

Global trade requirements and compliance with World Trade Organization agreements: the role of tracing animals and animal products

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Summary

The use of a measure incorporating traceability that directly or indirectly affects international trade is permitted under the World Trade Organization Agreement on the Application of Sanitary and Phytosanitary Measures, provided that the measure is applied in accordance with the provisions of the Agreement. These provisions state that the measure must be necessary, scientifically justified, no more trade restrictive than required and consistent with the appropriate level of protection of the importing country. If requested, importing countries are required to assess claims by exporting countries regarding an alternative measure(s) providing an equivalent level of protection or with regard to regionalisation.

Keywords

Agreement on the Application of Sanitary and Phytosanitary Measures – Equivalence – International standards – National treatment – Regionalisation – Traceability – World Trade Organization.

Introduction

Since the General Agreement on Tariffs and Trade (GATT) came into effect in 1948, national regulations for animal health (as well as for plant health and food safety) which affect trade have been subject to international rules. Following the Uruguay Round negotiations, the World Trade Organization (WTO) was established on 1 January 1995 to serve as the umbrella organisation for international trade (2).

Two new agreements on technical barriers to trade came into force when the WTO was created, namely: the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement). The SPS Agreement is concerned, *inter alia*, with the application of food safety and animal and plant health measures to international trade in animals, plants and their products. The underlying objective is to ensure that governments do not use quarantine and food safety requirements as unjustified trade barriers to protect domestic agricultural industries from import competition.

The SPS and TBT Agreements are complementary. In broad terms, the SPS Agreement applies to measures the purpose of which is to protect human, animal and plant life and health from certain hazards (pests and diseases), while the TBT Agreement covers other technical regulations and voluntary standards, and the procedures to ensure that these are met. Although the two Agreements are exclusive (as the TBT Agreement excludes any measures which are covered by the SPS Agreement), some common elements exist, including basic obligations for non-discrimination and similar requirements for the advance notification of proposed measures to WTO Members.

Traceability is not specifically cited in the WTO agreements; nonetheless, the use of measures incorporating traceability is covered by these agreements. A WTO Member must not exceed its rights or fail to meet obligations when employing such measures. This paper describes how the WTO SPS Agreement relates to the use of measures that require animals or animal products to be traceable. The TBT Agreement will not be considered further, as the use of traceability for animal health or food safety reasons is unlikely to be required under this Agreement.

Agreement on the Application of Sanitary and Phytosanitary Measures

The SPS Agreement applies to measures implemented to protect human, animal and plant life or health, and which may, directly or indirectly, affect international trade. Therefore, the purpose, and not the form of a measure, defines whether it falls under the SPS Agreement. Sanitary (human and animal health) and phytosanitary (plant health) measures apply to trade or movement of animal- and plant-based products produced within a country, as well as to products imported from or exported to other countries.

For the purposes of the SPS Agreement, SPS measures are defined as any measures applied in the following circumstances:

- to protect animal or plant life from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms, e.g. horse passports
- to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs, e.g. labelling of packaging to confirm factory of manufacture
- to protect human life or health from risks arising from diseases carried by animals, plants and their products, or from the entry, establishment or spread of pests, e.g. microchipping of dogs to indicate rabies vaccination
- to prevent or limit other damage to a country from the entry, establishment or spread of pests, e.g. spraying of aircraft for insects, depending on port of origin (2, 3).

Discussion in the remainder of this paper will be confined to issues relating to animal health (and human health where zoonoses are concerned).

Rules governing importation

The key provisions of the SPS Agreement are as follows:

- the purpose of an SPS measure may only be to protect human or animal life or health, and then only to the extent necessary to achieve the required level of protection of the importing country
- an SPS measure must be based on scientific principles and not be maintained without sufficient evidence
- an SPS measure may not be applied in a way which arbitrarily or unjustifiably discriminates between countries where identical or similar conditions exist; this includes discrimination between conditions within the country imposing the measure and other countries (this is the concept of 'national treatment')

- an importing country has the sovereign right to choose the appropriate level of protection (ALOP) it considers necessary to protect human or animal life or health within that territory, but such a level of protection must be consistently applied in different situations

- an SPS measure should be based on an international standard, guideline or recommendation, where these exist, except to the extent that scientific justification can be given for a more stringent measure which is necessary to achieve the ALOP of a member country

- an SPS measure conforming to an international standard, guideline or recommendation is presumed to be consistent with the Agreement

