

Lecture 12: Agreement on Sanitary and Phytosanitary measures (SPS)

Dear students, this week we are going to talk about the two Agreements and the first one is Agreement on Sanitary and Phytosanitary measures and the Technical Barriers to Trade. And in today's lecture we are going to examine the Agreement on Sanitary and Phytosanitary measures popularly known as SPS Agreement.

CONCEPTS COVERED

- **Concept of SPS**
- **Problem persisting**
- **Export Rejection**
- **Tokyo Round Code**
- **SPS Standards**
- **Conclusion**

The slide features a yellow header with the title 'CONCEPTS COVERED'. Below the title is a list of six bullet points. The slide also includes a large, faint 'NPTEL' watermark in the background. At the bottom, there are logos for IIT Bombay and IIT Madras, along with the text '©NDIR/RGSOIPL/NPTEL/TRADE LAW' and a small number '2'.

So, and also we will see that what is this Agreement, what is the concept of sanitary and phytosanitary. Then what is really the problem and the export rejections? Export rejections from India are a concern. It is a concern not only for exporters as a country it affects the reputation of the country as a destination of exports. So, we will see some of the rejections, and then we will see the other codes like the Kennedy Round Code, what the provisions on SPS, then the Tokyo Round and then what the standards, SPS standards. So, we are going to cover this in today's lecture.

The Problem?

- **How do you ensure that your country's consumers are being supplied with food that is safe to eat — “safe” by the standards you consider appropriate?**
- **And at the same time, how can you ensure that strict health and safety regulations are not being used as an excuse for protecting domestic producers?**
- **A separate agreement on food safety and animal and plant health standards (the Sanitary and Phytosanitary Measures Agreement or SPS) sets out the basic rules.**



So, when we talk about the SPS Agreement. So, what is the problem persisting now? So, how can consumers in a country be protected? This means how safe food can be provided to them or safe food products can be given to them. And what are the regulations? The countries use domestic regulations, and the SPS Agreement is a uniform minimum standard that is to be enforced by all member countries, 164 WTO member countries at their domestic level. But it is up to the member countries to adopt a standard; it can be an international standard, it can be their own standard and the standard is not mentioned in the SPS Agreement. So, according to every country's economic conditions or circumstances, they can adopt their own standards. But the members agreed that, taking a clue from the previous Agreements that is the Kennedy Round and the Tokyo Round, and in the Tokyo Round, Kennedy Round there was a code and the Tokyo Round elaborate code, and then the Uruguay Round came out with the SPS Agreement Sanitary and Phytosanitary Agreement which includes three components and the first component is with regard to the food safety and second with regard to animal health and the third component deals with the plant health. So, the SPS Agreement deals with the three areas of protection.

Indian Food Rejections

- A total of 3,925 human food export shipments from India were refused entry at US customs in the last four years, as per data available with the US Food and Drug Administration (FDA).
- Of these, 953 shipments (24 per cent) were refused entry for being “filthy” and 786 shipments (20 per cent) were refused for containing salmonella, a bacteria that causes severe stomach infections. The most frequent product categories to face entry refusals were spices, vitamins, minerals and proteins, bakery products, and seafood products.

