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# A Critical Study on Sanitary and Phytosanitary Agreement and its Impact on Developing Countries

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## ABSTRACT

*Although import duties on many agricultural products have been dropped or waived as part of preferential trading agreements, farmers in developing countries are facing new challenges to selling their products around the world. Technical requirements, particularly for the hygiene and safety of products, have become one of the greatest barriers to trade for many producers.*

*The World Trade Organisation (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) aims to provide the balance between the right of governments to protect food safety, plant and animal health, and prevent these sanitary and phytosanitary measures from being unjustified trade barriers.*

## I. INTRODUCTION

The agreement named the SPS agreement entered into force with the establishment of the World Trade Organization on 1 January, 1995 and was negotiated during the Uruguay round of the General Agreement on tariffs and trade. It mainly focused on the food safety and animal and plant health regulation.

The SPS Agreement is essentially about health and international trade. International trade and travel have expanded significantly in the past 50 years. This has increased the movement of products that may pose health risks. The SPS Agreement recognizes the need for WTO members to protect themselves from the risks posed by the entry of pests and diseases, but also to seek to minimize any negative effects of SPS measures on trade.

The health aspects of the SPS Agreement basically means that WTO members can protect human, animals or plants life or health by applying measures to manage the risks associated with imports.

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The measures that WTO members apply can be classified as sanitary (relating to human or animal life or health) or phytosanitary (relating to plants life or health). They are commonly known as SPS measures. And this is the agreement that set out the basics rules for food safety and animal and plant health standards.

It allows countries to set their own standard, setting some of the regulations based on science. The applicability of the measures are only to the extent necessary to protect human, animal or plant life or health and should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

Member countries are encouraged to use international standards, guidelines and recommendations where they exist. This allows member countries to use different standards and different methods of inspecting products.

## **II. MEANING AND CONCEPT OF SPS AGREEMENTS**

The main focus of the GATT had been always to lower the tariffs, and there was no agreement by which the problems of non- tariff barriers to trade could be resolved and the agreement that preceded the SPS agreement was a big fail to solve the problems and that gave birth to a new independent agreement or concept called the sanitary and phytosanitary agreement which was an ambitious attempt to deal with the NTBs which arose from the cross-national differences in technical standards without diminishing governments prerogative to implement measures to guard against diseases and pests.

This led to the development of SPS agreement which is an agreement that mainly focuses on the food safety and animal and plant health regulations. Its main aim is to make countries use standardized methods and products. Under this agreement the WTO constraints on member-states policies relating to food safety as well as animal and plant health with respect to imported pest and diseases. There are even some SPS measures that are only used to a extent necessary to protect human, animals or plant life or health. And they should not discriminate between the like products prevailing in the country. The member countries can use the measures which result in higher standard.

The main concept of this agreement is that all countries maintain must maintain measures to ensure the food safety of the consumers, and to prevent the spread of pests or diseases among animals and plants. There are many forms of the SPS measures like:

- Requiring products to come from a diseases- free area
- Inspection of products

- Specific treatment or processing of products
- Setting of allowable maximum levels of pesticide residues or permitted use of only certain additives in food.

This SPS measures are applied to both the domestically produced food and local animals and plants diseases as well as to product coming from other countries. The main concept of the implementation of the SPS agreement is to put some trade restriction which may ensure food safety and animals and plant health protection and also to shield the domestic producers from economic competition. The basic aim of SPS agreement is basically to maintain the sovereign rights of any government in order to provide the level of health protection required, but even put an eye on these rights so that this is not misused for protectionist purposes and result in unnecessary barrier to international trade.

### **III. LEGAL FRAMEWORK**

As for the effective implementation of the operation, the parties decided to form a committee on sanitary and phytosanitary measures which composed of the government representatives of each party responsible for sanitary and phytosanitary matters. The main objective was to consider matters of mutual interest and to enhance communication and cooperation on sanitary and phytosanitary matters.

There were some legal rules which needed to be followed and understand by the committee such as:

- A forum needs to be provided to the committee to improve the parties understanding of issues related to sanitary and phytosanitary problems which led to the implementation of the SPS agreement.
- A platform to enhance mutual understanding of each party's sanitary and phytosanitary measures.
- To undertake specific tasks related to the function of the committee.
- May consult on matters and positions for the meetings of the committee on sanitary and phytosanitary measures established under article 12 of the SPS agreement.

#### **Procedures to be taken into consideration:**

- A written description of the sanitary and phytosanitary responsibilities of the competent authorities and contact points should be given to all other parties by each of the party within each of the authorities.

- A primary representative is then identified within 60 days of the date of entry into the SPS agreement for that party.

**Equivalence in the agreement:**

- The parties shall apply equivalence to a group of measures on a system or on a systems-wide basis, to the extent feasible and appropriate. In determining the equivalence of a specific sanitary or phytosanitary measures, group of measures or on a systems- wide basis, each party shall take into account the relevant guidance of the WTO SPS committee and international standards, guidelines and recommendations. <sup>2</sup>
- The objective to be explained by the importing parties on request of the exporting party.
- In order to determine the equivalence of a sanitary or phytosanitary measure, an importing party shall take into account available knowledge, information and relevant experience, as well as the regulatory competence of the exporting party.

**Emergency measures:**

- If any emergency measures is undertaken by any of the party for the protection of human, plant or animal life and health, the party shall promptly notify to the the other party.<sup>3</sup>
- If the party adopts emergency measures, it has to review the scientific basis of that measure within six months and make available the result of the review to any party on request.