- where an international standard, guideline or recommendation does not exist or where, in order to meet the ALOP of a member country, a measure needs to provide a higher level of protection than accorded by the relevant international standard, such a measure must be based on a risk assessment; the risk assessment must consider the available scientific evidence and relevant economic factors

- a measure should be chosen to achieve the ALOP in the manner that is least restrictive to trade

- if scientific evidence is insufficient to complete a risk assessment, an importing country may adopt (a) provisional measure(s) by taking into account available relevant information; additional information must be sought to allow a more objective decision and the measure(s) reviewed within a reasonable period of time

- concepts of pest- or disease-free areas or areas of low pest or disease prevalence (regionalisation) and equivalence of measures between member countries should be utilised.

International standards

An SPS measure can be justified in two ways. The first, and that encouraged by the WTO, is for the importing country to make use of international standards, guidelines and recommendations, such as the *International Animal Health Code* (the *Code*) of the Office International des Epizooties (OIE) (1), in the development of the SPS measure. The international organisations recognised as responsible for establishing these international standards, guidelines and recommendations are the OIE (for animal health and zoonoses), the joint Food and Agriculture Organization (FAO)/World Health Organization (WHO) Codex Alimentarius Commission (for food safety standards) and the relevant international and regional organisations operating within the framework of the FAO/International Plant Protection Convention (IPPC) (for plant health).

The second method of justification is used where an international standard does not exist, or where a member country has decided that a higher level of protection than that

provided by the international standard is required to achieve its ALOP. In this case, the importing country must be able to demonstrate that the measure is based on a scientific assessment of the risks.

Dispute settlement process

The WTO dispute settlement procedures encourage member countries involved in a dispute over the application of SPS measures to find a mutually acceptable solution through formal bilateral consultations. If consultations break down or fail to reach a mutually acceptable outcome, the complaining party may ask the Dispute Settlement Body (DSB) of the WTO to establish an independent panel of trade experts to hear the dispute and to make recommendations. When the dispute involves technical matters such as food safety or quarantine measures, the panel is encouraged to seek scientific and technical advice. The advice can be sought either from individual experts, or through the establishment of an advisory group. Either party may appeal to the Appellate Body of the WTO against the findings of the panel on points of law and on legal interpretation, but not on the science or evidence presented. The recommendations of the panel, as modified by the Appellate Body, are automatically adopted by the DSB unless there is a consensus against adoption. When adopted by the DSB, the recommendations are binding and the member country found to be at fault may be required to bring the measure(s) into conformity with the WTO requirements within a reasonable period of time. The DSB can sanction retaliation against member countries that do not bring their measures into conformity.

As at May 2001, three food safety and quarantine disputes have been considered by the WTO: the prohibition by the European Union of imports of meat from animals treated with growth-promoting hormones from the United States of America (USA) and Canada; restrictions imposed by Australia on imports of fresh, chilled or frozen salmon from Canada; and testing requirements of Japan for different varieties of fruit from the USA, to ensure the effectiveness of treatment against codling moth. In all of these cases, scientific and technical advice was sought from several experts, on an individual basis.

The role of traceability

Although not directly referenced in the SPS Agreement, traceability may be mandated as an SPS measure by the importing country as a specific requirement, or the need for traceability may arise in negotiations relating to equivalence, regionalisation or national treatment.

Equivalence

The recognition that the ALOP of an importing country may be achieved in several different ways has led to the inclusion of the

principle of equivalence in trade agreements, including the SPS Agreement. This principle takes account of the differences which exist among the animal health and production systems in member countries. Article 4 of the SPS Agreement addresses the obligation to accept objective demonstrations of equivalence, as follows:

‘1. Members shall accept the sanitary and phytosanitary measures of other Members as equivalent, even if these measures differ from their own or those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member’s appropriate level of sanitary or phytosanitary protection...

2. Members shall, upon request, enter into consultations with the aim of achieving bilateral or multilateral agreements on recognition of the equivalence of specified sanitary or phytosanitary measures’ (2, 3).

The reference in Article 5.6 to the obligation to restrict trade as little as possible in setting measures is consistent with the consideration of equivalence:

‘Without prejudice to paragraph 2 of Article 3, when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection, taking into account technical and economic feasibility’ (2, 3).

