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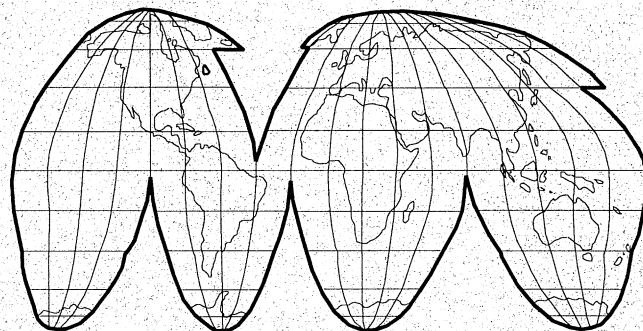
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# Understanding Technical Barriers to Agricultural Trade

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# Implementation of the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures: The US Perspective

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During the Uruguay Round [UR] negotiations to reduce tariff and non-tariff barriers to trade in agricultural goods, negotiators wanted to ensure that governments could not resort to the unjustified use of technical measures to thwart access to their markets. It was in this context that we negotiated the Agreement on the Application of Sanitary and Phytosanitary Measures [SPS or The Agreement]. The provisions in the SPS Agreement are designed to protect and extend the degree of trade liberalization that was achieved by the Uruguay Round Agreement on Agriculture.

The main objective of UR SPS negotiations was to clearly define the science-based principles that would promote a rules-based system for international agricultural trade flows. I believe those of us in the negotiating community met that objective -- but now we face the arduous task of getting signatory countries to put these concepts into practice. Implementation of this agreement will be much harder than its drafting.

The SPS Agreement commits countries to the principles of minimal interference in commerce when pursuing the legitimate objective of safeguarding human, animal or plant health. To support the principle of minimal interference, the SPS Agreement established several disciplines among which the important ones include the requirements for risk assessments, equivalency and transparency. The World Trade Organization's [WTO's] SPS principles are aimed at creating a level playing field for each country's agricultural products in international markets. These principles also strive to develop a more uniform approach to traded products among different disciplines *within* a country. Lastly, they should serve as disciplines for a clear separation between technical and political decisions about agricultural trade.

The WTO SPS principles are so significant that they will not only change the rules of the game, they will revolutionize the game itself. It is difficult to predict with any degree of precision which commodity markets and which countries might be most affected by the new trading environment which will be fostered by the SPS Agreement. Exports of those commodities that have been globally competitive without government assistance -- often the products that have faced the greatest number of unjustified technical barriers -- will likely increase. The Agreement might also yield different degrees of immediate benefits for developed and lesser-developed countries. In the short-term, countries with reliable animal and plant health infrastructures will have an added trade advantage.

In the new global trade arena, implementing the SPS Agreement will rely on: abiding by the golden rule of trade; increased education of industry, consumers, and trading partners about the SPS standards; development of international standards; and continuous communication between regulatory officials and their stakeholders, their foreign counterparts,

and their trade ministries. But as might be expected, when “revolutionizing the game” the process begins by taking one step forward and two steps back.

### **Implementation of the SPS Agreement: A Bumpy Transition**

The SPS Agreement promises to decrease and eliminate the most flagrant and unjustified trade barriers. Nonetheless, since SPS measures, in the future, will be the only way to legally regulate agricultural trade, the incentive to use them to control imports will increase. At this time, it is still easier to restrict unjustifiably, and then retreat if challenged, because other than a loss in technical and regulatory credibility, there is no real penalty for the initial barrier.

In recent months, we in the US Department of Agriculture [USDA] have witnessed a significant increase in restrictions to US agricultural exports which had been unimpeded before the signing of the North American Free Trade Agreement [NAFTA] and General Agreement on Tariffs and Trade [GATT] 1994. We have seen a number of new nuisance-type restrictions which are the result of well-intended, but inexperienced, attempts to apply the SPS measures by developing countries. They are, by and large, easily corrected. However, other types of restrictions imposed under the guise of SPS standards have been intentional trade barriers. For example, some countries have abused the Emergency Notification provision which allows countries to notify trading partners *ex post* about regulatory changes, rather than notifying them of a *proposed* regulatory change and allowing a period for official comment, when “urgent problems of health protection arise or threaten to arise.” Although this provision is intended for phytosanitary and sanitary emergencies, it has been used to address administrative needs.

Whether this trend will continue, increase, or decrease will depend in great part on how we respond under these new conditions. The trading world will watch the US with great interest to see how we react to the changes brought about by the new SPS principles. During the UR the US was the leader when it came to promoting the “golden rule of trade” -- that is, treating the exports of other countries as you would like your exports to be treated. In implementing these new provisions, we need to make sure that we practice what we preached during the negotiations.

