The WTO SPS Agreement in Action: Disputes over China’s Exports of Vegetables to Japan

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Abstract

Since the mid-1990s, there have been three occasions on which Japan has impeded imports of vegetables from China. On each occasion the instruments used by Japan and the response by China have been different. One the first two occasions, China was not a member of the WTO but now that she is, the scope for Japan to constrain imports by a VER has been removed. The most recent dispute concerns chemical residues in spinach which exceed Japan’s maximum permitted levels but not those of the EU and the U.S. In this paper we explore the workings of the SPS Agreement using these trade disputes as an example.

Key words: China, Japan, vegetables, SPS Agreement

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1 Introduction

It has long been recognised that Japan is very protective of her agricultural sector. For example, for the period 1986-88 the percentage Producer Support Estimate was 62 as compared with the average for all OECD countries in that period of 38 (OECD 2002, Table III.3). For the period 1999-2001, the corresponding figures were 61 and 31, respectively. From the viewpoint of the distortion caused to international trade, it is important to note that, of this support to farmers, the percentage being delivered through market price support instruments was 90 per cent in each time period. Of course, these aggregate figures, while indicative of the protectionist nature of Japanese agricultural policy, do not tell the whole story. Not only is Japanese agriculture protected through market price support instruments but it is also protected at the border by quarantine regulations.

With the implementation in 1995 of the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS), members of the WTO have been encouraged to harmonise their SPS standards on those defined by the relevant international organisations (Article 3:1). In the case of human health, the relevant body is the Codex Alimentarius Commission (Article 3:4). However, a Member is free to choose a higher standard if it can show, using a risk assessment based on appropriate science, that such a standard is necessary in order to achieve its acceptable level of risk (Article 5:1 and Annex A:5). If another Member judges that the risk assessment is flawed and that the standard used cannot be justified and is unreasonably trade restricting (Article 5:4 and 5:6), then a challenge can be mounted in the Dispute Settlement Body if bilateral negotiations have failed to resolve the dispute (Article 11). Through this mechanism, SPS measures are unlikely to be used capriciously as pure protection for domestic producers.

The purpose in this paper is to review the recent history of China’s exports of vegetables to Japan as a way of illustrating the effect of China’s membership of the WTO on this trade (Section 2) and the restrictions which this membership have placed on Japan’s ability legally to restrict them (Section 3). The paper is concluded (Section 4) with a discussion of the options available to China to improve the conditions under which her vegetables are imported by Japan.

2 Background: China-Japan Trade of Vegetables

2.1 China-Japan Vegetable Trade in the late-1990s

From 1996 to 2000, Japanese imports of fresh vegetables from all sources rose by 50 per cent. During the same period, imports of fresh vegetables from China rose by 140 per cent (Figure 1). By 2000, China accounted for 34.9 per cent of Japanese imports, the United States accounted for 21.4 per cent, and South Korea accounted for 9.9 per cent (Japanese Ministry of Finance, 2002). In 1998, China’s exports of vegetables to Japan...
accounted for 42 per cent of her total volume of vegetable exports and for 63 per cent of her total value of vegetable exports.

2.2 Reasons
The reasons for the significant change in exports of Chinese vegetables to Japan at the end of the 1990s and the early 2000s, include the following (He, Wahl and Chen, 2002; Jia and Wang, 2002).

• The surplus of grain production occurring at the end of the 1990s and the policy of structural adjustment and income led to a rapid increase in the production of vegetables along the areas of Eastern coast. With the lower cost of labour in China, the vegetable industry in China has an obvious comparative advantage with respect to Japanese vegetable production.

• At the end of the 1990s, some Japanese companies started to establish a base of vegetable production in the provinces along the Eastern coast in China. The aim was to provide vegetables at lower prices and greater variety to the Japanese domestic market. These companies also brought the techniques of packaging and preserving vegetables into China. With the improvement of techniques, it became possible to transport and preserve vegetables for a longer period of time.

