The SPS and TBT Agreements and International Standards (Agenda Item 5): Implication of SPS Agreement and relation to Codex standard

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Outline

• Global scenario and food safety
• SPS Agreement and link to Codex
• TBT Agreement and Codex
• Why harmonise with Codex
• Summary/ Way ahead
Global Scenario & Food Safety

• Establishment of WTO - dismantling of barriers for free flow of trade
• Creation of global market with equal access to all countries – leading to increase in trade
• Quality, health & safety issues acquiring global focus
• Food safety, a major agenda in international trade – also receiving increased attention in the region
• Role of standards/CA procedures gaining importance
  ➢ Governments imposing regulatory requirements for health & safety
  ➢ Private sector imposing standards for competitive advantage
• To prevent indiscriminate use, rules & disciplines laid down in Non-tariff agreements–SPS/ TBT
• Role of Codex in this scenario and the link to SPS/ TBT Agreements
Agreement On The Application Of Sanitary & Phytosanitary Measures (SPS)

• Negotiated in parallel with major agricultural trade negotiations

• Came into force in 1995

• Applies to all measures used to protect human, animal and plant life and health which may directly or indirectly affect trade
Objectives of the SPS Agreement

- To **protect & improve** the current human health, animal health & phytosanitary situation of all Member countries

- To protect Members from arbitrary or unjustifiable **discrimination** due to different sanitary & phytosanitary standards

- To maintain the **sovereign right** of any Government to provide an appropriate level of protection ie allow countries to set their own standards for health and safety
SPS Agreement – Basic Rights and Obligations (Article 2)

Rights

Recognize the right to apply SPS measures necessary for the protection of human, animal & plant life or health

Obligations

Avoid unnecessary barriers to trade

- Apply to the extent necessary
- Measures based on scientific principles
- Non-discriminatory
- No disguised restrictions on trade
Types of Measures

- End product criteria
- Process & production methods
- Testing
- Sampling
- Inspection
- Certification & approval procedures
- Risk assessment methods
- Quarantine treatments related to transportation of animals or plants
- Packaging & labelling requirements related to food safety

Standards, guidelines & related texts
Key Provisions

- Non discrimination  
  Article 2.3
- Scientific Justification  
  Article 5
- Harmonization (Codex, OIE, IPPC)
  - Higher standards based on risk assessment  
    Article 3
- Equivalence  
  Article 4
- Regionalization/ Disease-free areas  
  Article 6
- Transparency (NNA, Enquiry point)  
  Article 7
- Technical assistance  
  Article 9
- Special & differential treatment  
  Article 10
- Control, inspection and approval procedures  
  Annex C
Members shall ensure that any SPS measure is:

- based on scientific principles
- applied only to the extent necessary to protect human, animal or plant life or health (least trade restrictive)
- not maintained without sufficient scientific evidence

except as provided for in Article 5.7
Scientific justification (Articles 3 & 5)

Measures must be based on:

International standards

OR

Risk assessment

Scientific advise through scientific expert bodies

- **JECFA** (Joint FAO/WHO Expert Committee on Food Additives)
- **JMPR** (Joint FAO/WHO Meetings on Pesticide Residues)
- **JEMRA** (Joint FAO/WHO Expert Meetings on Microbiological Risk Assessment)
- **JMPS** (Joint FAO/WHO Meeting on Pesticide Specifications)

Taking into account **risk assessment techniques** developed by relevant international organizations (Codex)
SPS *Article 3* Harmonization

- Encourage use of international standards

Food safety & Animal health & zoonoses

• SPS permits higher standards based on risk assessment

Codex = Joint FAO/WHO Codex Alimentarius Commission
OIE = World Organisation for Animal Health
IPPC = International Plant Protection Convention (FAO)
Article 3 Harmonization

- Measures to be based on international standards/GLs/recommendations
- SPS measures which conform to international standards/GLs/recommendations deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with Agreement
- Higher level of SPS protection than international standards allowed, if scientific justification
- Members to participate, within limits of their resources, in the relevant international organizations/their subsidiary bodies (CAC)
- The SPS Committee to monitor the process of international harmonization and coordinate with the relevant international organizations
Equivalence  (Article 4)

If the exporting country objectively demonstrates that its measures achieve the ALOP of the importing country, Members shall accept SPS measures of other Members as equivalent.
Pest- or disease-free areas

Article 6 (Regionalization)

Members shall ensure that their SPS measures are adapted to regional conditions based on SPS characteristics of an “area”

To assess SPS characteristics of a region consider pest- or disease-free areas, differing climatic conditions & different pest or diseases or food safety conditions so as to lead to the development/imposition of different SPS requirements
Members shall establish an Enquiry Point AND designate a Notification Authority. They shall notify other Members of new or changed SPS regulations when:

- no international standard exists OR
- the new regulation is different than the international standard AND
- regulation may have significant effect on trade
Members agree to facilitate provision of TA…