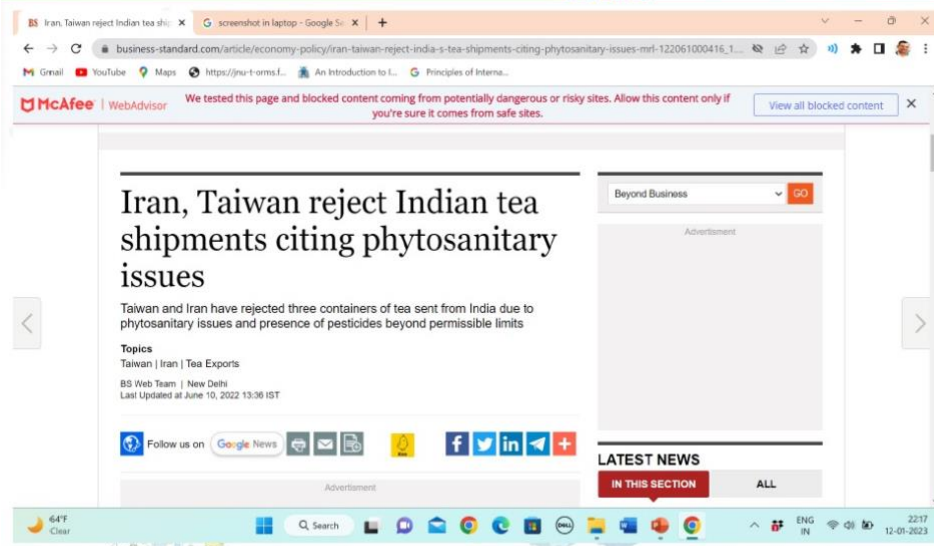


Now so, if you look into acute problem, this is the 2023 data; it says that around 3925 human food shipments were rejected by only one country or one of the largest trading partners, which is the United States. So, even though China is the largest trading partner they are second in rejection. So, you can imagine that China rejects food items, and the largest rejection is from the US. The US Food and Drug Administration has rejected, for the last 3, 4 years, around almost 4000 items. So, on average, if you take into consideration that around 1000 consignments are rejected per year, it is a concern. It is a concern for India as an export destination because this is going to affect the image of the country as an export destination of various products and especially we can see some of the areas like spices and India is one of the largest exporters of spices all over the world, but recently you can see there is a lot of rejections, and we will see one by one. See out of these shipments in 2023 around 1000 shipments so far around, 24 per cent shipments were refused entry by showing the reason that it is filthy. See, you are talking about the Quality Council of India, which is there to take care of the quality of the food which is exported, but 24 per cent of the consignments are rejected on the ground that they are filthy. And most importantly, contaminants so you can see that another 20 per cent of the shipments are refused entry by showing containing salmonella. Everybody knows that salmonella is a very serious disease causing organism, a bacteria which causes severe stomach infections. Salmonella bacteria are in 20 per cent of the exports, that are also food exports which people eat. So other categories includes spices, vitamins, minerals, proteins, bakery products, bakery items and seafood products.

Problem – Export Rejections

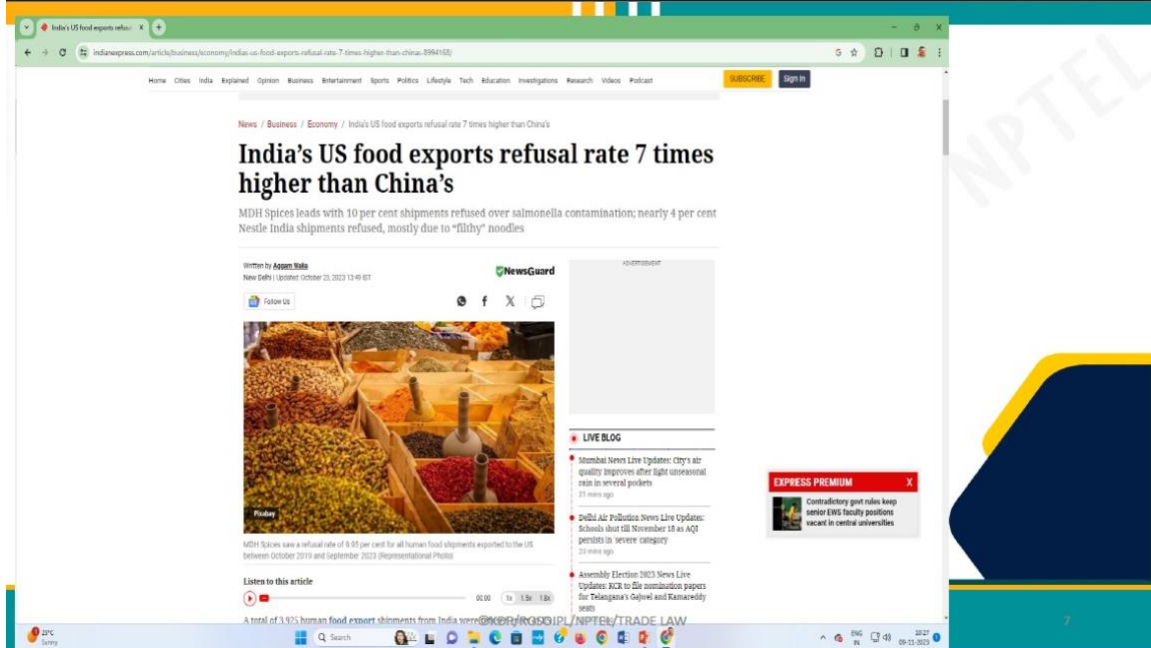
- 2100 batches of goods rejected by USFDA from India in 2020-21.
- 1753 – From China
- products across food, personal care and health supplement categories, those made by leading companies such as Hindustan Unilever, Britannia, Nestle etc. Haldiram etc.,
- 53 Haldiram-made consignments. Rejected.

And also see some of the cases. We can see that it is not the US that rejected it; China is the largest trading partner of India, and the products include foods, personal care products, health categories, supplements and others. As you can see, some of the products rejected include those of multinational companies like Hindustan Unilever, Nestle, Britannia, and our popular snack manufacturer, Haldiram. So it shows that for a single company, for example, the snacks-making company or the ready-to-eat food-making company, 53 consignments of one company were rejected. So this shows that there is some serious problem.



Not only in food, you can see a 2022 news item that says Iran and Taiwan rejected Indian tea shipments, citing phytosanitary issues. I was going through this particular news item and checked what it is. So, these countries find that there are excessive pesticide

residues in tea. So where are we going? So if you want to be an export destination you must be providing the goods including food items with some kind of international standards in conformity with the standards of the importing country.