• The appreciation of the Japanese yen to the U.S. dollar resulted in the increase of vegetable imports by Japan at the end of the 1990s.

• As Japanese consumption behaviour has changed in recent years, and eating out has increased, so too has the demand for processed vegetable. But the domestic production of vegetables in Japan could not meet this increasing demand and has led to the supply of vegetables in Japan becoming more reliant on imports than previously.

2.3 Outcomes
The increased availability of lower priced vegetables imported from China attacked the Japanese domestic markets for vegetables and affected the profitability of Japanese
vegetable growers. Therefore, this outcome led eventually to a series of disputes between Japan and China over vegetable trade from the mid-1990s onwards.

3 Disputes over China’s Exports of Vegetables to Japan

3.1 Chinese VER on Garlic and Ginger Exports to Japan in 1995
The first round in the dispute between China and Japan over trade in vegetables occurred in 1995. Japan asked for, corresponding to the Special Safeguard (Article 5) in the WTO Agreement on Agriculture (WTO 1995, pp. 39-68), a restriction on Chinese exports of garlic and ginger to Japan. The dispute was finally settled by China’s introducing a Voluntary Export Restraint (VER) on these exports to Japan and by Japan’s strengthening of her control of importers’ declarations to Customs. At this time, China was not a member of the WTO and, therefore, was not prohibited from employing a VER.

3.2 Chinese Retaliation to Japanese Restraints in the Period 2000 - 2001
On 19th December 2000, the Ministry of Agriculture, Forest and Fishing, the Ministry of Finance, and the Ministry of Commerce in Japan announced an investigation into imports of spring onions, mushrooms and rush, from China (Sina network, 2002). Japan deemed that the fall in the prices of these vegetables in Japan had resulted from China’s booming exports of vegetables to Japan and asked China to adopt VERs on her exports of these three vegetables. China insisted that she would not introduce VERs on her exports of vegetables to Japan and indicated that the VER was not consistent with the WTO’s principles on trade liberalisation and fair competition. Accordingly, China and Japan could not find a way out of dispute.

On 10th April 2001, the Japanese Government decided on the basis of Article XIX of the GATT (WTO 1995, pp. 518-519) and the Tariff Act in Japan, to impose an emergency import constraint for 200 days (from 23rd April to 8th November 2001) on spring onions, fresh/shiitake mushrooms and rush, mostly imported from China (Japanese Economy News, 2002). Tariff Rate Quotas were applied to the above three vegetables. The import quotas for the 200 days were restricted to the average imports of the previous three years (from 1997 to 1999), i.e. spring onions of 5,383 metric tons, fresh/shiitake mushrooms of 8,003 metric tons and rush of 7,949 metric tons. Low tariff rates of 3-6% were applied to the in-quota imports of the three vegetables, while high tariff rates of 106-266% were applied to over-quota imports.

On 18th June 2001, the Chinese Ministry of Foreign Trade and Economic Cooperation (MOFTEC) implemented a special tariff of 100%, starting on 22nd June, on Japanese imports of cars, air conditioners, and car/hand-held mobile phones so as to retaliate against Japanese import quotas on Chinese vegetables (Sina network, 2002).

After several round of negotiations at the Ministerial level, China and Japan eventually reached an understanding on 21st December 2001 that Japan would not issue a permanent restraint on imports of Chinese vegetables and that China meanwhile would cancel the retaliatory tariff of 100% on imports of Japanese cars, air conditioners, and car/hand-held mobile phones (Sina network, 2002).
3.3  *Dispute over Food Safety Standards in 2002*

Since the end of 2001 and China’s membership of the WTO, Japan has changed her strategy on how to limit vegetable imports from China, from using the Special Safeguard provision in the Agreement on Agriculture to using SPS regulations.