### **The Golden Rule of Trade**

To comply with the principles of the SPS Agreement, all countries, developed as well as developing, will have to review and make the necessary changes to their regulatory systems. For the SPS Agreement to be fully implemented, we will need a cultural change in both the trade and the regulatory communities which will permit the honest re-evaluation of existing measures and practices. Certain countries, and certain agencies within each country, will be more willing than others to make the necessary concessions and adjustments.

I believe that within the US, and even within regulatory agencies like the Animal and Plant Health Inspection Service [APHIS], there are two distinct paradigms. The first, which is

aimed at protecting American agriculture, is characterized by a conservative zero-risk approach towards imports, while strongly promoting exports. The second paradigm, which concentrates on facilitating trade, is typified by a focus on scientifically-based and transparent trade rules while at the same time protecting US agriculture and consumers. These differences in approach are not unique to regulatory agencies: they are found throughout industry, the general public, and among high-level decision makers. It is clear that because of interval contradictions in the former paradigm, we must all move to the second, and that we must establish agreement on a pace at which to proceed.

I mentioned earlier the need to review existing regulations. One of the more significant upcoming USDA regulations is an all-encompassing proposed rule on regionalization for animals and animal products, new standards which represent a major departure from past practices. This rule, which will provide broad guidelines for all regionalization requests made for imports into the US, will allow APHIS to evaluate hazards presented by proposed importations in the context of geographic and demographic boundaries as well as national and political borders. APHIS will use regional risk classifications rather than the previous criteria of disease-free or not-disease-free statuses determined on a country-by-country basis. Thus, the proposed regulation merges the concepts of regionalization and risk assessment, congruent with the new obligations set forth in Articles 5 and 6 of the WTO SPS Agreement.

We also are standardizing the risk analysis guidelines and methods for plant and animal health. For decades, APHIS has successfully excluded exotic diseases by conducting intuitive risk assessments based on educated guesses by our scientists as to the magnitude of disease hazards and the most logical means of reducing the likelihood of their occurrence. Current international obligations now require these evaluations to be probabalistic, based on the latest scientific evidence, documented, and available upon request.

We have also begun to share decision-making information between the group of professionals responsible for imports and the group responsible for exports. An action that is aimed at improving the consistency and transparency of our decision-making process. And we also recognize that external risk communication, with our domestic stakeholders and as well as our trade partners, is as important as the internal dissemination of information.

### **APHIS' Proactive Agenda**

Although many technical barriers transparently violate the principles of the SPS Agreement, a significant number are more complex. In these cases, APHIS' scientists will be fundamentally important in resolving the issue, providing expert advice for technical consultations or dispute settlement actions. But APHIS would be overlooking important opportunities to create an international marketplace free of unjustified technical measures if it limited its activities to eliminating current or newly emerging barriers. Proactive measures are fundamentally important as well. Even in an era of constrained resources, APHIS is firmly committed to education and training programs, foreign technical cooperation, and active participation in the international standards setting organizations. APHIS views these activities as investments that will yield a large return in the longer run.

### *Education and Training*

Educational and training efforts on WTO SPS principles and measures are critical during this transition stage. The number of countries that actively participated in the negotiation of the SPS Agreement was small. Many countries, especially less developed countries [LDCs], are unsure of their new, basic obligations (such as notification of potential regulation changes) under the SPS Agreement. APHIS has been active in supporting and participating in SPS-related training sponsored by the WTO, Asian-Pacific Economic Cooperation [APEC], and Free Trade Area of the Americas [FTAA] since the SPS Agreement came into force in January 1995.

Many domestic producer groups are also unaware of the implications of the SPS Agreement for their operations. A basic lack of understanding, combined with the recent wave of unjustified import restrictions, may lead some to believe there are advantages to be gained by not reporting pest and disease conditions. These selfish and short-sighted actions could seriously undermine the excellent credibility of the US agriculture infrastructure. APHIS has been instrumental in USDA's effort to apprise US producers of the requirements for competing in the new international marketplace created by the SPS Agreement.

### *Technical Cooperation*

Many countries have insufficient resources to make the substantial investment in human capital and technology that is necessary to properly safeguard animal and plant health. APHIS has and will continue to provide technical assistance to LDCs to develop SPS regulations that are based on sound science through activities such as workshops on formal risk assessments.

I hope that the challenge of developing credible sanitary/phytosanitary infrastructures in the developing world attracts the attention of the international community. Instead of funding control programs for a single, fashionable pest or disease, international development and funding organizations need to focus more on basic investments in sanitary/phytosanitary infrastructure. Proficient and credible animal and plant health institutions will become vitally important components of a country's trade infrastructure, and well-targeted multilateral and bilateral investments in this area could help LDCs develop the necessary infrastructure to compete in the international marketplace.

### *International Standards*

Another area that will require support during the transition to science-based standards is the work of the international standard-setting organizations. The best and easiest way for trading partners to develop harmonized SPS measures is to actively support these standard-setting organizations with expertise and resources. While the International Plant Protection Convention [IPPC], CODEX, and Office International des Epizootics [OIE] have been in existence for numerous years, a lot of work remains to be done in developing sanitary and phytosanitary standards.