And also we can see this is a very recent news in October 2023 and it says that the food exports refused 7 times higher than China; the US food exports. So everybody knows that the US is a country with a high standard of food and a high standard of items, and I was going through this: what is this rejected? A majority of the items rejected are spices, and spices belong to a particular company, a particular spice making one of the largest spice-making companies in India that is MDH. And the news item says that 10 percent of their shipments are rejected and what is the reason? They said mostly, as you can see, that salmonella. Again salmonella is a villain in most food products as well as spices. So, the contamination by salmonella, and then you can even see that multinational company products like noodles are rejected. So the reason which they have given is it is filthy. Remember, if this is the standard which is adopted by the multinational companies in India then nobody can help them, and the bad name comes back to India as an export destination.

Rejections

- The products from India which were refused entry included **fried snack foods, bakery products, spices (ground, mixed) and seasonings, tamarind and other pastes, basmati rice, food with supplemental nutrients added, soft drinks, shrimps and prawns, harvested fisheries, herbals and botanicals, miscellaneous patent medicines, generic medicines, bath soaps and detergents.**

So as I told you these items and other items, there is a long list of items rejected by other countries, including food, fried snacks, bakery products, spices and tamarind and other paste then basmati rice. So basmati rice is one of the geographical indication products which has a high reputation all over the world, but if that also gets a bad name, then it will severely affect the exports from India. And other items which you can see are seafood items, soft drinks, fisheries items, botanical items, medicines and even bath soaps and detergents are rejected products. So, what are you going to export? So, what is the basic problem? The basic problem is your product standards or food standards.

Objective of the SPS Agreement?



Recognizing right to protect human, animal, plant life or health

Avoiding unnecessary barriers to trade

So, in this background, we will see the WTO Agreement on Sanitary and Phytosanitary measures. So what is the objective? The objective of the Agreement is specially mentioned in the Agreement. I hope this email finds you well.

SPS Agreement

- **The SPS Agreement allows WTO members to set their own standards on food safety and animal and plant health.**
- **But these standards must be based on science, applied only to the extent necessary to protect human, animal or plant life or health, and not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.**



It says that the SPS Agreement allows the WTO members to set their own standards of food safety, animal safety and plant safety or plant health, animal health and plant health. However, these standards adopted by the member countries must be in accordance with science, based on science, and they can be applicable only to the extent of protecting human, animal, or plant life or health. So it means no arbitrary unjustified discrimination between countries on the same product, similar products or like products.

What is Sanitary and Phytosanitary

- to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food or beverages;
- to protect human life from plant- or animal-carried diseases (known as “zoonoses”);
- to protect animal or plant life from pests, diseases, or disease-causing organisms;
- to prevent or limit other damage to a country from the entry, establishment or spread of pests.



So the SPS Agreement clearly says the objective of the SPS Agreement is to protect human health, animal health and plant health and also protect from other risks and risk arising from additives, contaminants, toxins, disease-causing organisms in food beverages. When it comes to human life and animal life, animals carry various diseases (“zoonoses”), and it is to protect human life from these animal diseases and

protect animal and plant life from pest diseases and disease-causing organisms which is contaminated or transmitted from other countries. And when entering into another country, the minimum damage, for example, the spread of pests. So Sanitary and Phytosanitary mainly focus on human, animal, and plant health.

SPS Measures - Definition - Annex

A

A measure taken to protect:

Human or animal health	from	risks arising from additives, contaminants, toxins or disease organisms in food, drink, feedstuff
Human life	from	plant- or animal-carried diseases
Animal or plant life	from	pests, diseases, disease-causing organisms
Territory of Member	from	other damage caused by entry, establishment or spread of pests



So here, human or animal health is basically looking into the risk from additives, contaminants, toxins, disease-causing organisms, food drinks, foodstuff, etcetera. Then human life from plants and animals carried diseases and animal and plants from pest diseases and disease-causing organisms and as a territory so minimum damage to a particular territory with the infestation of a particular pest or other disease-causing organisms in a region of a member country. So we can see that these measures are taken under the SPS Agreement to protect human beings, animals and plant health.

Objectives and Purpose of SPS

- **Article 20 of the General Agreement on Tariffs and Trade (GATT) allows governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism.**
- **In addition, there are two specific WTO agreements dealing with food safety and animal and plant health and safety, and with product standards in general.**
- **An agreement on how governments can apply food safety and animal and plant health measures (sanitary and phytosanitary or SPS measures) sets out the basic rules in the WTO.**



So, the objectives and purposes of the SPS Agreement are clearly said to protect human, animal or plant life or health, provided they do not discriminate or use this as a disguised protectionism. So, Article 20 of the GATT itself clearly says what is the purpose of SPS measures and mainly, the SPS Agreement deals with food safety, animal and plant life and product standards. So we will see in another lecture about the product standards which are created by the Codex Alimentarius Commission, which is an internationally designated authority by the Food and Agriculture Organization(FAO) to form international standards. And also, it is very important to see how the member countries are implementing these provisions at the domestic level. So, the objective and purpose of SPS Agreement is clearly laid down.

