INTERNATIONAL LEGAL NORMS OF THE WORLD TRADE ORGANIZATION IN THE FIELD OF FOOD SAFETY REGULATION (THE SPS AGREEMENT)

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Doi; https://doi.org/10.5281/zenodo.20363744

Abstract. This article examines the international legal framework of the World Trade Organization governing food safety regulation through the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The study analyzes the legal nature, principles, and mechanisms of the SPS Agreement aimed at ensuring the protection of human, animal, and plant life and health while preventing unjustified barriers to international trade. Particular attention is devoted to the balance between the sovereign right of states to establish food safety measures and their obligations under international trade law. The article explores the role of scientific evidence, risk assessment, harmonization of standards, and the activities of international organizations such as the Codex Alimentarius Commission in the implementation of SPS measures. Furthermore, the research highlights current challenges related to globalization, technological development, and increasing international food trade, emphasizing the importance of effective legal regulation in maintaining global food security. The author concludes that the SPS Agreement represents a key international legal instrument that contributes to both consumer protection and the stability of the multilateral trading system.

Keywords: food safety, SPS Agreement, World Trade Organization, international trade law, sanitary and phytosanitary measures, risk assessment, international legal norms, food regulation, consumer protection, Codex Alimentarius Commission, harmonization of standards, global food security.

Globalization and the rapid development of international trade over recent decades have led to a significant increase in the cross-border movement of goods, which, in turn, has created new challenges in the field of food safety. As traditional tariff barriers are gradually reduced through multilateral, regional, and bilateral trade agreements, sanitary and phytosanitary (SPS) measures, as well as technical barriers to trade (TBT), are increasingly becoming potential sources of trade disputes.

The World Trade Organization (WTO) is a key international institution designed to regulate trade relations among states on the basis of agreed multilateral rules. Since its establishment on January 1, 1995, as a result of the Uruguay Round of multilateral trade negotiations, the organization has assumed functions extending far beyond the traditional liberalization of trade in goods and services.

It should be emphasized that the preamble to the Agreement Establishing the WTO does not directly mention issues related to food safety and the protection of public health. Nevertheless, it stresses that the achievement of objectives related to raising standards of living, ensuring employment, increasing income, and expanding the production of and trade in goods and services must be consistent with and coordinated with the needs and interests of member states. Furthermore, the preamble recognizes that the WTO is not limited exclusively to trade matters, as it also takes into account environmental protection and the fight against global poverty[1].

As an international organization, the WTO was established to promote cooperation in strictly defined areas of activity. The WTO's competence covers issues related to trade in industrial and agricultural goods, international trade in services, banking and insurance operations, transportation and telecommunications services, government procurement, industrial standards, sanitary and phytosanitary

[1] Van den Bosche, P. The Law and Policy of the World Trade Organization: Text, Cases and Material. Cambridge University Press, 2005. P. 87.

measures, protection of intellectual property rights, and other aspects of international trade. As noted by I. I. Dyumulen, “already today, with some caution, the WTO may be characterized as a universal body whose scope encompasses all major flows of international trade and creates a common legal basis for mutual trade among most countries.” At the same time, the WTO remains a specialized organization, and its competence is strictly limited to matters expressly закреπed in the agreements, namely issues relating to international trade.

Within the WTO framework, there is no separate agreement specifically regulating food safety relations. However, such matters are addressed through agreements such as the General Agreement on Tariffs and Trade (GATT), the Agreement on the Application of Sanitary and Phytosanitary Measures, and the Agreement on Technical Barriers to Trade. Based on the exceptions provided in these agreements, states may adopt measures necessary to protect human, animal, and plant life and health, thereby ensuring the importation of food products of appropriate quality. Nevertheless, WTO agreements establish special conditions for the adoption of such measures. If such measures are discriminatory in nature or constitute protectionist measures in favor of domestic producers, they may be challenged before the Dispute Settlement Body (DSB) as unlawful and subject to withdrawal.

The SPS Agreement constitutes a comprehensive set of rules and procedures designed to guide WTO members in the development, adoption, and application of measures affecting trade and aimed at protecting human, animal, or plant life or health. The Agreement on the Application of Sanitary and Phytosanitary Measures applies to all sanitary and phytosanitary measures that may directly or indirectly restrict international trade. Unlike GATT 1947, which lacked a specialized regulatory instrument in this sphere, the SPS Agreement became a more detailed legal mechanism replacing the general provisions of Article XX of GATT. The latter only provided abstract exceptions and did not ensure sufficient legal certainty or institutional procedures for the effective application of sanitary and phytosanitary measures by states.The primary objective of the Agreement is to achieve a delicate balance: on the one hand, it recognizes the sovereign right of WTO members to protect the health of their populations, animals, and plants from risks; on the other hand, it seeks to minimize the negative impact of such measures on international trade. Thus, the WTO does not eliminate the right of states to protect health, but rather disciplines its exercise by ensuring that food safety measures are scientifically justified, non-discriminatory, and not used as disguised protectionism. This constitutes a fundamental compromise that enables “fair” trade while preserving food “safety.”

