts from the United States based on an assessment that shipments posed a risk of three disease introductions in backyard (i.e., noncommercial) flocks per 100 importation years (Ministry of Agriculture and Forestry,

Table 8-1—Interventions in the WTO SPS Committee, 1995–2001

	Number of interventions ¹ against:					Total
	FTAA	Europe	Asia	Africa and Middle East	Multiple countries	
By:						
FTAA	20	45	17	1	2	85
Europe	25	24	17	3	1	70
Asia	3	12	10	1	0	26
Africa and Middle East	0	5	0	0	1	6
Total	48	86	44	5	4	187

¹Numbers exclude 'repeat' interventions by members that registered complaints against the same measure more than once.

Source: WTO (c) and author's calculations.

Table 8-2—Interventions in the WTO SPS Committee, by regulatory objective, 1995-2001¹

	Total		FTAA intraregional	
	Number	Percent	Number	Percent
Food safety	57	30	3	15
Protection from TSEs ²	50	27	1	5
Plant health	42	22	9	45
Animal health	33	18	7	35
Other concerns	5	3	0	0
Total	187	100	20	100

¹Numbers exclude 'repeat' interventions by members that registered complaints against the same measure more than once.

²Transmissible spongiform encephalopathies.

Source: WTO (c) and author's calculations.

2000). Such policies may be scientifically justifiable, but nonetheless fail cost-benefit tests if they ignore the benefits of imports to domestic consumers.

Provisions in the agreement, which (1) recommend that countries take into account the objective of minimizing negative trade effects, and (2) require that measures be no more trade restrictive than necessary, alludes to a larger role for economics in SPS policy choice. These two provisions clearly do not require SPS measures to be justified by the economic welfare effects on producers, consumers, taxpayers, and industries which use the regulated product as an input, but at least envision consideration of economic factors that extend beyond the potential risk-related costs of imports. Greater gains from trade could be realized if FTAA countries adopted a normative framework which would account for the benefits as well as the potential costs of imports, but requiring (rather than just allowing) countries to do so may be seen as an unacceptable infringement on national sovereignty.

Regionalization. The agreement's regionalization provision is an integral part of a science-based approach to regulating trade, as SPS risks often do not correspond to political boundaries. Regionalization provides countries with an opportunity to export products from areas where animal or plant health risks are considered negligible, thereby benefiting consumers without jeopardizing the agricultural resource base in the importing country. By ensuring that partial eradication or control leads to trade gains, regionalization also provides incentives for additional investments in control measures, so that over time this provision is likely to be of growing importance in international agricultural markets.

The trade effects of regionalization are already evident in the Western Hemisphere. Chile's decision to allow imports of fresh melons and watermelons from all production areas in the United States except Hawaii provides one example of a regional approach to mitigating pest risks (WTOh, 2001). Developing-country exporters have also benefited from regionalization: one prominent example is provided by the United States' 1997 decision to replace its 83-year-old ban on imports of Mexican avocados with measures that allow imports from specified regions of Mexico to the U.S. Northeast (Roberts, 1997). This measure was subsequently amended to extend the length of the shipping season and to increase the number of States that can import Mexican avocados, and U.S. authorities now are considering opening access to all 50 States.

In general, however, farmers and ranchers in developing countries will face more challenges in capitalizing on the regionalization provisions than developed country producers, because exports will be contingent on adequate public sector investments in laboratory, inspection, monitoring, and certification infrastructure. Argentina's recent experience with outbreaks of foot and mouth

disease (FMD) illustrates the importance of such investments. The United States and Canada, as well as several other countries, lifted longstanding bans on Argentina's exports of fresh, chilled, or frozen beef in 1997 as the country neared completion of its FMD eradication program. Exports of Argentine beef to the United States reached 45,000 metric tons in 1999, but the following year U.S. market access for the beef was suspended when FMD was detected in animals that had been smuggled across the border. The United States re-opened its market to Argentine beef in December 2000, subject to certification that the beef came from FMD-free regions (along with other requirements). However, recurring outbreaks led the United States and Canada to reinstate their bans in early 2001.