Purpose

- **To protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food;**
- **To protect human life from plant- or animal-carried diseases;**
- **To protect animal or plant life from pests, diseases, or disease-causing organisms;**
- **To prevent or limit other damage to a country from the entry, establishment or spread of pests.**

So the purpose says, it is to protect from animal life, risk arising from additives, contaminants and we saw this again toxins and disease causing organisms. At the same time, human life from animal and plant-carried diseases which may be carried from other country or other country means from the exporting country to the importing country. And these animals and plants, from pests and diseases and other disease causing organisms from again the exporting country. So minimum damage to a particular region is needed as well. So, the purpose of the SPS Agreement is very clear.

Basic Goals of the Agreement

- **The SPS Agreement has a two-fold objective. It aims to both:**
- **Recognize the sovereign right of Members to provide the level of health protection they deem appropriate; and**
- **Ensure that SPS measures do not represent unnecessary, arbitrary, scientifically unjustifiable, or disguised restrictions on international trade.**

And the Agreement very clearly talks about what is its objective, the two-fold objectives. The two-fold objective is every member country has the sovereign right to adopt its own standards subject to the principle of non-discrimination. And at the same time the second objective is adoption of such standards should not be unjustifiable, it should not be arbitrary, it should not be scientifically unjustifiable or unnecessary restrictions on international trade. It should not put unnecessary restrictions on international trade. So, every country can have their own higher standards of this protection, but that should not be an obstacle to trade.

SPS Measures

- **"Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia,**
- **End product criteria;**
- **Processes and production methods;**
- **Testing,**
- **Inspection,**

Also, we can see that Sanitary and Phytosanitary measures, all relevant laws relating to SPS regulations and requirements and end product criteria, process and product methods,

testing, and inspection - all this will include SPS measures. So, the barriers can be put on any one stage, so all these include the SPS measures.

SPS Measures:

- **Must be based on scientific evidence and risk assessment**
- **Must not create any sort of unjustified barriers and**
- **Must not create any restrictions in international trade.**

And the criteria, the condition, the only condition put on such SPS measures are it must be based on scientific evidence and proper risk assessment. It must not create any sort of unjustified barrier to trade, and it should not create any restrictions on international trade. So the objective and purpose is very clear about the SPS Agreement.

SPS Agreement, Article 2.1.

- **All countries have rights to take Sanitary and Phytosanitary (SPS) Measures for protection of human, animal and plant life and health.**

At the same time, you can see that every country has a right to protect human, animal and plant health and life. So, the SPS Agreement very clearly says every country has the sovereign right to adopt any standard of protection for their people, animals and plants.

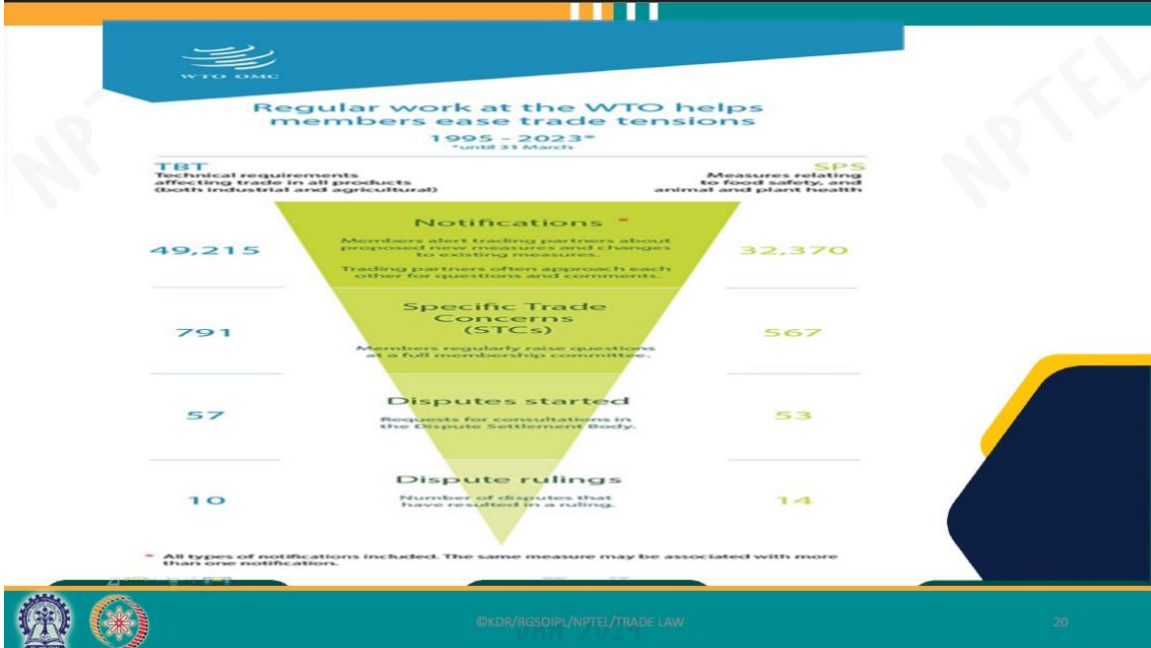
Scientific Justification

Article 2.2

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
- not maintained without sufficient scientific evidence
- except as provided for in Article 5.7