The OIE was established in 1924 and is located in Paris. It is a scientific organization which has a long history of promoting cooperation among countries in controlling the spread of contagious animal diseases by developing science-based standards and sharing national animal health information globally. The CODEX was established in 1962 to implement the Joint FAO/WHO Food Standards Programme. Its charter is the protection of consumers' health and ensuring fair practices in the trade in food. The IPPC was established as an FAO plant health convention in 1951 and commits nearly the 120 signatory countries to working together to control the spread of plant pests and diseases worldwide. The IPPC is currently in the process of reviewing the original convention, looking for a closer alignment of its standard setting procedures with the expectations of the WTO.

It should be emphasized that these standard setting bodies themselves possess no legal authority to compel compliance with their standards. However, this does not mean that standards will be unenforceable. The OIE, CODEX, and IPPC are important entities in the international trade arena in terms of promoting a framework of standards which may be used to prevent, or settle, sanitary and phytosanitary trade issues. International standards will be used as a benchmark by WTO panels and committees when evaluating national regulations in sanitary and phytosanitary-based trade disputes.

APHIS has long recognized the importance of international standards and we continue to view our active participation in the IPPC and OIE as a critical part of our trade strategy to promote the establishment of a fair and safe trading system. We have numerous Agency scientists on various committees and working groups as well as senior level managers in executive positions within these standard setting organizations. These senior managers and scientists are increasing their commitment to exchange information with representatives of producer and consumer groups in order to identify US priorities and policies for our international standards setting activities.

### **APHIS' Strategy: Sound Science and . . .**

As we move toward the new, post-UR trade environment, reactions to foreign trade restrictions, as well as strategies to prevent them, need to be handled by multi-disciplinary teams. Only by considering the commonality among commodity issues and the reactions of various countries can we counteract the contagious effect of unjustified trade restrictions. Scientific and technical skills are needed, but without negotiation and intercultural skills the US will continue to provide the best science and still lose most negotiations. We cannot continue to defend our exports with aggression. We must begin to discern and understand the motivating factors behind importers' regulatory decisions.

Long-term strategies will be developed by the various US agencies with responsibilities for SPS decisions. We must work very closely with industry and consumers as we proceed. For our country to maximize the benefits of these Agreements, all interested parties will have to focus on developing a national agenda and strategy. If regulators and agricultural commodity interests continue to fight for their own individual agenda, the US will find itself reacting to the initiatives and strategies of others. Instead of continuing to focus on the

export of traditional, low profit-margin, raw commodities which are so competitive in the global market, we should form new partnerships among agencies and industry to strategize ways to expand exports of biotechnology-derived products, with a resulting increase in pre-export employment, as well as export profits.

Complying with the disciplines of the new trade agreements is labor intensive. Due to the number of SPS issues and the limited resources for addressing these issues, we believe it has become increasingly necessary to find means to prioritize the issues which merit the Agency's attention. Our decisions about which SPS barrier problems to pursue will depend on how "winnable" we believe the issue to be from a scientific or technical standpoint, as well as the level of industry interest in, support of, and commitment to an issue. We believe that successful resolution of SPS issues will rely on joint federal-state-industry cooperation and pooling of resources, particularly for the costs associated with surveillance, data gathering, and analysis. State governments and industry must understand and embrace their role in establishing the necessary systems (i.e., surveillance and monitoring operations) to produce health-related information for their products.

Although the SPS principles are intended for global application, the rapid implementation of these concepts relies on a series of bilateral and multilateral agreements between willing trade partners using the WTO SPS Agreement as an umbrella. Collaboration, harmonization, and trust is easiest when starting bilaterally. Bilateral cooperation is particularly productive between countries with compatible and similar interests.

## **Conclusions**

Finally, I cannot emphasize enough the importance of trust in trade relationships. It is through trusting partnerships, not political force, that we will produce long-lasting results. Trust and credibility between foreign regulatory officials or agencies is essential for reaching agreements on regulatory protocols which will allow the movement of commodities which may present a pest or disease risk, however inconsequential. A credible infrastructure and a solid bilateral agreement will go a long way toward preventing unjustified barriers and disputes, especially in instances where a pest or disease problem occurs.

The process used to resolve trade disputes is not all that different from our own judicial system. Challenges will be costly. And the burden of proof lies with the challenger because the issue is not whether the importer created an unjustified barrier, but whether the challenger can demonstrate that the restriction was unjustified and/or discriminatory. Therefore, instead of spending countless resources in dispute resolution, we should prevent disputes from occurring in the first place by forming lasting and productive partnerships with our trading allies. For this reason, APHIS will continue to develop, expand, and strengthen its personal and professional relationships with regulatory officials from around the world. The aim is to share our views on standard setting priorities, information on our SPS obligations, and to establish linkages which can help expeditiously address changing pest and disease conditions which impinge on trade.