Pursuant to Annex A of the SPS Agreement, sanitary and phytosanitary measures include measures applied:

(a) to protect animal or plant life or health within the territory of a Member from risks arising from the entry, establishment, or spread of pests, diseases, disease-carrying organisms, or disease-causing organisms;

(b) to protect human or animal life or health within the territory of a Member from risks arising from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs;

(c) to protect human life or health within the territory of a Member from risks arising from diseases carried by animals, plants, or products thereof, or from the entry, establishment, or spread of pests;

(d) to prevent or limit other damage within the territory of a Member from the entry, establishment, or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, regulations, requirements, and procedures, including, in particular: end-product criteria; processes and production methods; testing, inspection, certification, and approval procedures; quarantine measures, including requirements related to the transportation of animals or plants and materials necessary for their survival during transport; provisions relating to statistical methods, sampling procedures, and methods of risk assessment; as well as packaging and labeling requirements directly related to food safety.

The SPS Agreement is based on several key principles and provisions developed, inter alia, through dispute settlement practice: the principles of equivalence, transparency, non-discrimination, harmonization, scientific justification, and regionalization. In order to strike a balance between the liberalization of international trade and the protection of non-trade values, the Agreement establishes the

fundamental principle of scientific justification. This principle is aimed at preventing arbitrary or politically motivated trade barriers.

At the same time, the Agreement recognizes that in certain circumstances relevant scientific evidence may be insufficient. In such cases, Members may provisionally adopt SPS measures on the basis of available information, provided that they seek additional information necessary for a more objective assessment of risk and review the measure within a reasonable period of time (Article 5.7). This provision represents a limited recognition of the precautionary principle, allowing states to act in conditions of uncertainty while requiring further scientific inquiry. This delicate balance between immediate protection and the avoidance of unjustified trade restrictions remains the subject of ongoing debate and litigation, since scientific certainty is rarely absolute, especially in complex biological systems.

A vivid illustration of the practical implementation of this principle is the dispute "European Communities - Measures Concerning Meat and Meat Products (Hormones)" (EC – Hormones). The European Union prohibited the importation of beef produced using certain growth hormones, citing potential risks to consumer health. The United States and Canada challenged these measures, arguing that the ban lacked a sufficient scientific basis and effectively restricted international trade. The WTO Dispute Settlement Body concluded that the EU had failed to provide adequate scientific evidence demonstrating a genuine risk to human health and had therefore violated the scientific justification requirement established under the SPS Agreement. The ruling emphasized that sanitary measures must be based on a proper risk assessment conducted in accordance with internationally recognized scientific methods, rather than on assumptions or excessive precaution.

This case became a landmark precedent because it confirmed that WTO members may introduce restrictions in the field of food safety only where supported by convincing scientific evidence. The absence of such evidence is regarded as a violation of SPS obligations and as an unjustified restriction on international trade. Thus, the principle of scientific justification serves as a guarantor of balance between the protection of public health and the maintenance of fair trading conditions.[2]

To promote harmonization, the SPS Agreement expressly refers to three key international organizations, commonly known as the "Three Sisters," which develop international standards, guidelines, and recommendations in the fields of plant health, animal health, and food safety. These are the Codex Alimentarius Commission (food safety/sanitary measures), the International Plant Protection Convention (plant health/phytosanitary measures), and the World Organisation for Animal Health (animal health/veterinary measures). Standards developed by these organizations are recognized by the WTO as "international standards" upon which the legal systems of WTO members should base their domestic requirements. Compliance with such standards provides states with a presumption of conformity with WTO obligations in trade disputes. By contrast, references to "regional standards" or to the standards of individual foreign states are not regarded by the WTO as "international" and do not carry equivalent legal significance.

The SPS Committee is the central body administering the SPS Agreement. It serves as a forum for consultations where WTO members regularly discuss SPS measures and their impact on trade, monitor implementation of the Agreement, and seek to avoid potential disputes. The Committee meets three times a year and provides a platform for the exchange of experience, the expression of concerns regarding the measures of other members, and the development of further guidance on implementation of the Agreement.