This episode underscores the fact that investments in public sector regulatory infrastructure must be forthcoming if there is to be a return on private sector eradication efforts. It is also evident that national regimes will not work in some cases: trans-border pest or disease controls may be required where there are insufficient natural barriers or when animals (including wildlife) move freely across borders. It is therefore likely that creating or reinforcing regional sanitary and phytosanitary regimes *across* as well as *within* countries will often be necessary to fully realize the gains from trade in the region. Coordination of this sort may be beyond the institutional capabilities of some FTAA countries.

Equivalence. The SPS Agreement requires members to accept other countries' measures as equivalent to their own if an exporter shows that its measures achieve the importer's desired level of SPS protection. This provision recognizes that regulatory flexibility allows countries to allocate scarce resources efficiently rather than identically. The agreement also encourages members to create bilateral and multilateral agreements to foster equivalence.

Equivalence determinations usually involve process standards, since countries can easily compare product standards, which stipulate observable and/or testable attributes of end products. An enormous number—and arguably a growing proportion—of SPS measures are process standards. One of the principal lessons to emerge from 2 decades of environmental regulation is that process standards are generally an inefficient means of achieving regulatory goals. However, food technologists argue that the unique nature of food hazards—which include pathogens (such as *Salmonella*) that can regenerate and cross-contaminate at several points in the production chain—requires regulating production processes to avoid repeated, expensive tests of conformity with product standards (MacDonald and Crutchfield, 1996). Some analysts have challenged this conclusion (Antle, 1996), but process standards continue to emerge as components of risk management programs, notably in Hazard Analysis and Critical Control Point (HACCP) programs, which an expanding number of countries mandate for a growing number of food products. The equivalence obligation therefore theoretically has the potential to yield significant benefits in international markets for products such as cheeses, meats, fresh produce, and seafood for which process standards are key policy instruments for managing microbial risks.

While the SPS Committee has urged members to submit information on their bilateral equivalence agreements and determinations, few have done so (WTOi, 2001). Consequently, there is no systematic accounting of achievements to date. However, experts indicate that such arrangements are still rare (Gascoine, 1999).⁶ Numerous regulatory differences remain in contention

⁶ Possibly the most prominent equivalence accord has been a veterinary agreement signed by the U.S. and the EU in July 1999, after 6 years of occasionally high-profile negotiations over matters seemingly as minor as the colors of wall paint in food-processing facilities. The veterinary agreement reduces—but does not eliminate—inspection of some \$1 billion in EU exports of dairy products, fish, and meat to the United States, and \$1 billion in U.S. exports of fish, hides, and pet food to EU countries.

even between countries generally recognized as having rigorous regulatory standards that are rigorously enforced. One example is the 1997 EU ban on U.S. poultry exports: European authorities do not consider the chlorine decontamination used in U.S. poultry processing plants equivalent to lactic acid decontamination.

Developing countries therefore have questioned whether the equivalence obligation will actually provide many export opportunities for them, given the difficulties that developed countries have had in exercising their rights under this provision (WTOj, 1998). A number of equivalence arrangements between developing and developed countries do exist, especially for seafood products. However, developing countries—echoing the claims of developed countries—have argued that developed countries often require “compliance” rather than equivalence of measures. Even developing countries that have had substantial success as agricultural exporters, such as Brazil, Mexico, and Thailand have gone on record to note the difficulties in gaining recognition of equivalence (WTOk, 1999, and WTOl, 2001). Globally, the limited access to developed country markets for poultry meat illustrates the both the potential and challenge of equivalence. Of the 144 countries that are WTO members, only 15 are currently eligible to export fresh, chilled, or frozen poultry meat to the EU, 4 may export to the U.S.,⁷ 1 may ship to Canada, and none are allowed to export to Australia.

