



# **The SPS Agreement - Emerging Issues and Challenges**

**Quarantine and Market Access Conference 2003**

**Maximizing Trade - Minimizing Risk  
Canberra, Australia**

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# Emerging issues and challenges

- Food safety and animal health - perception of health problems
- Resource constraints to ensure science-based foundation
- Risk assessments creating delays
- Disputes on politically sensitive issues i.e. *GMOs*
- Technological and knowledge inequities
- Lack of understanding of the SPS by developing countries





# SPS Agreement - a balance

Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal and plant life or health...

(Article 2.1)

Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health...

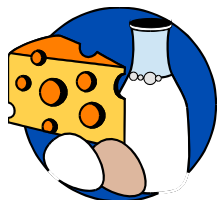
(Article 2.2)



# SPS measures

To protect:

- Human life



- \* Contaminants include pesticides, veterinary drug residues, extraneous matter

From:

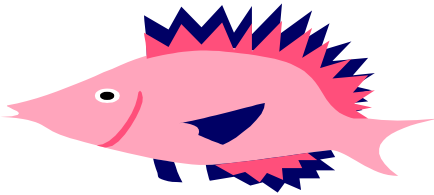
- risks from toxins, contaminants\*, food additives, or disease-causing organisms in foods and beverages
- diseases carried by animals, plants or products thereof



# SPS measures

To protect:

Animal life, including  
fish and wild fauna



From:

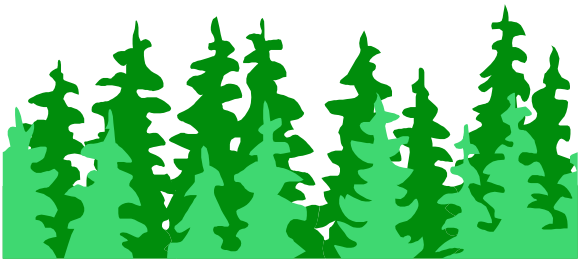
- Risks from toxins, contaminants, food additives, or disease-causing organisms in feedstuffs
- the entry, establishment or spread of pests, diseases, disease-carrying or disease causing organisms



# SPS Measures

To protect:

- Plant life including forests and wild flora

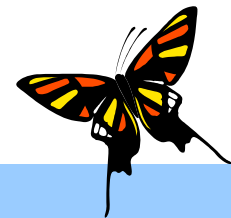


From:

- the entry, establishment or spread of pests, diseases, disease-carrying or disease-causing organisms



# SPS Measures



To protect

- The territory of a country

From

- Damage from entry, establishment or spread of pests (including weeds)



# Interpreting the SPS Agreement



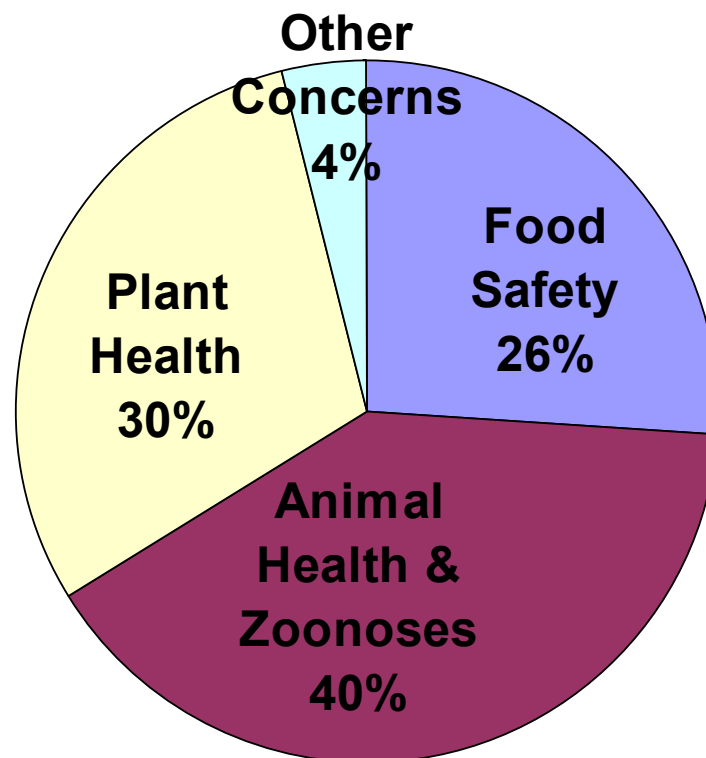
Problems have become apparent as countries use the SPS Agreement to increase trade opportunities

- bilateral discussions
- specific trade concerns
- formal trade disputes



# Specific Trade Concerns - Issues

Total number of issues raised: 154



Members raising issues:

41% developed countries

58% developing countries

1% least developed countries



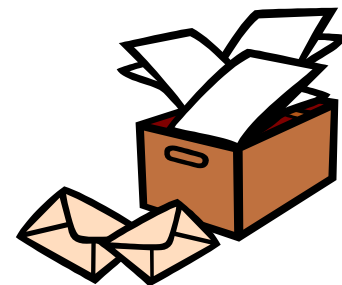
# Interpreting the SPS Agreement



- Long-standing trade problems have been challenged - using the WTO disputes settlement
- Four SPS disputes
- Disputes have clarified the meaning of the SPS Agreement
- Other "interpretations" through Committee decisions



# DS Procedure



1. Consultations
2. Request for panel
3. Selection of panel members
4. Submission of written and oral arguments
5. Expert advice
6. Draft report to parties
7. Interim report and findings to parties
8. Final report to parties
9. Public circulation of report