- help countries comply with SPS measures
  - technology, research, infrastructure
  - advice, credits, donations, grants
  - technical expertise, training, equipment
- help countries maintain and expand market access

The Standards Trade and Development Facility (STDF)
Special and Differential Treatment (Article 10)

When preparing and applying SPS measures

- Members shall take account of the special needs of developing countries
- Members should accord longer time frames for compliance
- The Committee can grant specified, time-limited exceptions
- Members should encourage participation in international organizations
TBT Agreement - Objectives

• Allows members to apply standards, technical regulations, conformity assessment procedures for
  
  ➢ protection of human safety or health (sockets, seat belts, labelling cigarettes)
  
  ➢ Protection of animal & plant life or health (pollution, extinct eg turtle extruder device)
  
  ➢ Protection of environment (level of vehicle emissions)
  
  ➢ Prevention of deceptive practices (labelling, size)
  
  ➢ Other objectives (quality-size of fruits & veggies, tech harmonization-telecom)

• However need to ensure that these do not create obstacles to international trade
TBT Agreement Application

• Scope
  - Applies to all products including industrial & agri products, both voluntary standards & technical regulations
  - Not apply to SPS measures as defined in SPS Agreement

• Covers
  - Product characteristics
  - Process & production methods (PPM) that have an effect on product characteristics
  - Terminology & symbols
  - Packaging & labelling requirements
TBT Agreement - Important Features

• Came into force in 1995
• Covers products other than those under SPS
• Country has right to adopt voluntary standards & technical regulations (mandatory standards)
• Avoidance of unnecessary obstacles to trade
• Non-discrimination & national treatment
• Encourages adoption of international standards
• Code of good practice for standards development
• Equivalence of technical regulations
• Mutual recognition of CA procedures - encourages Members to enter into negotiations for agreements for MR of results of each others CA procedures
• Transparency, Tech assistance, Special & diff treatment
SPS or TBT??

- Regulation regarding fertilizers residues in foods
- Regulation regarding fertilizers residues in animal feeds
- Regulation regarding efficacy of a fertilizer
- Regulation regarding risk to handlers of fertilizers
- Labelling of Nutrient levels in food
- Labelling of storage temperature
- Fumigation of containers for shipments
- Size of containers

Contd...
SPS or TBT?

**SPS Measures**
- human or animal health from food-borne risks
- human health from animal- or plant-carried diseases
- animals and plants from pests or diseases
- examples:
  - pesticide residues
  - food additives

**TBT Measures**
- human disease control (unless it’s food safety)
- nutritional claims
- food packaging and quality examples:
  - labelling (unless related to food safety)
  - pesticide handling
  - seat belts
SPS Agreement and Codex References

• Annex A - Codex as “relevant international organization for food safety”
• Art 3.1 – measures “based on” Codex
• Art. 3.2 – measures that “conform to” Codex
• Art. 5.1 – Risk Assessment – “taking into account” Codex methodologies
• Art. 5.7 – Emergency actions – on the basis of information from Codex
• Art. 7 & Annex B – notify deviations from Codex
• Art. 5.6 & 12 – procedure to monitor use of Codex standards
SPS agreements *vis a vis* Codex – in a nutshell

- The SPS Agreement calls on countries to harmonize their national standards and base on Codex.
- Codex standards are reference points for harmonizing national food safety standards.
- Codex standards acquire binding force only as a consequence of explicit adoption by individual members.
- The legal status of these standards has increased significantly by virtue of being referenced in the SPS Agreement.
- Codex standards serve as the basic texts to guide the resolution of trade disputes.
WTO Agreements & Standards: Inter-relationships

Member Countries

Data, expertise
Scientific advice

International risk assessment
JECFA, JMPR, JEMRA, ad hoc expert consultations

Scientific advice
Requests for advice, risk assessment

International risk manager
CODEX

International trade agreements
Standards, guidelines, related texts

WTO Agreements

Needs, feasibility, inputs, etc.

Benchmark standards

WTO Agreements & Standards: Inter-relationships
Relevance/benefits of Codex to members

Why harmonise with Codex?

• Based on scientific principles and risk analysis
• Consensus based approach – *truly global*
• Covers a wide range – *products, codes of practice, methods, MRLs, audits, ethics, equivalence, etc.*
• Easy to harmonize national legislations and helpful in absence of national standards
• Provides flexibility in adaptation
• Exchange of information is standardized
• Facilitates trade – exports and imports
• Equivalence process is facilitated
• Reference standard in WTO
Summary - Way ahead

- Codex will continue to play a critical role under the SPS agreement in the area of food standards
- The increasing role of new and more innovative technology, new & emerging hazards, better test methods, awareness & demand by consumers for safe products will lead to newer/stringent standards for more globalized food trade
- Proliferation and importance of private standards - cannot neglect
- Base national standards on Codex or strengthen risk assessment
- Harmonize within country
- Increased role of different stakeholders in standard setting
- Greater participation in Codex, also involvement and co-hosting by developing countries
- Regional collaboration important with common views in Codex
THANK YOU

Any Questions?