The United States, with the most lucrative market for developing-country exporters in the Western Hemisphere, has stated that its experience indicates the potential for equivalence may be limited because the actual trade benefits of an equivalence determination or agreement may not justify the administrative burden (WTOm, 2000). The United States has also cautioned that *equivalence* does not imply *mutual recognition*: under the equivalence provisions of the SPS Agreement, market access is contingent on a scientific determination that an exporter’s alternative measure achieves the level of SPS protection required by the importer, not on reciprocity.

Multilateral harmonization. The SPS Agreement urges the widest possible harmonization of countries’ SPS measures based on internationally recognized standards, and identifies three organizations to promote this objective: the Codex Alimentarius Commission (Codex) for food safety measures, the International Plant Protection Convention (IPPC) for plant health measures, and the International Office of Epizootics (OIE) for animal health measures.

The agreement’s endorsement of harmonization stems from repeated complaints by exporters that complying with divergent SPS measures substantially increases the transactions costs of trade. The net benefits of harmonization for exporters will be positive if the resulting revenues exceed the costs of complying with the international standard. These benefits are usually considered large compared to those of regionalization or equivalence, as the former usually permits greater economies of scale in both production and certification. Consumers may also benefit from harmonization if eliminating regulatory heterogeneity among countries lowers prices and expands product choice.

The limits to multilateral harmonization as sound policy prescription is limited by the factors noted earlier for regional harmonization. However, the impact of multilateral harmonization on trade appears to have been constrained as much by the lack of international standards as by normative considerations. The majority of 1995-99 notifications from WTO members stated that no international standard existed for the notified measure (fig. 8-1). The character of international standards as a public good leads to an expectation of under-investment in their creation. This underinvestment leads not only to too few international standards, but also to too many outmod-

⁷ In addition to the four countries that are permitted to export fresh, frozen and chilled poultry to the United States (Canada, Great Britain, France, and Israel), some plants in northern Mexico may also re-export U.S.-origin poultry meat to the United States after minimal processing.

ed standards, which may account, in part, for the low adoption rate for those standards that do exist. Partial or full acceptance of international standards as a percentage of total measures notified by income category was highest for the lower-middle income countries (38 percent) followed by high-income (22 percent), lower income (20 percent) and upper-middle income countries (17 percent) (Roberts, Orden, and Josling, 1999).

The nature of international standards is also important in assessing their impact on trade. Over the past decade, the three standards organizations have allocated most of their resources to the development of metastandards, which identify common approaches to risk identification, assessment, and management rather than international standards per se. In fact, the IPPC has not produced any commodity-specific standards, although some are under development. Exporters' anticipated gains from international metastandards may be smaller than from international standards: for example, even if an importing country has used the IPPC standard to determine the pest status of an exporting country, its measures may nonetheless vary from those of other importers. These metastandards have contributed to the trading system by setting out scientific approaches to regulation, not by promulgating product standards that will be identical across adopting countries.

The WTO SPS Agreement and the FTAA Countries

Developed-country exporters, including the United States and Canada, are the strongest proponents of the current balance of rights and obligations in the WTO SPS Agreement. It is clear why. These countries have been able to successfully challenge measures that have no scientific basis while maintaining their own stringent health and environmental standards that reduce verifiable risks to negligible levels. All four cases to advance to the WTO Appellate Body between 1995 and 2002 have been won by the developed-country complainants: the United States and Canada in *EC Hormones*, Canada in *Australia Salmon*, the United States in *Japan Varietal Testing*, and the United States in *Japan Apples* (table 8-3). Developed-country exporters have also been successful in using dispute settlement procedures to achieve their objectives before their complaints reach a WTO panel. For example, Korea agreed to modify its shelf-life measures in response to separate complaints from the United States (primarily for processed meats) and Canada (bottled water) as the result of formal consultations. At the same time, new initiatives in developed countries to improve food safety, such as the U.S. Food Quality and Protection Act (FQPA), have not been challenged in the WTO even though these new policies have resulted in lower imports from some countries.