A substantial portion of each regular meeting is devoted to the discussion of Specific Trade Concerns (STCs). Any WTO member may raise concerns regarding food safety, animal health, or plant health requirements introduced by another WTO member that may negatively affect trade. This mechanism serves as an effective tool for resolving trade tensions before they escalate into formal disputes. The high percentage of STCs resolved without formal litigation demonstrates that the STC

[2] WTO, European Communities — Measures Concerning Meat and Meat Products (Hormones), WT/DS26/AB/R, Appellate Body Report, adopted 13 February 1998.

mechanism is a “hidden gem” of the WTO system, allowing the majority of trade disagreements to be resolved informally at the committee level before developing into costly and lengthy legal proceedings. This underscores the preventive and mediating role of the Committee, which is often underestimated compared to formal dispute settlement.

The mechanisms established under the SPS Agreement may also be used by certain states as instruments of economic pressure. The objective of such pressure may be to lower food safety standards in other countries, which particularly affects developing economies.

A notable example is the dispute between the United States and the European Union. In 1999, seeking to increase exports of meat and livestock products containing antibiotics, the United States challenged the European ban on imports of such products. The United States argued that the European Union had failed to provide timely notification of the ban and had not conducted a proper risk assessment as required by the SPS Agreement[3]. In such situations, WTO members face a dilemma: either lower national sanitary and phytosanitary standards, thereby creating potential risks to human, animal, and plant health, or incur significant economic losses resulting from retaliatory measures imposed by trading partners, such as 100% import duties on exported products. This situation highlights the tension between trade interests and the sovereign right of states to ensure domestic safety.

The application of the SPS Agreement may, in some cases, conflict with the WTO’s broader objectives of trade liberalization and the reduction of trade barriers. This contradiction became particularly evident in the “US – Hormones” dispute. This case was the first major dispute under the SPS Agreement and gave rise to a number of implementation problems. Although the United States and Canada prevailed in the dispute, the European Union refused to repeal its ban on imports of hormone-treated meat.

In response to the EU’s non-compliance, in July 1999 the United States imposed 100% duties on certain European food products totaling approximately 117 million US dollars. These tariffs significantly increased the price of European goods on the American market, thereby reducing their competitiveness and consumer demand. Thus, despite the SPS Agreement’s stated objectives of preventing trade conflicts and facilitating free trade, its application in this case resulted in increased costs and social tension, contrary to WTO principles. This precedent illustrates how dispute settlement mechanisms may prove ineffective where states prefer to bear economic costs rather than compromise national standards, particularly in matters concerning health and safety.

In addition to the SPS Agreement, the WTO regulates aspects of international trade related to food safety through the Agreement on Technical Barriers to Trade (TBT Agreement). Although the SPS and TBT Agreements are separate instruments, both are intended to prevent the use of domestic measures as unjustified obstacles to trade.

The TBT Agreement establishes rules and procedures governing the development, adoption, and application of voluntary product standards, mandatory technical regulations, and conformity assessment procedures (such as testing and certification) used to determine compliance with such standards or regulations. The principal objective of the TBT Agreement is to prevent technical requirements from becoming unnecessary barriers to international trade.

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[3] Silverglade B. The WTO Agreement on Sanitary and Phytosanitary Measures: Weakening Food Safety Regulations to Facilitate Trade// Food and Drug Law Journal, 55, 4. P.2. 164 Ibid. P.2.

Importantly, the TBT Agreement applies to a broad range of industrial and agricultural products, but SPS measures are excluded from its scope because they are governed separately by the SPS Agreement. Thus, if a measure is intended to protect human, animal, or plant life or health from risks associated with food products, diseases, or pests, it falls under the SPS Agreement. If, however, the measure concerns other product characteristics, such as labeling, packaging, terminology, symbols, or general quality requirements unrelated directly to sanitary or phytosanitary risks, it is governed by the TBT Agreement.

The TBT Agreement is based on several core principles designed to ensure fair and transparent trade:

Non-discrimination. Technical regulations, standards, and conformity assessment procedures must be developed and applied on a non-discriminatory basis, without arbitrary or unjustifiable discrimination between trading partners or between domestic and imported products.

Transparency. The processes for developing and applying technical requirements must be open and transparent. WTO members are required to notify the WTO of proposed technical regulations and conformity assessment procedures that may significantly affect trade, thereby allowing interested parties to review and comment on them before adoption. National Enquiry Points and the ePing platform serve this purpose, similarly to the SPS framework.

Use of international standards. Where appropriate, technical regulations should be based on relevant international standards and guidelines. This promotes harmonization and reduces barriers to trade.

Least trade restrictiveness. Technical regulations should not create unnecessary obstacles to international trade and should not be more trade restrictive than necessary to fulfill a legitimate objective. Legitimate objectives may include national security requirements, the prevention of deceptive practices, the protection of human health or safety, animal or plant life or health, or environmental protection. Unlike the SPS Agreement, which requires scientific justification for deviations from international standards, the TBT Agreement permits deviations for a broader range of reasons, including technological difficulties or geographical factors.