# DS Procedure

10. Adoption of final  
report by Members  
(DSB)

OR

10(a) Appeal of  
findings

10(b) Consideration by  
Appellate Body

10(c) Adoption of  
report of Appellate  
Body



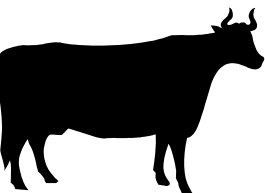
# DS Procedure

11. Implementation within a "reasonable period of time"
12. [Determination of consistency of implementation measures or arbitration on retaliation]





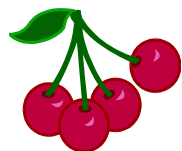
# Four SPS Disputes



"Hormones"  
US + Canada v.s EC -  
Measures Affecting Meat and Meat Products



"Salmon"  
Canada v.s Australia - Measures Affecting Importation  
of Salmon



"Variety testing"  
US v.s Japan - Measures Affecting Agricultural  
Products

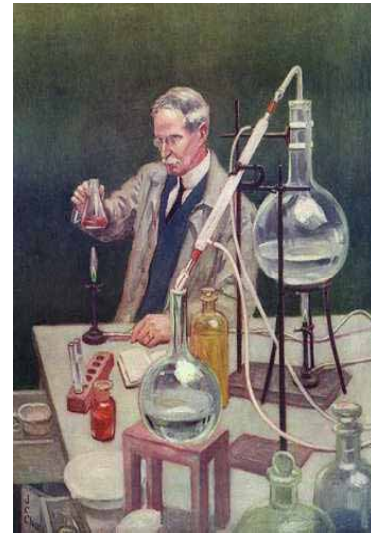


"Fire blight"  
US v.s Japan - Measures Affecting Importation of  
Apples



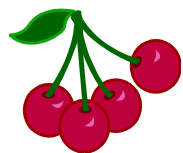
# Scientific justification - issues

- How to judge if a measure is "based on scientific principles"?
- What is "sufficient scientific evidence"?
- Whose science?
- What is required in a risk assessment?
- How long should a risk assessment take?
- Can all countries afford to do risk assessments?





# Scientific justification - interpretations

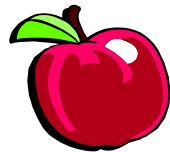


## Variety Testing

- Rational relationship required between measure and scientific evidence
- The variety testing method was not based on sufficient scientific evidence



# Scientific justification - interpretations



Fire blight

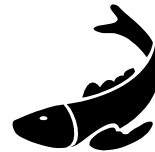
Panel

- No lack of scientific evidence
- There was a large volume of evidence not supporting Japan



# Scientific justification/risk assessment interpretations

Salmon



## Three cumulative requirements

1. Identify the disease(s)
2. Evaluate the likelihood of entry, establishment or spread
3. According to the SPS measure which might be applied



# Scientific justification/risk assessment - interpretations


Salmon 

## Panel

- Assumed the risk assessment met requirements, but found that the measure was not based on that risk assessment

## Appellate Body

- Australia had not met the second and third requirements: was not sufficient to say "there is a possibility..."



# Scientific justification/risk assessment - interpretations



## Fire blight

### Panel

- Japan failed to evaluate likelihood of disease entry with imported apples
- Japan only looked at measures already applied



# Provisional Measures

Members may provisionally adopt measures...

- if relevant scientific evidence is insufficient
- on the basis of available information



**But:**

- shall seek to obtain the additional information
- review measure within a reasonable period of time



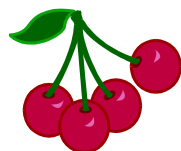
# Provisional measures - issues

- Precaution or protectionism?
- When is scientific evidence "sufficient"?
- What is a reasonable period of time for review?
- How does this compare with other definitions of the Precautionary Principle?





# Provisional measures - interpretations



## Variety testing

- Japan maintained the measure without trying to obtain the necessary additional information
- Did not revise the measure within a “reasonable period of time” (to be determined on a case-by-case basis)



# Provisional measures - interpretations



Fire blight

Panel

- Evidence (both laboratory and “real world”) not **“insufficient”**



# Consistency - issues

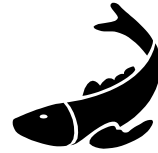
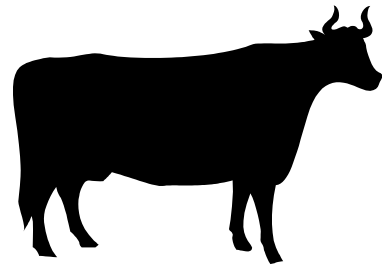
- Appropriate Level of Protection (ALOP) same as acceptable level of risk
- Sovereign right to establish - but rarely defined ALOP with precision
- Difficult to apply ALOP consistently - and difficult to maintain consistently





# Consistency - interpretations

Hormones and Salmon  
Three-pronged test:



1. **Different** appropriate levels of protection in different situations
2. Differences are "**arbitrary or unjustifiable**"
3. Differences result in "**discrimination or a disguised restriction on international trade**"

Committee guidelines - *G/SPS/15*



# Least Trade Restrictive

*"not more trade restrictive than required to achieve the appropriate level of protection"*

Alternative measure...

- reasonably available
- technically and economically feasible
- significantly less trade restrictive





# Other issues

- Equivalence - practical implementation
- Regionalization/pest- or disease-free areas
- Problems of developing countries
  - Technical assistance
  - special and differential treatment

New issues - *GMOs*, invasive species



# Contact Details



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