

PACER Plus: Advanced Trade in Goods Workshop

Honiara, Solomon Islands

Day 2 Session 2: SPS Measures



Richard Braddock
www.lexbridgelawyers.com

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Lexbridge

Overview

- I. WTO SPS Agreement
- II. PACER Plus SPS obligations & implications

I. WTO SPS Agreement

I.1 What are SPS measures?

- WTO SPS Agreement seeks to strike balance between right of WTO members to protect health and need to allow smooth flow of goods across borders
- Recognises the right of WTO members to adopt legitimate measures to protect food safety and animal and plant health while ensuring these measures are not applied in an unnecessary manner for protectionist purposes

I.1 What are SPS measures?

Measures to:

- protect **animal or plant life or health** from risks from entry, establishment or spread of pests, diseases;
- protect **human** life or health from risks from diseases carried by animals, plants, or from entry, establishment or spread of pests;
- protect **human or animal** life or health from risks from additives, contaminants, toxins or disease-causing organisms in foods, beverages;



I.1 What are SPS measures?

- Not limited to animal / pest quarantine measures – also measures to protect humans and animals from additives, contaminants & toxins (food safety)

Examples

- Limits on permitted amount of residual pesticides / chemicals in food
- Restrictions on goods that might contain pests (e.g. untreated wood)
- Ban on importing live fish from areas where diseases prevalent
- Requirements to treat food in a certain way (e.g. cooking) to reduce risk of diseases



I.2 WTO SPS Agreement – key principles

- WTO Members have a right to adopt SPS measures for the protection of human, animal or plant life or health, provided they meet requirements of SPS Agreement and not used for protectionist purposes.
- SPS measures must be based on **scientific** principles and not maintained without sufficient scientific evidence;
- SPS measures must be based either on a relevant international **standard** or a scientific assessment of risk;
- SPS measures only **applied to the extent necessary** to protect human, animal or plant life or health;
- Members must **not arbitrarily or unjustifiably discriminate** between countries where similar conditions prevail in application SPS measures

I.3 SPS Agreement – science & risk assessment

- Choice of **appropriate level of protection (ALOP)** is the right of each Member
 - Level of risk prepared to tolerate
- But - SPS measures must be based on science / sufficient scientific evidence
- Unless based on international standard – must be based on / justified by **risk assessment** - SPS Agreement contains rules / principles for risk assessments & factors to consider
- SPS measures must not be more trade restrictive than necessary to achieve ALOP

Risk assessment - disease or pest risks

- evaluation of likelihood of entry, establishment or spread of pest or disease according to SPS measures which might be applied, and potential biological & economic consequences

Risk assessment – food-borne risks

- evaluation of potential for adverse effects on human or animal health from presence of additives, contaminants, toxins or disease-causing organisms in food or beverages

I.3 SPS Agreement – science & risk assessment

- Members not required to prepare their *own* risk assessment - may base SPS measures on risk assessments carried out by other Members or international organisations
 - Especially important for developing countries with technical and resource constraints
- SPS Agreement factors to take into account when assessing risks:
 - available scientific evidence; relevant processes and production methods; relevant inspection and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; quarantine or other treatment
- SPS Agreement economic factors to take into account when determining measures to achieve appropriate level of protection:
 - potential damage in terms of loss of production or sales; costs of control or eradication; relative cost-effectiveness of alternative approaches to limiting risks

Likelihood of pest entry, establishment and spread	Consequences of pest entry, establishment and spread					
	Negligible	Very low	Low	Moderate	High	Extreme
High	Negligible risk	Very low risk	Low risk	Moderate risk	High risk	Extreme risk
Moderate	Negligible risk	Very low risk	Low risk	Moderate risk	High risk	Extreme risk
Low	Negligible risk	Negligible risk	Very low risk	Low risk	Moderate risk	High risk
Very low	Negligible risk	Negligible risk	Negligible risk	Very low risk	Low risk	Moderate risk
Extremely low	Negligible risk	Negligible risk	Negligible risk	Negligible risk	Very low risk	Low risk
Negligible	Negligible risk	Negligible risk	Negligible risk	Negligible risk	Negligible risk	Very low risk

I.4 SPS Agreement – international standards

International Standard-setting Bodies

- SPS Agreement recognises 3 standards bodies:
- **Codex Alimentarius Commission (Codex)** for food safety;
- **International Office of Epizootics (OIE)** for animal health and diseases (now called **World Organization for Animal Health (WOAH)**);
- Secretariat of the **International Plant Protection Convention (IPPC)** for plant health



I.4 SPS Agreement – international standards

SPS Agreement & Standards

- General principle - harmonisation: Members should base SPS measures on international standards where they exist
- Strong incentive: SPS measures based on international standards presumed consistent with SPS Agreement (and GATT)
- But not *required* to use standards in all cases can apply measures which result in higher level SPS protection than under standards if standard does not achieve Member's **appropriate level of protection**
 - Must be scientific justification;
 - Must be based on a risk assessment

II. PACER Plus SPS obligations & implications

II.2 PACER Plus – SPS Chapter

- PP draws on WTO SPS Agreement
- Different levels of commitment for WTO Members / non-WTO Members:
- **WTO Members** – affirm rights and obligations under SPS Agreement – and commit to apply key provisions to *non-WTO* Members
- **Non-WTO Members** commit to comply with SPS *only to the extent of their capacity* when adopting or applying a technical regulation, standard or conformity assessment procedure

II.1 PP SPS Chapter objectives

Article 2: Objectives

1. The objectives of this Chapter are to:

(a) facilitate trade between the Parties while protecting human, animal or plant life or health in the territory of each Party; ...

(e) promote the application of the SPS Agreement by Parties that are not WTO Members.