Although many developing exporters in the region, including Chile, Argentina, and Brazil, have also been able to capitalize on the institutional innovations established by the SPS Agreement, their intermittent success has sometimes been overshadowed by exogenous regulatory trends that not only frustrate attempts to expand exports, but also have reduced trade in some instances. The increasing demand for food safety in developed countries is the most prominent trend; another is increased reliance on process standards that place more responsibility on the regulatory infrastructure of the exporting country than on border inspection in the importing country. A regulation that reflects both of these trends, the U.S. HACCP requirements for meat and poultry, resulted in a loss of market access for five developing countries (FSIS, 1999).⁸ Adoption of new

⁸ Four countries (the Dominican Republic, Guatemala, Honduras, and Slovenia) were "delisted," which means that they voluntarily delisted all establishments certified for the U.S. market while developing a HACCP program. The U.S. will not accept product from these countries until full documentation is received and evaluated to determine whether the foreign HACCP program meets domestic requirements. Paraguay's eligibility to export to the United States was suspended as it did not implement HACCP requirements or equivalent measures.

Table 8-3—Complaints related to SPS measures that have advanced to formal WTO dispute settlement, 1995-2002

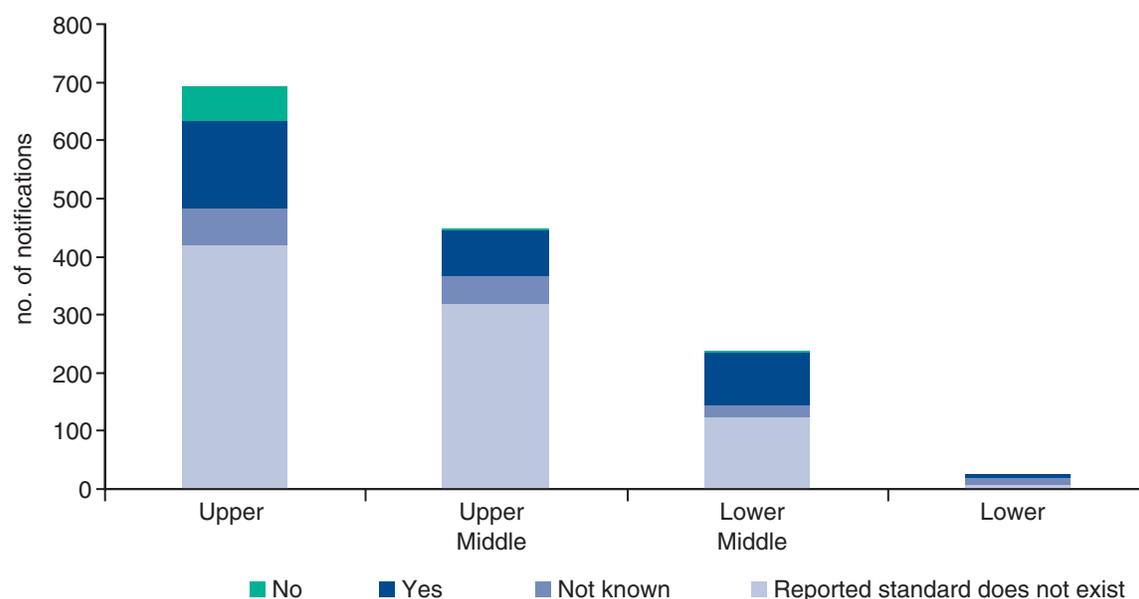
Case Number(s)	Issue	Complainant(s) (Co-complainants)	Status
DS 3/41	Korea—produce inspection	United States	Settled
DS 5	Korea—shelf-life requirements	United States	Settled
DS 18/21	Australia—ban on salmon imports	Canada (EC, India, Norway, US)	Panel and Appellate Body ruled against Australia. Australia notified its new measures to the WTO.
DS 20	Korea—bottled water	Canada	Settled
DS 26/49	EC—ban on use of hormones	United States and Canada (Australia, New Zealand, Norway)	Panel and Appellate Body ruled against EC. Retaliation was authorized by the WTO when the EC failed to change its measures.
DS 76	Japan—varietal testing requirements	United States (Brazil, EC, Hungary)	Panel and Appellate Body ruled against Japan. Japan has notified its new measures to the WTO.
DS 96/1	India—quantitative restrictions in imports of agricultural, textile, and industrial products	EC	Settled
DS 100	US—poultry requirements	EC	Pending
DS 133	Slovakia—dairy product imports and transit of cattle (BSE restrictions)	Switzerland	Pending
DS 134	EU—restrictions on rice	India	Pending
DS 137	EU—measures on pine wood nematodes in conifer wood	Canada	Pending
DS 144	US—state restrictions on Canadian trucks	Canada	Pending
DS 203	Mexico—measures affecting trade in live swine	United States	Pending
DS 205	Egypt—import prohibition on canned tuna with GM soyoil	Thailand	Pending
DS 237	Turkey—restrictions on fresh fruit	Ecuador	Panel suspended
DS 245	Japan—apples	United States	Panel and Appellate Body ruled against Japan.
DS 265	Turkey—import ban on pet food	Hungary	Pending
DS 270	Australia—importation of fruits and vegetables	Philippines	Under review by panel
DS 271	Australia—importation of fresh pineapple	Philippines	Consultations