3.3.1  *Japanese Import Restrictions Implemented through Quarantine Procedures*

Until 29th November 2001, China exported 32,489 lots of vegetables to Japan, a total weight of 440,000 metric tons. Japan quarantined samples amounting to 12.2% and found in 96 lots of vegetable, chemical residues above Japanese maximum permitted levels. The Ministry of Labour in Japan decided to quarantine all lots of vegetables imported from China, starting in January 2002 (Xinhua Press, 2002).

On 16th March 2002, a non-governmental society reported that the chemical residues, beyond the standards of Section 7 of the Japanese Food Safety Act, were found in frozen vegetables imported from China. On 20th March, the Bureau of Quarantine in Japan began to inspect 18 varieties of frozen vegetables, with a sampling rate of 10 per cent of samples, for 43 organic phosphorous residues.

After the finding of chemical residues being reported in a shop in Tokyo on 22nd April, the Bureau of Quarantine began to inspect all of the import applications and added three more organic salts to its checklist. At the same time, the number of inspection samples was doubled.

On 14th May, the Bureau of Quarantine requested the Chinese government to control the exports of spinach and its products to Japan which exceeded the standards on chemical residues and it asked the Chinese Embassy in Tokyo to submit a report on the issue of chemical residues in imported vegetables.

On 1st June, the Bureau of Quarantine announced the name of companies importing vegetables which exceeded permitted levels of chemical residues and again doubled the number of samples for the inspection of chemical residues. For imported spinach, not including that in inspection samples, the Bureau of Quarantine asked importers to check it before resale.

3.3.2  *Reaction from China*

An official from China indicated that Japan was applying technical barriers to trade (TBT) and SPS measures to restrict imports of vegetables from China. This was a continuation of the earlier episodes but the means of restriction had changed because of China’s accession to the WTO which prevented the re-introduction of VERs. From 4th January to 25th June 2002, in samples from 5,341 lots of vegetables supplied by China, only 13 lots of imported vegetables were found to have exceeded the limits on chemical residues. This represented only 0.2 per cent of the total number of lots. Most of samples were selected from spinach.

The official from the Bureau of Import and Export Food Safety in the Chinese State Bureau of Quantity Inspection, indicated that as both China and Japan are member countries of the WTO, Japan should follow the international conventions to set up her standards of quarantine and inspection. The reasons are as follows.
• According to the international standards set by the Codex Alimentarius Commission (CAC), the residues of “tick killer” should be less than 0.05mg/kg. The European Union and the United States follow the standards set by the CAC. But on the list of chemical residues issued by Japan in 20th April, the content of “tick killer” in spinach was set at a maximum of 0.01 mg/kg. The level of chemical residues set by Japan is obviously lower than the international standard; in other words, Japan has set a higher standard than that thought to be necessary by the CAC to provide an acceptable level of risk for human health and she did so apparently without undertaking the necessary risk assessment, as required by the SPS Agreement.

• The discrepancy between these two standards amounted to serious discrimination for an exporter like China. Usually, the more the absorbable amounts of vegetable per capita per day are, the more strict are the standards for chemical residues in vegetables. But the Japanese standards for the content of “tick killer” in vegetables do not correspond to this principle. In Japan, the average absorbable amounts of carrot are 47.3g per capita per day and the absorbable amount of spinach is less than half that of carrot, only 22.8g/capita/day (CAAS, 2002). Yet the maximum permissible level of “tick killer” for spinach is much more strict than that for carrot.

• At present, Japan has no standards for chemical residues in frozen spinach, but only standards for fresh spinach. Frozen vegetables are derived from fresh vegetables through the procedures of boiling, drying and freezing. Generally, several kilograms of fresh spinach are processed into one kilogram of frozen spinach. Therefore, using the standards of chemical residues for fresh spinach as the standard for frozen spinach is not reasonable and is not on a scientific base. CAC standards for chemical residues for processed and fresh products are quite different. Hence, Japan needs to establish standards for frozen vegetables based on CAC guidelines.