Before trade in animals and animal products may occur, decision-makers in an importing country must be satisfied that the animal health status of that country will be appropriately protected. In most cases, the import requirements will in part rely on judgements about the animal health and production system(s) in the exporting country and the effectiveness of sanitary measures undertaken there. Systems operating in the exporting country may differ from those in the importing country and from those in other countries with which the importing country has traded. Differences may be with respect to infrastructure, policies and/or operating procedures, laboratory systems, approaches to the pests and diseases present, border security and internal movement controls.

For the purposes of judging equivalence, sanitary measures can be broadly categorised, as follows:

– infrastructure: including the legislative base (e.g. animal health law) and administrative systems (e.g. organisation of national and regional animal health authorities, emergency response organisations)

– programme design/implementation: including traceability systems, performance and decision criteria, laboratory capability, and provisions for certification, audit and enforcement

– specific technical requirement: secure facilities, test/treatment process (e.g. retorting of cans), specific tests (e.g. enzyme-linked immunosorbent assay [ELISA]) and procedures (e.g. pre-export inspection).

A sanitary measure proposed for a judgement of equivalence may fall into one or more of the above categories, which are not mutually exclusive. The OIE *Code* recognises equivalence by recommending alternative sanitary measures for many diseases and, to facilitate the judgement of equivalence, member countries are encouraged to base sanitary measures on OIE standards to the extent possible (1). Equivalence may be gained by the use of alternative certification, test, treatment and isolation procedures, or by combinations of all.

The exporting country has the responsibility to objectively demonstrate how the proposed alternative sanitary measure(s) would achieve or help to achieve the ALOP of the importing country. The exporting country should present a submission for equivalence in a form that facilitates judgement by the importing country which is obliged to evaluate such submissions in a timely, consistent, transparent and objective manner, and according to appropriate risk assessment principles. It is important to note that equivalence does not mean 'identical', rather that the proposed measure or set of measures should provide an equivalent level of protection against the identified hazard(s). Importing countries should not insist that, for ease of administration, proposed systems or processes need to be identical to that used in their own territory.

Traceability may be a measure proposed by the exporting country as equivalent to (a) measure(s) required by the importing country. For example, the ability to trace animals back to the herds or flocks of origin may provide greater confidence in pest- or disease-status certification which in turn may allow a reduction in the level of individual animal testing or treatment, without any overall reduction in the level of protection accorded; for instance, the ability to trace a shipment of cattle back to a farm certified as tuberculosis-free may eliminate the need to isolate and test the shipment for tuberculosis. Conversely, isolation and testing may be proposed to provide assurances if the requisite traceability systems do not exist in the exporting country.

Thus, traceability may assist member countries in meeting obligations with regard to equivalence and the adoption of measures that are less restrictive to trade.

National treatment

Conflicts can arise over the relationship between national measures and those imposed on imports.

Article 2.3 of the SPS Agreement states the following:

'Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail,

including between their territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade' (2, 3).

The concept of national treatment prohibits a Member from discriminating between its own territory and the territories of other WTO Members when implementing measures, i.e. a higher level of protection may not be applied against hazards in imported commodities than is applied against the same or similar hazards in domestic commodities.

Obvious links exist between national treatment and judgement of equivalence.

Regionalisation

When establishing SPS measures, member countries are obliged to recognise that imported products may originate from pest- or disease-free areas or areas of low pest or disease prevalence. Article 6 of the SPS Agreement requires that importing countries adapt requirements according to the pest or disease status of the region from which the product is being imported, and the conditions present in the region into which the product is imported.

International standard-setting organisations have developed guidelines on surveillance and monitoring standards necessary to support claims of regional pest- or disease-free status.

As is the case for equivalence, the burden is initially on the exporting country to demonstrate the pest or disease status of a particular area, and on the importing country to objectively assess this claim. The ability to trace animals or animal products back to the herds or flocks of origin would provide greater confidence in the regionalisation claims of exporting countries, particularly when the disease situation is relatively stable, for example for diseases such as bovine brucellosis and Aujeszky's disease.

Consistency

Member countries have an obligation to avoid arbitrary or unjustifiable distinctions in the levels of protection applied in different situations, if such distinctions result in discrimination or a disguised restriction on international trade. This obligation reflects the objective of consistency in applying the concept of ALOP against risks to human or animal life or health, i.e. a member country must be consistent in the application of risk management and not arbitrarily vary its attitude to the acceptance of risk from one situation to another. For instance, a member country cannot take a very restrictive approach in relation to trade in one animal commodity (e.g. pork from a country infected with foot and mouth disease) and be willing to accept a much higher level of risk for another commodity (e.g. live breeding cattle from the same country), perhaps because the former competes against products from a local industry.