So we said that all the measures must be based on scientific evidence. What does it mean? All the restrictions put in place by a particular member country should be based on scientific evidence. So, for example, what happened in the EU-Beef Hormone Case? we will see those cases later, and you cannot simply ban beef by saying that it is treated with hormones and this beef is harmful to human health. So, what do you have to do? You have to prove scientifically you have to prove that this hormone-treated beef is harmful to human beings. So, it must be based on scientific principles and it can be applied only to the extent to protect human, animal or plant life or health. It cannot be made as a barrier to trade, and scientific evidence is a must. Also, scientific evidence is a must for any such kind of action by the members, and scientific justification is required.



If you look into the latest data from the WTO, which says from 1995 to 2023, how many such notifications are coming to the WTO with regard to SPS measures, and the members notified around 32,370 SPS measures and 49,215 TBT measures. So, we will see in the next lectures what is the TBT measure. So 32,370 SPS measures are initiated by the members. So, this shows how serious they are about food safety and standards, and so far, you can see that there are 14 disputes, and you can see some of the 14 disputes that came before the WTO Dispute Settlement Panel. Also, you can see that trade concerns; the members have raised more than 500 trade concerns. That means they have raised the barriers more than 500 times. So from around 50 disputes started, the ones ended up in dispute rulings are 14. It means that only a small percent maybe 5 percent of the cases end up in rulings and all other disputes are sorted out by the members themselves during the negotiation period and during the consultation period. So, the SPS measure of 32,000 is a big number, and it shows that the members are very much concerned about food safety mechanisms or animal health. They are concerned about plant health at their domestic level.

• Cinnamon from Sri Lanka - 2006



So in 2006 so you can see in the picture this is the cinnamon bark which is used as a spice commodity in many food items and in Sri Lanka this is one of the revenue earning, foreign exchange earning for Sri Lanka. The Sri Lankan cinnamon is world famous for their quality, for their aroma and also for a long tradition of preserving it. So, in 2006, the European Union rejected cinnamon consignments from Sri Lanka, and the European Union found that there was excessive sulfur dioxide content in the bark. So, the farm, the agriculture department, and the farm practices of even the European Union have been searching for the reason for the sulfur dioxide contaminants in the bark of cinnamon. So they found that during the ripening of mango orchards, they also use smoke to send away flies, and like mango orchards here, they also smoke these cinnamon plantations, smoked to send out flies and pests from the plantations. So, in order to increase the intensity of the smoke, they use sulfur dioxide. So if you use sulfur and burn it, a lot of sulfur dioxide as fumes as smoke will come out and the pest will be out. The cinnamon trees absorb a part of this sulfur dioxide, and the residues are found in this bark. So at that point of time



so the consignment was rejected and Sri Lanka requested the WTO committee on SPS to form a standard. And the WTO committee on SPS asked the Codex Alimentarius Commission to formulate a standard on cinnamon. Later, the European Union also cooperated with the Codex, and a standard was formed for the pesticide residue or the sulfur residue in the cinnamon bark. So this is harmonization. So if there is no standard for a particular product the Codex, the specialised body under the Food and Agriculture Organization (FAO) which makes an international standard for that particular product whether it is specified residue, whether it is a contaminant or it is any other residue any standard, food standard or any product standard which they make. So they made the standard, and then later on Sri Lanka was able to export the famous cinnamon, Sri Lankan cinnamon to the European Union. So, it shows the problem-solving capacity of this Agreement, SPS Agreement. So it worked very well. So, if there is no standard for any particular product, then definitely the international institutions are there to make the standards, to be adopted by members. So the European Union gradually adopted the standard prepared by the Codex and they allowed Sri Lanka to export, in conformity with the particular standard. Sri Lanka also changed the farm practices. So this is the way the world trade grows. So this is one of the best examples of how this SPS Agreement came and harmonisation works at the domestic level.

Key provisions of the SPS Agreement

1. **Non-discrimination**
2. **Scientific justification**
 - **harmonization**
 - **risk assessment**
 - **consistency**
 - **least trade-restrictiveness**
3. **Equivalence**
4. **Regionalization**
5. **Control, inspection and approval procedures**
6. **Transparency**

So here you can see that in these provisions which talk about non-discrimination, we said every action should be based on scientific justification, harmonization: which we saw as the harmonisation principle then risk assessment, consistency and the measure of trade restrictiveness then equivalence principles, regionalisation, inspection mechanisms and approval procedures and also the transparency, enquiry points. So, these are some of the provisions we will see elaborately.



Tokyo Round “Standards Code” – 1979 – TBT

• SPS to protect:

- Human or animal health from food-borne risks;
- Human health from animal-or plant-carried diseases
- Animals and plants from pests or diseases
- The territory of a country from damage caused by pests
- Sanitary and Phytosanitary measures include measures taken to protect the health of fish, forests and wildlife, as well as farmed animals and plants.

