

28 January 2011

## Sanitary and Phytosanitary Measures

### Part 4

#### Justification of measures

SPS measures are defined as measures that are intended to protect human, animal or plant life or health against certain, specified kinds of risks. They can only be justified in terms of that objective

SPS measures may, incidentally, also have other effects and even other purposes, but these cannot be used to justify them in any way.

All SPS measures must be based on *scientific principles*, and cannot be maintained without *sufficient scientific evidence* unless they are provisional measures that have been put in place until the relevant information can be collected. The SPS Agreement requires that SPS measures have an *objective basis*.

WTO Members can take measures to protect human/animal/plant life and health:

- ♦ only to extent necessary
- ♦ based on scientific principles
- ♦ not maintained without sufficient scientific evidence (unless provisional - see Art. 5.7\*)

Measures to be non-discriminatory: national treatment/non-discrimination. National treatment means not discriminating against other countries in favour of domestic producers. Non-discrimination means not treating one trading partner country more favourably than another.

*\* Article 5.7: In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time.*

Measures that are based on relevant international standards, guidelines or recommendations are deemed to be justified and use of such norms is strongly encouraged.

If international standards, guidelines or recommendations are not followed, then measures must be justified by an appropriate risk assessment.

#### Minimising trade restrictions

It is a fundamental principle of the Agreement that the appropriate level of protection of human, animal or plant life or health should be achieved in the least trade-restrictive way. This idea is reflected explicitly in a specific obligation, and also implicitly in two kinds of special circumstances:

- ♦ adaptation to regional conditions
- ♦ equivalence of measures

#### What does "least trade restrictive" mean?

The SPS Agreement establishes the right of WTO Member countries to ensure that there is adequate security against sanitary and phytosanitary risks like exotic pests and diseases. However, in almost all situations, there are different measures (like a ban or a testing procedure or a requirement for official certification) or different combinations of measures that can achieve the appropriate level of protection. Each measure or combination of measures is likely to increase costs for the exporting country or countries, or otherwise restrict trade in different degrees. The extent of trade restriction will depend not only on the measures applied by the importing country but also on the particular circumstances of the exporting country. The SPS Agreement says that an importing country that is considering imposing SPS requirements on the exports of another country must look at all the different ways of achieving sufficient protection and choose that way which will allow the maximum amount of trade still to occur.