**Information exchange:**

- If there is a problem in the SPS measure a party may request information from another party on that matter arising.
- A party that receives a request for information shall endeavour to provide available information to the requesting party within a reasonable period of time, and if possible , by electronic means.

**Dispute settlement:**

Unless otherwise the party shall apply under the dispute settlement with respect to Article 7.8, Article 7.11

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<sup>2</sup> Article 4 of SPS Agreement

<sup>3</sup> Article 7.6 of SPS Agreement

#### **IV. RECENT CASES RELATED TO SPS AGREEMENT:**

- **EC- HORMONES<sup>4</sup>**

Here in this case, Canada had requested consultations with the European Communities regarding the importation of livestock and meat from livestock that have been treated with certain substances having a hormonal action under Article XXII of the GATT 1994 and the corresponding provisions in the SPS Agreement. After this European community notified its intention to appeal certain issues of law and legal interpretations developed by the panel. The AB examined this appeal The AB upheld the panel's finding that the EC import prohibition was inconsistent with Article 5.1 of the SPS Agreement, but reversed the panel's finding that the EC import prohibition was inconsistent with Articles 3.1 and 5.5 of the SPS Agreement. On the general and procedural issues, the AB upheld most of the findings and conclusions of the panel, except with respect to the burden of proof in proceedings under the SPS Agreement.

Articles that were used in this case was Article 2<sup>5</sup>, Article 3<sup>6</sup>, Article 5<sup>7</sup>.

- **US- SHRIMPS CASE<sup>8</sup>**

On 8 October 1996, India, Malaysia, Pakistan and Thailand requested consultations with the United States concerning a ban on importation of shrimp and shrimp products from these complainants imposed by the US under Section 609 of US Public Law 101-162. Violations of Articles I, XI and XIII of the GATT 1994, as well nullification and impairment of benefits, were alleged. Due to the bad quality of the shrimps there was ban on the shrimps and shrimps products.

- **US- PANGASIUS SEAFOOD PRODUCTS CASE.<sup>9</sup>**

On 22 February 2018, Viet Nam requested consultations with the United States concerning certain measures affecting the importation into the United States of pangasius seafood products from Viet Nam, purportedly because of sanitary and phytosanitary concerns. The quality of the seafood products were not so good and did not qualify the SPS measures. Vietnam claimed that the measures appear to be inconsistent with:

Articles 2.2, 2.3, 4.1, 5.1, 5.3, 5.6, 8 and Annex C(1)(a) of the SPS Agreement.

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<sup>4</sup> DS26

<sup>5</sup> Basic Rights and Obligations

<sup>6</sup> Harmonisation

<sup>7</sup> Assessment of Risk and Determination of the Appropriate Level of Sanitary or Phytosanitary Protection

<sup>8</sup> DS58

<sup>9</sup> DS540

## V. CRITICISM

- **Economic Consideration**

Exchange the stock subject to SPS-type measures can possibly prompt vital financial additions for national economies. Favouring financial contemplations over various crucial general wellbeing approach issues, nonetheless, are a few things that needs closed examination by government and along these lines the universal network.

The SPS Understanding mirrors the precaution standard – a rule that grants them to follow up on the part of alert if there's no logical assurance concerning potential dangers too human wellbeing and in this way the air. Beneath Article five.7 Individuals World Wellbeing Association institute contingent lives zone unit committed to chase extra information on potential dangers and audit the measure 'inside a reasonable measure of time'. The procedures Body in Japan– Estimates contacting Agrarian stock, communicated that the length of a 'sensible measure of time' is to be evaluated on a free premise. Beneath SPS rules, the weight of evidence is on the prosecutor nation to exhibit that a live abuses Article a couple of.2 and Articles five.1-5.8 before it is controlled albeit logical confirmation will ne'er be decisive and it's impracticable to check for all wellbeing dangers that may emerge from importation of an unequivocal item.

- **Impact on Developing Countries**

It is vital that the views of developing countries are incorporated into the standard-setting method because the result of mercantilism countries enacting SPS measures are often damaging to developing economies. This can be part because of these states not possessing the technology and resources required to without delay accommodates bound SPS necessities.

## VI. CONCLUSION

The SPS Ascension is basically about wellbeing and global exchange. Global exchange and travel have extended altogether in the previous 50 years. This has expanded the development of items that may present wellbeing dangers. The SPS Understanding perceives the requirement for WTO individuals to shield themselves from the dangers presented by the passage of nuisances and infections, yet additionally to try to limit any negative impacts of SPS estimates o exchange.

The wellbeing parts of the SPS Understanding essentially implies that WTO individuals can secure human, creatures or plants life or wellbeing by applying measures to deal with the dangers related with imports.

The measures that WTO individuals apply can be named clean (identifying with human or creature life or wellbeing) or phytosanitary (identifying with plants life or wellbeing). They are normally known as SPS measures. Furthermore, this is the assent-ion that set out the essentials rules for sustenance security and creature and plant wellbeing norms.

It enables nations to set their very own standard, setting a portion of the controls dependent on science. The materialness of the measures are just to the degree important to secure human, creature or vegetation or wellbeing and ought not subjectively or ridiculously separate between nations where indistinguishable or comparative conditions win.

Part nations are urged to utilise worldwide gauges, rules and proposals where they exist. This enables part nations to utilise distinctive models and diverse techniques for assessing items.

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