So if we look into the SPS Agreement, the SPS Agreement is not first time Agreement. The provisions are not first time provisions and they did not come in the Uruguay round of negotiations. If you look into the Tokyo round code of 1979 you can see very clear provisions on SPS, Sanitary and Phytosanitary measures to protect human-animal health from foodborne risk, human health from animal and plant carry diseases, animal and plant from pests or diseases then the protection of a particular region, territory and then the standards to be adopted to protect fish, fisheries products, forest products, wildlife products, farm products, animal and plants. So, these provisions which were adopted in the Uruguay round of negotiations are directly from the Tokyo round of negotiations.

SPS Agreement

- Allows members to set standards for safety of human, animal & plant health-scientific basis, apply to extent necessary
- Harmonization with Codex Alimentarius Commission-higher standards based on risk assessment-risk of spread of pest/disease,
- Equivalence-allows use of different standards & different inspection methods for same level of protection
- It requires that sanitary and phytosanitary measures be applied for no other purpose than that of ensuring food safety and animal and plant health.
- In particular, the agreement clarifies which factors should be taken into account in the assessment of the risk involved.

And the SPS Agreement as we already said that allows the member countries to set standards on non-discriminatory basis and also based on scientific basis. So, if

harmonization is done, as I told you, the Codex Alimentarius is the organization which forms international standards and harmonisation with Codex standards. So there is no compulsion from the SPS or WTO to adopt the Codex standards. The Codex standards are the basic standards and the countries are free to adopt their own standard which can be even a lower one than those of Codex. So there is no compulsion on the developing countries to adopt the higher Codex standards. Mostly these Codex standards are adopted by the United States and European Union and some other countries. But if you want to export any products to these particular countries then you have to do so in conformity with the Codex standards. So it must be based on scientific evidences. So the harmonization with the Codex standards, the limit for pesticide residues and diseases and disease causing organisms and different standards. So the rule of SPS itself is the different standards can be adopted by the countries, but based on non-discrimination principle and to protect animal and plant health.

The SPS Agreement encourages WTO members to base their regulations on the health and safety standards developed by the three relevant international expert bodies, namely the Codex Alimentarius Commission (for food safety), the International Plant Protection Convention (for plant health) and the World Organisation for Animal Health (for animal health and animal diseases transmittable to humans). WTO members who want to impose more stringent requirements must be able to justify these measures based on a scientific assessment of health risks.

Then here we can very see that it clearly says that the WTO members to form their regulations on health, safety standards to be adopted ideally to be adopted by the three organizations. First, we talked about the Codex, the Codex Alimentarius Commission, which forms the international standards for food safety. Then the International Plant Protection Convention (IPPC) for plant health and the World Organization for Animal Health. So the organisation for animal health, earlier the name was OIE. So, the WTO members who want to adopt these stringent standards can definitely adopt these international standard made by these particular international organisations.



Other key provisions

The SPS Agreement recognises that:

- *different processes or means of production may result in equally safe products*
- *the least trade-restrictive measures should be used to achieve the desired level of health protection*
- *there should be consistency in the level of health protection sought in the face of comparable risks*
- *different areas within a country may pose different levels of animal or plant pest or disease risks.*

And also you can see that this process is not only for products, but also on the production and process the standards can be imposed. But the trade-restrictive measures should be only to the extent of protecting health, and there should be a consistency in the level of protection of health, and also there will be a comparable risk. So, different areas within a country may pose different levels of animal, plant health or disease risk because different diseases may be affected by different regions. So, the same country may adopt different standards for different areas and different measures to be taken to protect against that particular disease. For example, you can say the virus causing bed flu, if it is affected by a particular region then those particular measures taken to be imposed in that particular region.

SPS Includes

- **To protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;**
- **To protect human life or health from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests;**
- **To protect animal or plant life or health from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; or to prevent or limit other damage from the entry, establishment or spread of pests.**

And SPS: so we continuously said that the SPS includes additives, contaminants, toxins, disease-causing organisms in food, beverages and foodstuffs. So, the US and other countries, even Russia, rejected our consignments of pepper. They said that there are some foreign materials in the spices like pepper. Many countries rejected, you can see the list that is publicly available. Why? it is mainly due to the additives or contaminants or toxins or disease causing organisms. So, we saw that most of the rejection have salmonella, excess pesticide residues, filthy. So you can see various reasons which will come under these definitions. And with regard to these animal health or plant health: the main concerns are spread of pests, spread of diseases and disease carrying organisms and disease causing organisms. So at any cost the entry of these pests or diseases or disease causing organisms should be stopped at the entry. That entry means the port of entry. So, for people who travel to other countries like Australia, the plant protection agency is very strict, and they will ask you what you are carrying. Are you carrying any seeds? Are you carrying any spices? Are you carrying any plants? Are you carrying any live animals? They will ask you these questions. So, this is mainly to protect the animal and plant health or protect the spread of these diseases or any kind of disease or disease carrying organisms passing over to their countries. So these measures also include SPS.