The General Director of the Chinese Animal Imports and Exports Cooperation (CAIEC) pointed out that Japan imported 40,000-50,000 metric tons of spinach annually, of which 99% came from China. Japan chose spinach as a major product, the imports of which should be constrained. The object of restriction focused on China. Such Japanese restrictions on imports of Chinese vegetables deny Japanese consumers the benefit of lower prices of vegetable products which generally meet Japanese SPS standards.

The State Bureau of Quantity Inspection in China met Japanese officials from the Ministry of Health to negotiate on technical issues in June and July 2002. During the negotiations on technical issues, both sides explained their individual opinions but they could not reach a common understanding.

3.3.3 Amendment of Japanese Food Safety Act
The issue of chemical residues in imported vegetables attracted the attention of the Japanese government, farmers and consumers in Japan. The Government strengthened quarantine and inspection and the media reported the widespread incidence of chemical residues in vegetables imported from China which exceeded permitted limits. This misleading revelation led to a rapid decrease in vegetables exported from China to Japan. The Bureau of Quarantine reported that the applications for imports of vegetables from China fell from 85 lots in the last week of May to only 18 lots in the first week of June (CAAS, 2002).
According to a news item from the Japanese “Daily News” in September 2002, the results of its recent survey revealed that in a sample survey, 77% of respondents indicated that the government should constrain the imports of agricultural products in order to protect domestic farmers. This figure is 18 percentage points higher than that of Daily News’s survey in 1989. Only 18 per cent of interviewees indicated that the Government should expand the imports of agricultural products with higher quality and lower price.

On 7th September, the amendment of the Japanese “Food Safety Act” was implemented. The newly amended Act is more strict than the Act as amended in May 2000. Under the previous Act, the Ministry of Labour could only abandon products imported in the same period if the importable products were found to violate Japan’s food safety standards. The newly amended Act stipulates that the Minister of Labour has the power to ban imports of any product, if the product is confirmed to be harmful to consumers’ health. The condition for overturning this prohibition is that the Minister considers the product to be no longer harmful to human health after hearing recommendations from the Medicine and Food Safety Committee. Any person, who violates the Act, will be punished to work for less than 6 months or to pay a fine of less than 300,000 yen (CAAS, 2002).

3.3.4 Outcomes
Although Japan did not ban the imports of frozen spinach from China, Japan will conduct more strict protection for her domestic vegetable farmers in the future through the newly amended Food Safety Act. From China’s perspective, a challenge to Japan’s standard would surely be appropriate through a request to the Dispute Settlement Body in the WTO to establish a Panel, should bilateral negotiations with Japan continue to fail. There exist some important precedents for such a course of action, e.g., the infamous U.S./Canada complaint against the European Union’s ban on imported beef treated with growth hormone. However, even if China were to succeed with a Panel, she would not be compensated for the loss of export revenue in the meantime.

4 Discussion
It is clear from the foregoing that Japan maintains tight control over her imports of vegetables, the bulk of which come from China. Now that China is a member of the WTO, the avenues available to Japan to exercise this control have been reduced; in particular, the use of VERs has now been ruled out. It would appear that Japan has decided to use phytosanitary measures to achieve her aim of protecting the incomes of her vegetable producers. This conclusion has been inferred from the standard set by Japan for “tick killer” residue in spinach which is five times as high as that recommended by the Codex Alimentarius Commission. It appears that this standard was set without undertaking the necessary risk assessment and it has left Japan open to challenge in the WTO. Whether or not China will opt for this approach to resolving the dispute or will continue with the bilateral approach, remains to be seen. The opportunity provided to China by the Dispute Settlement Body to challenge Japan’s phytosanitary standards for vegetables and particularly frozen vegetables, means that the series of such trade disputes should end. At the same time, China’s membership of the WTO has obliged her to pay more attention to international phytosanitary standards if her exports to Japan are to continue to grow.
References:


