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The international trade regulatory framework

The World Trade Organization (WTO) Agreements and OIE international standards provide the framework to facilitate the discussion between exporting and importing countries and to agree on the sanitary requirements to be applied to achieve safe trade of live animals and animal products.

The WTO agreements

The WTO agreements, including the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the Agreement on Technical Barriers to Trade (TBT Agreement), as well as the more recent Trade Facilitation Agreement (TFA), define the legal rights and obligations of trading partners and enshrine general WTO principles such as transparency, non-discrimination and harmonisation with international standards.

The SPS Agreement seeks to strike a balance between the right of WTO Members to protect animal, plant and human life and health on the one hand, and to avoid unnecessary barriers to trade on the other hand. This agreement highlights science-based principles that apply specifically to sanitary and phytosanitary measures, such as risk assessment, regionalisation and equivalence. Together with the Codex Alimentarius Commission and the International Plant Protection Convention (IPPC), the SPS Agreement recognises the OIE as one of the international standard setting organisations; the OIE is the reference organisation for international standards relating to animal health and zoonoses.

While the SPS Agreement covers requirements related to animal health and zoonoses, the TBT Agreement deals with other measures relating to animals and animal products, for example on animal welfare or on the quality of veterinary pharmaceuticals.

The TFA aims to simplify, modernise and harmonise export and import processes while safeguarding WTO Members’ rights to regulate in order to achieve other policy objectives. It does not diminish the rights and obligations of WTO Members under the SPS and TBT Agreements, but establishes additional disciplines aimed at improving the transfer of goods across borders.

Regional trade agreements (RTAs) between two or more partners have risen in number and reach over the years: from 27 active RTAs notified to the WTO in 1995, to 302 as of October 2019. Non-discrimination among trading partners is one of the core principles of the WTO; however, RTAs which are reciprocal preferential trade agreements, constitute one of the exemptions and are authorised under the WTO, subject to a set of rules. Scholars highlight the fact that FTAs conducive to cooperation and harmonisation are more often concluded between homogeneous, ‘like minded’ countries (1).
WTO SPS Agreement principles applicable to sanitary measures

**Harmonisation**
SPS measures shall be based on scientific principles (Article 2.2)
A country’s sanitary measures must be based on International standards (Article 3.1)

**Equivalence**
Members shall accept the sanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates that they achieve the importing Member’s appropriate level of sanitary protection (Article 4)

**No discrimination**
Members shall ensure that their sanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members (Article 2)
Sanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade (Article 2)

**Scientific risk assessment**
In the absence of a relevant international standard; or when a Member chooses to adopt a higher level of protection than the international standards provide, a country’s sanitary measures must be based on risk assessment (Articles 3.3 & 5)

**Regionalisation**
Members shall recognise the concept of disease-free areas, whether all of a country, part of a country, or all or parts of several countries (Article 6)
Members shall ensure sanitary measures take into account (Article 6):
- Disease prevalence
- The existence of eradication or control programmes
- The criteria or guidelines developed by the relevant international organizations

**Least trade restrictive**
When establishing or maintaining sanitary measures, Members shall ensure that their appropriate level of sanitary protection is achieved through the application of measures that are least restrictive to trade, taking into account technical and economic feasibility (Article 5)

**Transparency**
Members shall notify changes in their sanitary measures and shall provide information on their sanitary measures (Article 7)
Under the regionalisation principle, zoning and compartmentalisation are tools that not only contribute to disease control, but also allow flexibility in the facilitation of safe trade. These concepts described in Section 4 of the Codes are based on the application of measures to separate animal subpopulations with different health statuses. Subpopulations may be separated by natural or artificial geographical barriers (zoning) or by the application of appropriate biosecurity management (compartmentalisation).

While the initial goals of disease prevention and control and safe international trade continue to be core objectives of the OIE international standards, overarching issues such as animal welfare and veterinary public health are also addressed. Such issues are a natural consequence of the complexity of the work of today’s Veterinary Services and Aquatic Animal Health Services.