¹Some 'pending' cases appear to be settled, but settlement has not yet been officially notified to the WTO.

Source: WTO.

Figure 8-1

Notification of adoption of international standards, by income class, 1995-99



Source: Author's calculations from WTO data.

HACCP measures by other developed countries has similarly led to the suspension of developing country exports, particularly seafood (Unnevehr and Hirschhorn, 2000). These countries therefore fear that without more progress on implementing the provisions of the agreement that offer constructive solutions to these challenges, such as regionalization, equivalence and harmonization, their participation in international trade will be further marginalized (WTOj, 1998).

The primary focus of developing importers, on the other hand, is on fulfilling their obligations rather than exercising their rights under the SPS Agreement. They claim that the new obligations (related to requirements for risk assessments, for example) have diverted scarce resources from investments needed to capitalize on the trade opportunities created by other Uruguay Round agreements. This group of importers, including some Central American countries and Caribbean islands in the FTAA region, advocate various forms of increased technical assistance to address their concerns (WTOj 2001; WTOo, 1999).

The varying objectives of these three groups will determine the nexus of interests for a FTAA SPS agreement. The challenge before the SPS negotiators will be to find common ground among those who favor the status quo (developed-country exporters), strengthened commitments to aid market access (developing-country exporters), or increased assistance to live up to current obligations (developing-country importers). The absence of any developed-country net importers (such as Switzerland or Japan) in the Western Hemisphere should simplify the task of reaching consensus on a regional SPS pact. Many developed importers in the WTO have proposed incorporation of the precautionary principle in the current rules to allow more latitude for addressing consumer concerns in SPS regulation, a suggestion that has been strongly opposed by both developed and developing exporters in the Western Hemisphere (WTOj, 2001).

Options for an FTAA SPS Agreement

A regional accord to discipline the use of SPS measures will differ in important respects from the preferential trading arrangements made for tariff and other nontariff barriers within the region. Rules cannot be tailored for specific products of interest to regional trading partners, nor establish preferential schedules for regional exporters to comply with SPS measures. As in a multilateral agreement, a regional agreement consists of a set of rules, applicable to all FTAA countries, that is aimed at reducing the trade distorting aspects of all SPS measures.

If new rules or principles are to be negotiated, it should be recognized that the starting point for the FTAA negotiators will be the WTO SPS Agreement. All FTAA countries, as WTO members, are bound by the provisions in this agreement. The decentralized policing rules of the WTO SPS Agreement therefore establishes a “floor” for any regional rules. Hypothetically, even if FTAA exporters were to agree to relax the equivalence obligation for Western Hemisphere importers, the importers still would be required to recognize the equivalent measures of non-FTAA exporters. Membership in the WTO therefore limits the options of FTAA countries to either existing WTO rules or to “WTO plus” rules that augment trade.