Relevant international standards

The ability to trace animals to the herd or flock of origin is included in several chapters of the OIE *Code* as part of a systems approach to judging the validity of a pest- or disease-status claim for a particular country. For example, Article 2.2.2.1 of the chapter on Aujeszky's disease states the following:

'The Aujeszky's disease (AD) free or provisionally free status of a country or zone can only be determined if the following conditions are fulfilled:

- 1) a risk analysis has been conducted identifying all potential factors for AD occurrence and their historic perspective;
- 2) AD is notifiable in the whole country, and all clinical cases suggestive of AD are subjected to field and laboratory investigations;
- 3) an on-going awareness programme is in place to encourage reporting of all cases suggestive of AD in susceptible species;
- 4) the Veterinary Administration has current knowledge of, and authority over, all establishments containing pigs in the whole country;
- 5) domestic pigs are properly identified when leaving their establishment of origin with an indelible mark giving the identification number of their herd of origin; a reliable tracing back procedure is in place for all pigs leaving their establishment of origin' (1).

As such, traceability forms part of an international standard and a country applying such a measure may be presumed to fulfil its obligations under the SPS Agreement, subject to provisions governing consistency and national treatment.

Conclusions

Measures to trace animals and animal products through production systems can be used to provide assurances on the safety of the animal and resulting products with regard to identified hazards. Some such measures have been incorporated into international standards. The WTO SPS Agreement provides member countries with a right to implement traceability as an SPS measure. However, this right is accompanied by certain obligations. The measures must be based on an assessment of the risks and be scientifically justified, appropriate to the circumstances, no more restrictive of trade than required and applied consistently, including between the country imposing the measure and other countries. Measures that are based on international standards are deemed to be necessary. If requested by an exporting country, importing countries must consider, on scientific merit, any claims of equivalence of alternative risk management measures and must adapt measures to regional conditions.

Traçabilité dans le commerce international des animaux et produits d'origine animale et respect des accords de l'Organisation mondiale du commerce

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Résumé

L'adoption de mesures en matière de traçabilité, susceptibles d'affecter directement ou indirectement le commerce international est autorisée aux termes de l'Accord sur l'application des mesures sanitaires et phytosanitaires de l'Organisation mondiale du commerce, sous réserve que ces mesures ne contreviennent pas aux autres dispositions de l'Accord. Celui-ci stipule que de telles mesures doivent être à la fois indispensables et scientifiquement justifiées, ne pas entraîner de restrictions arbitraires aux échanges et être conformes au niveau approprié de protection du pays importateur. Celui-ci est tenu, le cas échéant, d'examiner toute demande faite par le pays exportateur tendant à recourir à une ou des mesure(s) alternatives offrant un niveau de protection équivalent, ou à procéder à la régionalisation.

Mots-clés

Accord sur l'application de mesures sanitaires et phytosanitaires – Équivalence – Normes internationales – Organisation mondiale du commerce – Régionalisation – Traçabilité – Traitement national.

Rastreabilidad de animales y productos pecuarios en el comercio internacional y conformidad con los acuerdos de la Organización Mundial del Comercio

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Resumen

El Acuerdo sobre la Aplicación de Medidas Sanitarias y Fitosanitarias de la Organización Mundial del Comercio admite el uso de medidas que incorporen la rastreabilidad y puedan afectar directa o indirectamente a los intercambios internacionales, siempre y cuando tales medidas no contravengan las disposiciones del Acuerdo. Este estipula que cualquier medida que se adopte ha de ser necesaria, estar justificada desde un punto de vista científico, no imponer más limitaciones de las necesarias al comercio y ser coherente con el nivel de protección apropiado del país importador. Cuando se le solicite, el país importador está obligado a estudiar las propuestas relativas a la regionalización o a posibles medidas alternativas (siempre y cuando ofrezcan un grado equivalente de protección) que le formulen los países exportadores.

Palabras clave

Acuerdo sobre la Aplicación de Medidas Sanitarias y Fitosanitarias – Equivalencia – Normas internacionales – Organización Mundial del Comercio – Rastreabilidad – Regionalización – Tratamiento nacional.



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