Trade of animals and animal products can imply risks to public health. This document will focus mainly on the management of the risks of animal diseases being spread through trade and will not specifically discuss the role of the Veterinary Services in food safety systems. Nevertheless, it assumes compliance with the OIE standards in Section 6 of the Terrestrial Code, as relevant to the control of animal diseases and traceability and certification processes.

The OIE Codes establish standards for the improvement of animal health and welfare and veterinary public health worldwide, including the prevention of disease spread through international trade of animal and related commodities.
Good regulatory practices (GRPs) are defined as internationally recognised processes, systems, tools and methods to improve the quality of regulations and ensure that regulatory outcomes are effective, transparent, inclusive and sustained (World Bank, 2015). GRPs are pillars of good governance.

The SPS Agreement sets a framework which aims to achieve a balance between the right to protect human, animal or plant life or health and the objective of avoiding unnecessary barriers to trade. This means that WTO Members must apply such measures only to the extent necessary to protect human, animal or plant life or health, and without arbitrary or unjustifiable discrimination between countries where similar conditions exist.

Using GRPs (consultation with stakeholders, review and evaluation, transparency) helps to define sanitary measures that are fit for purpose, to avoid the creation of inappropriate non-tariff barriers and to improve predictability.

The WTO SPS Agreement includes several principles relating to GRPs, including the use of international standards, risk assessment, transparency and advance notifications on draft measures.

The WTO TFA emphasises the importance of cooperation between customs and other border authorities and agencies within a country, which include Veterinary Services conducting inspections at the entry points. The TFA also encourages cooperation between neighbouring countries to coordinate procedures and simplify formalities and document requirements in order to facilitate cross-border trade.

In 2012, OIE Members adopted new standards on veterinary legislation (Chapter 3.4. of the OIE Terrestrial Code) to encourage the harmonisation of rules in the veterinary domain and, in particular, to emphasise legal principles such as ‘transparency’, ‘consultation’, ‘quality of legislation and legal certainty’. Legislation is recognised as a key element in achieving good governance. In particular, careful consideration of the hierarchy of legislation (as defined in Chapter 3.4.) is important to ensure clarity and coherence, but also to provide the ability to respond quickly to changes in the health situation in the importing or exporting country.
When countries impose sanitary measures that are not consistent with SPS principles, there is a risk of trade disruption, which can lead to disputes between countries, and negation of the intended benefits of the WTO’s rules based framework.

When an OIE Member considers that a trading partner has not complied with the relevant OIE standards, the OIE may be asked to conduct an informal mediation process with the mutual consent of both the importing and exporting Members.

The OIE mediation process is entirely voluntary and its goal is to find a mutually agreed compromise that will allow trade to be established (or re-established), preferably by application of the relevant OIE Standards. Using this mechanism provides an environment conducive to friendly bilateral discussions, with the objective of finding a basis for compromise. The key contribution of the OIE lies in identifying differences in Member Countries’ interpretation of the scientific issues and in the application of OIE Standards and seeking common ground to resolve trade restrictions, where possible. The bases for this process are set in Article 5.3.8. of the Terrestrial Code.

In addition to this informal mechanism, and instead of taking retaliatory action unilaterally with the possibility of spiralling into damaging trade wars, WTO Members have agreed to use the WTO system of settling trade disputes (2).

The WTO’s dispute settlement procedure aims to make trade more secure and predictable, and to underscore the rule of law. The objective of this process is not to pass judgement but to settle disputes, through consultations if possible. Further details of the WTO dispute settlement process can be accessed on the WTO website (https://www.wto.org/english/thewto_e/whatis_e/tif_e/disp1_e.htm).

Before a situation reaches the level of a dispute, concerns that a trading partner is acting inconsistently with the SPS Agreement can also be raised in the WTO SPS Committee in the form of a specific trade concern (STC). This is not a formal dispute in a legal sense and is not formally linked to the WTO dispute settlement process. Nevertheless, raising an issue in this forum is an opportunity for countries to draw attention to a concern and promote discussion, which might help solve trade problems and in so doing avoid potential future disputes between trading partners. Each STC raised in the SPS Committee is allocated a specific number and is followed up over time; details of discussions relating to STCs are publicly available.
References