2. Recognising capacity constraints of developing country Parties, ..., assistance ... would be provided under Chapter (Development and Economic Cooperation) ...

- Aims to facilitate trade but clearly recognises right to protect human, animal, plant life or health
- For **non-WTO Members** – encourage application WTO SPS rules
 - Recognise capacity constraints DC Parties – provide assistance to support implementation and compliance with SPS measures

II.2 PACER Plus – SPS – key rules

Article 4: Basic Rights and Obligations of Parties under this Chapter

1. Nothing in this Chapter shall limit the rights of a Party to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with this Chapter.

- PP confirms that nothing in prevents Parties from imposing SPS measures necessary to protect human, animal or plant life or health
 - Subject to compliance with Chapter

II.2 PACER Plus – SPS – key rules

Article 5: Scientific Basis for Non-Discrimination with Respect to and Harmonization of Sanitary and Phytosanitary Measures

1. Each Party shall ensure that any SPS measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence ...

Key principles – necessity & scientific basis:

- SPS measures only applied to extent necessary to protect human, animal or plant life or health (not more restrictive than necessary)
- SPS measures based on scientific principles / evidence

II.2 PACER Plus – SPS – key rules

Article 5: Scientific Basis for Non-Discrimination with Respect to and Harmonization of Sanitary and Phytosanitary Measures

2. Each Party shall ensure that its sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Parties where identical or similar conditions prevail, including between its own territory and that of other Parties.

Key principles – non-discrimination:

- SPS measures not discriminate arbitrarily or unjustifiably between countries with same / similar conditions

II.2 PACER Plus – SPS – key rules

Article 5: Scientific Basis for Non-Discrimination with Respect to and Harmonization of Sanitary and Phytosanitary Measures

3. Wherever possible, each Party shall base its SPS measures on international standards, guidelines or recommendations, where they exist. Sanitary or phytosanitary measures which conform to international standards ... shall be presumed to be consistent with this Chapter.
4. A Party may introduce or maintain SPS measures which result in a higher level of ... protection than would be achieved by measures based on the relevant international standards ... provided there is a scientific justification.

II.2 PACER Plus – SPS – key rules

Key principles: international standards

- SPS measures based on international standards / guidelines presumed consistent with Chapter
- But – if standard not provide adequate protection – Parties can impose SPS measures with higher level of protection if scientific justification
- Provisional measures: In cases where scientific evidence is insufficient, a Party may provisionally adopt SPS measures on basis of pertinent information.
 - Must seek to additional information for objective assessment of risk & review SPS measure within reasonable period of time

II.3 PACER Plus – SPS – Equivalence

Article 6: Equivalence of Sanitary and Phytosanitary Measures

1. Each Party shall accept the SPS measures of other Parties as equivalent, even if the measures of another Party differ from its own or from those of other Parties trading in the same product, if the exporting Party objectively demonstrates to the importing Party that its measures achieve the importing Party's appropriate level of SPS protection. ...

Key principles – equivalence:

- Commitment to accept SPS measures of other Parties as equivalent – if they achieve importing Party's level of SPS protection

II.3 PACER Plus – SPS – Equivalence

Equivalence – implications & process:

- If requested – importing Party must enter into negotiations within reasonable period of time to recognise equivalence of exporting country SPS measures
- Principles to facilitate trade opportunities – in particular for developing country Parties - requests processed as expeditiously as possible
- If exporting Party capacity constraints are obstacle to acceptance of equivalence - can request technical discussions to identify actions to enhance capacity of exporting Party / assist the acceptance of equivalence

II.4 PACER Plus – SPS – Transparency

Publication

- All SPS measures must be **published promptly**
- Unless urgent, must allow reasonable time (at least 6 months) between publication of SPS measure and entry into force to allow time for (developing country) producers / exporters to adapt products & processes

Notification

- Requirements to notify other Parties of:
 - Any new or amended SPS measure that may have significant effect on trade
 - Provisional SPS measure;
 - Change in animal plant or health status that may affect trade
- Requirements to notify and allow time for comments on **proposed SPS measure** if not based on international standard (unless urgent)

II.5 PACER Plus – SPS – Cooperation & S&DT

Cooperation

- Commitment to explore opportunities for cooperation on SPS matters of significant interest to a developing country Party
- To enhance market access for DC Parties, each DC Party may establish list of **prioritised products** of significant export interest
 - considered by developed country Parties ... within framework of their laws and procedures governing prioritisation of market access requests, with a view to facilitating exports of DC Parties
- Recognise capacity constraints - where exporter from DC Party finds difficult to address significant, sustained or recurring pattern of non-compliance with importing Party's requirements - cooperative actions explored to address the problem
- Explore strengthening cooperation on provision technical assistance and capacity building

II.5 PACER Plus – SPS – Cooperation & S&DT

Special and Differential Treatment

- In preparing and applying SPS measures, each Party shall take into account the special needs and interests of DC Parties
- If ALOP allows for phased introduction of new SPS measures, longer time-frames for compliance should be allowed for products of interest to DC Parties to maintain export opportunities
 - If possible, producers in DC Parties shall be given longer time-frames to comply with SPS measures

Technical discussions

- Party may request technical discussions with another Party on any SPS measure affecting trade - other Party shall respond promptly
- Parties shall seek to clarify measure and find mutually acceptable solution
 - If measures affecting export interests of DC Party - should seek to resolve concerns in timely manner

Quiz

SPS rules are only concerned with measures protecting against pests and diseases

True False

Parties cannot impose SPS measures which are more restrictive than allowed under international standards

True False

SPS measures based on international standards are presumed to be consistent with SPS obligations

True False

PACER Plus contains commitments to assist developing countries to gain and maintain market access in priority sectors

True False

Thank you