SPS

- **Quarantine treatments including relevant requirements associated with the transport of animals or plants,**
- **or with the materials necessary for their survival during transport;**
- **Provisions on relevant statistical methods, sampling procedures and methods of risk assessment;**
- **and packaging and labeling requirements directly related to food safety."**

And then, most importantly, the Quarantine treatments. The quarantine of animals and plants is done at the entry of the port. So these are very important. So during the quarantine period, they will see whether there is any spread of disease or whether it is carrying any disease-causing organisms, and the authorities' plant protection agencies get a period of time for risk assessment. And also the labelling requirement is also one of the important criteria which we will see in the next lecture as TBT. So, the packaging criteria and labeling criteria are also very important with regard to SPS. That is why we study the SPS and TBT Agreements together.



SPS

- **It allows countries to set their own standards. But it also says regulations must be based on science.**
- **They should be applied only to the extent necessary to protect human, animal or plant life or health.**
- **And they 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.**



And again you can see that SPS allows independent standards for each and every country not a single standard. So the only reason is that we have already said that it must be based on science, it should not be used as a barrier and it should be only to the extent to protect the plant life, human life and animal life or health. So arbitrary, unjustifiable discrimination between countries is also not allowed. So, the members are encouraged to adopt international standards prepared by international organizations like CODEX or IPEC or OIE.

Food Safety

- **Food safety if the measure is to protect human life or health from:**
 - **risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs.**
 - **Take particular care that food safety measures fit these very specific criteria.**
 - **They must be to protect against health risks, and not merely set compositional standards. They must also deal with one of the four categories of health risk (additives, contaminants, toxins or disease-causing organisms).**
 - **contaminants include pesticide and veterinary drug residues and extraneous matter. Food safety measures involving labelling, quality or nutrition may also (or alternatively) require notification under the TBT Agreement.**



So, food safety is one of the prime concerns of every country because food safety in some countries is considered as it highly threatens human life or health. That is why you can see that in countries like the European Union, there is a very high standard especially on food items because of the additives, contaminants, toxins and disease-causing organisms.

This is a concern of these particular countries. So they adopt a higher standard not only for the domestic industry but also for all the exports which must be in conformity with those particular standards. And also, you can see that these standards are to be applied uniformly to all the exporters. So, it means the cardinal principle of WTO, the principle of non-discrimination is applicable in SPS Agreement as well. So, if you look into the contaminants so you can see not only in food items or animals but even veterinary drugs. Pesticide residues and other residue items will also be taken into consideration. And other food safety measures like labeling and quality, the nutritional value is also to be taken into consideration under another Agreement which is the TBT Agreement.

SPS Standards

- **However, members may use measures which result in higher standards if there is scientific justification.**
- **They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary.**
- **And they can to some extent apply the “precautionary principle”, a kind of “safety first” approach to deal with scientific uncertainty.**
- **Article 5.7 of the SPS Agreement allows temporary “precautionary” measures.**

So, the SPS standards says that, there is no such standard is prescribed by the SPS Agreement. So it says that even the countries can adopt higher standards than the international standards provided it is scientifically justified. However, this higher standard imposition should be based on risk assessment. So, we will see elaborately the risk assessment in the next class, next lecture and what do you exactly mean by risk assessment. So this is actually the extension of the principle, which you can see, the precautionary principle, based on safety first and not always based on scientific evidence. So this happened in the EU-Beef Hormone case and the EU Biotech case. So safety first, so the European Union went ahead with the ban of these particular products and they found it difficult to justify under scientific evidence later when it went to the panel and appellate body.



Harmonization

Article 3, Annex A



So here we can see that we already discussed the standard setting organisations. So for food safety, the harmonisation of these standards is done by these three organisations, and one is the Codex, the Codex Alimentarius related to food safety. Animal health is dealt with by the World Organization For Animal Health or OIE, and the IPPC is concerned about plant health. These are the three international organisations that deal with international standards. They form international standards for each and every food items, animal health and plant health.

Consistency

Article 5.5

Members shall

avoid arbitrary distinctions



in appropriate level of SPS protection (ALOP) considered in different situations



if distinctions result in discrimination or disguised restrictions on trade

So here again consistency must be followed. So, this is mainly to avoid arbitrary distinctions. So the appropriate level of SPS protection can be adopted at different situations. If a pandemic or, in the case of a disease, a particular disease breaks out in a particular region, the government can impose a separate standard. So, this cannot be

considered as discrimination because this is required in order to quickly prevent the diseases from spreading to other areas and least trade restrictive.

Least trade-restrictive – *Article 5.6*

- SPS measures not to be more trade restrictive than required to achieve the appropriate level of protection
- Alternative measure...
 - reasonably available
 - technically and economically feasible
 - significantly less trade restrictive

So, the measures adopted must be least trade restrictive. So even though we say that the countries are permitted to adopt their own standards, the protection should be based on non-trade restrictive and technically and economically feasible measures, and it must be least trade-restrictive measures.