Like the SPS Committee, the TBT Committee serves as a forum for discussing technical regulations and standards and for resolving Specific Trade Concerns (STCs) arising among WTO members. This mechanism enables members to raise issues and seek solutions before disagreements escalate into formal disputes, making it an important conflict-prevention tool.

The WTO dispute settlement system constitutes the central enforcement mechanism of the SPS Agreement, giving it binding legal force. This system provides WTO members, including developing countries, with a powerful instrument to challenge unjustified trade barriers based on food safety measures. The dispute settlement process is legally binding and includes a mandatory preliminary stage of consultations aimed at reaching a mutually satisfactory solution. If consultations fail, a Panel may be established, and subsequently, where necessary, the case may be appealed to the Appellate Body. Without this enforcement mechanism, the SPS Agreement would remain merely declaratory; it is the Dispute Settlement Understanding (DSU) that ensures its effectiveness by enabling members to hold each other accountable and secure compliance with WTO rules.

Decisions of the Dispute Settlement Body in food safety cases are particularly controversial where no international consensus exists among states. For example, the WTO ruling in the Hormones dispute provoked criticism from consumer protection associations and food safety organizations, which argued that trade considerations were prioritized over food safety concerns and that the ruling interfered with domestic policy matters.

Accordingly, when reviewing disputes, WTO panels assess SPS measures against three criteria:

whether the measure was applied only to the extent necessary to protect human, animal, or plant life or health;

whether the measure was based on scientific principles and maintained with sufficient scientific evidence;

whether the measure constituted arbitrary or unjustifiable discrimination or a disguised restriction on international trade[4].

The effectiveness of the WTO dispute settlement mechanism must also be taken into account. Approximately 95% of DSB rulings are implemented, while retaliatory measures have been applied in only around 5% of completed disputes. Unimplemented decisions generally concern politically sensitive issues, such as "EC – Hormones" and "EC – Biotech Products." The effectiveness of the WTO dispute settlement system is also reflected in the high rate of negotiated settlements. According to WTO Secretariat statistics, more than 60% of disputes are resolved during formal consultations. Of the disputes initiated since the establishment of the WTO dispute settlement system, approximately 77% remain at the stage of implementation or ongoing proceedings[5].

Within the context of the SPS Agreement, scientific justification serves as the central factor balancing trade liberalization and non-trade interests such as health protection. On the basis of scientific evidence, WTO panels and the Appellate Body determine whether a measure constitutes a legitimate exercise of sovereign authority or a disguised trade barrier.

However, as noted by Carreau and Juillard, the very concept of "scientific justification" remains inherently uncertain and may become a source of endless disagreement among experts. Similar difficulties arise in defining the "appropriate level of risk." These subjective criteria have been central to disputes such as the Hormones case between the EU, the United States, and Canada[6].

For developing countries, compliance with WTO SPS standards presents a dual challenge. On the one hand, SPS requirements constitute a major barrier to access to lucrative markets in developed countries, which frequently impose high and constantly evolving food safety standards. Inadequate financial and technical resources, insufficient legal and regulatory infrastructure, and a lack of coordination and qualified personnel severely limit the ability of developing states to implement SPS obligations effectively. This creates an asymmetric compliance burden whereby even legitimate SPS measures may function as de facto trade barriers due to the inability of developing countries to satisfy them.

On the other hand, compliance with SPS standards may also serve as an opportunity for modernization and quality improvement in the food export sector. Adoption of such standards can stimulate domestic capacity-building, improvements in production processes, and greater market sophistication, ultimately generating significant long-term economic benefits. However, realization of this potential requires substantial technical assistance. The WTO and other international organizations provide such assistance through e-learning programs, seminars, and advanced training courses. This structured support is essential to bridging the capacity gap and ensuring that developing countries can effectively participate in global food trade. Without such support, the benefits of the SPS Agreement may disproportionately accrue to developed countries.

Mechanisms such as equivalence, regionalization, and the active role of the SPS and TBT Committees in addressing Specific Trade Concerns and providing technical assistance serve as important instruments for preventing disputes and promoting cooperation. Nevertheless, the WTO system continues to face challenges, including the burden of compliance for developing countries and tensions between international trade obligations and national sovereignty in matters of public health. Despite these difficulties, the WTO provides a structured framework for risk management, trade facilitation, and

[4] Van den Bosche, P. The Law and Policy of the World Trade Organization: Text, Cases and Material. Cambridge University Press, 2005. P. 463.

[5] Chuyko N.A. International Legal Regulation of Food Safety within the Framework of the World Trade Organization: dissertation for the degree of Candidate of Juridical Sciences: 12.00.10 / Chuyko Natalia Andreevna. — Moscow, 2015. — 192 p.

[6] Carreau D., Juillard P. Op. cit. P. 125.

dispute settlement, remaining critically important for shaping the global food safety landscape in an ever-changing world.

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