No FTAA country has yet proposed a new addition to the current WTO principles of transparency, science-based risk regulation, national sovereignty, regionalization, equivalence, and multilateral harmonization. Rather, FTAA proposals have ranged from leaving the existing WTO rules intact to making existing rules far more prescriptive (FTAA, 2001). This suggests that differing views on the success or shortcomings of the WTO SPS Agreement does not involve differences over fundamental principles, but rather *implementation* of the current obligations. Although modifying basic treaty rules is favored by those countries who would like to improve implementation of the current obligations, this option has a number of shortcomings. First, making treaty rules more prescriptive is at best a blunt tool for engineering more energetic fulfillment of obligations to achieve region-specific goals or outcomes. Secondly, this option also risks codifying detailed procedures that may be increasingly inappropriate over time. Finally, altering the basic principles of the WTO rules in a regional accord may eventually jeopardize coherence in risk management policy as the multilateral rules evolve over time.

One remedy that can be targeted regionally, and may be especially suitable for a coalition of developed and developing countries (unlike more homogenous regions) is technical assistance. Seven years of experience with the provisions of the WTO SPS Agreement suggest the following options for technical assistance to expand regional trade:

- helping the region’s developing countries to eradicate or mitigate pests and diseases in specific regions could yield substantial payoffs, because the complaints raised in the SPS Committee identified animal and plant health measures as the more significant impediments to trade in the hemisphere. Such assistance could be, in effect, extra-territorial investments in biosecurity for importing countries, resulting in increased foreign shipments that benefit domestic consumers without increasing SPS risks that could harm domestic production;⁹
- targeting technical assistance to the strengthening of public sector testing and certification services in the developing countries to speed equivalence determinations or compliance audits by developed country food safety regulators. Technical assistance could also

⁹ Some intergovernmental efforts to eradicate animal and plant pests, including Mediterranean fruit flies, screw-worm, and FMD are already under way in the region.

be used by developing countries to establish a separate “enclave” food system that meets higher regional standards, while maintaining standards that are more suitable for the domestic market given national preferences, technologies, and endowments;

- using technical assistance to promote the participation of regional developing countries in activities of the international standards organizations. It is important for new participants to recognize that more widespread adoption of international standards may not always increase trade—trading partners that adopt international HACCP standards, for example, may still have different requirements for gaining access to domestic markets, as seen in the poultry meat sector. Nonetheless, the standards organizations are important institutions for development of science-based regulation, and greater participation by developing countries may contribute to the more effective functioning of international markets by increasing the predictability of regulation in these countries; and,
- technical assistance to help the least developed countries in the region come into compliance with their obligations as importers. However, nearly every FTAA country has fulfilled the SPS transparency requirements, the most basic obligation under the WTO SPS Agreement, and the costs and benefits of investment in national risk assessment capabilities for least developed countries needs to be weighed against the costs and benefits of alternative strategies, including adoption of international standards.

Technical assistance is already widely recognized as an effective mechanism for addressing SPS barriers to trade. The WTO SPS Agreement includes an article on technical assistance that states “Members agree to facilitate the provision of technical assistance to other members, especially developing-country members ...”. If FTAA countries choose increased technical assistance as a means of expanding regional trade, they will still have to determine how to best strengthen the current WTO commitment in a regional trade pact. Institutional arrangements will also be an important issue for negotiators. Options include establishment of new regional committees, or use of WTO mechanisms (including existing subcommittees of the Codex Commission, the Office of International Epizootics, and the International Plant Protection Convention) to accomplish FTAA goals. Regardless of the outcome, FTAA policymakers will need guidance on establishing priorities for SPS initiatives in the region. Economic research that could aid in the identification of priority projects currently lags far behind analysis of other trade barriers. Additional investments in multidisciplinary research on SPS measures therefore will be necessary if the objective of increasing regional welfare through trade is to be realized.

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