Equivalence

Article 4

If the exporting Member **objectively demonstrates** that its measures achieve the ALOP of the importing country



Members shall



accept SPS measures of other Members as **equivalent**

SPS Committee Guidelines
(G/SPS/19/Rev.2)

Then equivalence, so if every country's standards are not same then there is a problem of equivalence. So, other member countries standards you should recognize otherwise you would not be able to export. So, the question of equivalence is another problem in trade of food items and other items.

Regionalization

Article 6

- Adapt SPS measures to characteristics of area (all or part of a country, all or parts of several countries) taking into account
 - prevalence of diseases or pests
 - existence of eradication or control programmes
 - criteria/guidelines developed by OIE, IPPC
- Recognize concept of pest- or disease-free areas
- Exporters=>proof

SPS Committee guidelines (G/SPS/48)

And also we can see that regionalisation. The prevalence of diseases is almost most of the time it is regional. So the eradication programs of different agencies is based on regional basis. So the criteria also to be developed on regional basis. So the SPS committee issues guidelines with regard to the implementation of the effective measures based on regionalization.

Control, Inspection and Approval Procedures - Article 8 and Annex C

- **No undue delays**
- **Information requirements: limited to what is necessary**
- **No less favourable treatment for imports:**
 - Fees – no discrimination, only to cover costs
- **Procedure to review complaints**

And also, the committee has an inspection mechanism. So in the case measures to be taken, the committee visits. So, the inspection mechanism is also available under the WTO-SPS committee.

Transparency *Article 7 & Annex B*

Members **shall**

establish an Enquiry Point
AND
designate a Notification Authority.

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

And you can see that transparency is one of the core principle of SPS Agreement. So, every regulation and every law must be published and reported to the WTO-SPS committee. Every country should notify an enquiry point, designate an office in every country as SPS enquiry point. And then all the regulations, international standards, national standards relating to that particular area must be published.

Different Standards

- **The agreement still allows countries to use different standards and different methods of inspecting products.**
- **So how can an exporting country be sure the practices it applies to its products are acceptable in an importing country?**
- **If an exporting country can demonstrate that the measures it applies to its exports achieve the same level of health protection as in the importing country, then the importing country is expected to accept the exporting country's standards and methods.**

So as I told many times that the SPS Agreement never imposes a uniform standard among the WTO countries. And what does it impose? It imposes certain principles and allows different standards for different countries. But the harmonisation is a problem, and if you want to export a particular product to the European Union, you have to comply with the European Union standards. You have to comply with the US standards. So if

your country has a lower standard, it is your problem. You will not be able to export a particular product to other countries.

International Standards

- **Are applied only to the extent necessary to protect life or health;**
are based on scientific principles and not maintained without sufficient scientific evidence (except emergency or provisional measures); and
- **Do not unjustifiably discriminate between national and foreign, or among foreign sources of supply.**
Members have two options to show that their measures are based on science. They may either:
 - **Base their measures on international standards; or**
 - **Base their measures on scientific risk assessment.**

And the international agencies, and international institutions which form international standards play a very crucial role. And also the SPS Agreement encourages members to adopt these international standards. So, these international standards are made by the three agencies based on scientific risk assessment.

The SPS Agreement encourages WTO members to base their regulations on the health and safety standards developed by the three relevant international expert bodies, namely the Codex Alimentarius Commission (for food safety), the International Plant Protection Convention (for plant health) and the World Organisation for Animal Health (for animal health and animal diseases transmittable to humans). WTO members who want to impose more stringent requirements must be able to justify these measures based on a scientific assessment of health risks.

Scientific risk assessment is the process for the determination of standards. And these regulations you can see in this export bodies which we already talked, the three expert bodies.

Conclusion

- **It is observed that in order to protect and preserve the food safety, animal health and plant health without deteriorating in the health condition of the consumer, it was realized that a separate international agreement was required and thereby, the concept of Agreement on Sanitary and Phytosanitary measures as well as Agreement on Technical Barriers to Trade has been emerged.**



So, with regard to the SPS Agreement, we can say that the SPS Agreement is necessary to protect human health, animal health and plant health. A separate agreement and international bodies are established to establish international standards. So, the members are free to adopt their own standards rather than international standards. So, the only condition is that the standard, even a higher standard, adoption of a higher standard must be based on scientific evidence and it should not make a barrier to the trade.

So, within the ambit of the SPS Agreement, every country can make their own food laws, their own animal laws, and their own plant laws, to protect it from contaminants, residues and disease-causing organisms.

And if there is no product standard, these international organizations will help countries to adopt an international standard which will be acceptable to the SPS committee as well as to the other members. However, the SPS Agreement never imposes an obligation on the members to adopt the international standards which are made by organisations like the CODEX, OIE or International Plant Protection Committee IPPC. So, in conclusion I would say that if you want to export, if you want to reduce export rejections from other countries increase your standard, increase your food standard, increase your product standard so that you will be able to export a good quality product to other countries. So SPS Agreement plays a crucial role in the export of products nowadays. In the next class, we will see the risk assessment and the CODEX standards.

Thank you.