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The New International Trade Context for Developing Countries: The Impact of SPS and TBT Agreements

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Abstract

With the conclusion of the Uruguay Round of trade talks in 1994 and the simultaneous creation of the World Trade Organization, food and agricultural products were brought fully into the fold of international trading rules. As tariffs and quantitative restrictions were significantly reduced, regulatory measures have come to center stage as potential sources of trade restrictions. Such measures, designed to ensure food safety, consumer protection, and plant and animal health, are regulated by two agreements annexed to the general trade accords: the Sanitary and Phytosanitary (SPS) Agreement and the amended Technical Barriers to Trade (TBT) Agreement. Both agreements provide for special assistance to developing countries, to facilitate their access to opening markets. The preliminary record, after 6 years of implementation, suggests that greater efforts are needed to make the trading system more transparent and beneficial to developing countries.

Introduction

International agricultural trade has doubled since 1980, reaching \$450 billion annually. Globalization of markets created a need for agreements that ensure fair and efficient trade based on considerations of equity and in particular fair access to markets. This need was reflected in the conclusion of the Uruguay Round of multilateral trade negotiations in Marrakech in 1994 and the simultaneous creation of the World Trade Organization (WTO). These agreements resulted in significant declines in both tariffs and quantitative restrictions to trade in food and agricultural products. At the same time, there was a recognition that technical (non-tariff) barriers to trade (TBT) and in particular sanitary and phytosanitary (SPS) measures, when used indiscriminately, could impede trade in these products. In order to limit this problem, the SPS Agreement and an updated TBT Agreement were signed as annexes to the general trade agreement. These agreements lay out conditions for transparency and equivalent treatment in the enactment of regulatory measures. For developing countries, they provide for special treatment, in recognition of the greater difficulties these countries might have in complying with new measures.

Considerable debate has ensued concerning the extent to which the new trading environment for agriculture has been favorable or not to developing countries, given the apparent rise in the use of technical barriers to trade more generally (Figure 1), and a strengthening of measures in the food and agricultural sector by some leading importers. In this paper we outline the nature of the SPS and TBT agreements, and discuss recent

evidence concerning difficulties faced by developing countries in complying with technical requirements of importers of food and agricultural products. We then conclude with a discussion of possible steps to make the agreements work better in fostering fair trading conditions for developing countries.

The SPS and TBT Agreements

Together, the SPS and TBT agreements cover the full range of food-related standards, including quality and safety as well as other areas such as labeling, consumer protection, biotechnology, food irradiation and the production of “organic” foods.

The SPS agreement relates to questions of food safety as well as plant and animal health. Its principal elements can be summarized as follows:

Fundamental rights and obligations. WTO member countries may put into place SPS measures to protect the life and health of their citizens, animals and plants. These measures must be founded on clear scientific evidence and must not constitute a disguised restriction to trade.

Harmonization. Countries should aim to base their SPS measures on international standards, regulations or guidelines when these exist. Such internationally agreed measures are automatically accepted as justifiable. Countries are encouraged to participate in the work of international standard-setting bodies, in particular the Commission of the Codex Alimentarius (food safety issues), the World Organization for Animal Health (OIE) (animal health issues), and the International Plant Protection Convention (IPPC) (plant health).

Equivalence. Countries must accept control measures of their trading partners, when these are different from their own measures, if the exporting country can demonstrate that they permit an equivalent level of protection. The importing country has rights to on-site inspection and product analysis.

Risk assessment. Countries can introduce new measures, more stringent than international standards, as long as they provide scientific evidence that this is necessary to protect human, animal or plant health. Appropriate methods of risk assessment must be applied in these instances. When scientific evidence is insufficient, temporary measures may be put into place based on available information.

Adaptation to regional conditions. A clause introducing the possibility to consider specific zones as pest or disease-free for trade purposes, with rights of inspection by importers.

Transparency. Countries must rapidly make public all SPS measures envisaged, including details on the methods of risk assessment used to determine protection levels and the means of inspection to be applied, in order to permit potential exporters to familiarize themselves in due time. Notification for new measures should generally occur with a minimum delay of 45 to 60 days before enactment, except in special cases where an imminent danger exists.

Technical assistance. Special assistance (technical assistance, financial support) is foreseen for developing countries in order to help them to meet technical requirements of SPS measures for trade.

Differential and special treatment. Member countries agree to take into account the particular needs of developing countries when putting into place SPS measures, for instance by giving them a longer lead time to comply with new measures whenever possible.

The TBT Agreement covers technical standards for all products, industrial as well as agricultural. For the latter, it covers the range of aspects linked to product quality, nutritional content, labeling, and methods of analysis not directly covered by the SPS agreement. This includes a large number of measures aimed at protecting consumers against fraud. The overriding principles are, once again, that technical measures must be justified, transparent, and non-discriminatory. In contrast to the SPS Agreement, there is no explicit goal of harmonization of these regulations and standards across countries.

Preliminary Evidence on the Impact of the New Trade Accords on Developing Countries

The SPS and TBT Agreements and the corresponding measures have enhanced transparency, established clear settlement procedures, set the basis for international harmonization of national SPS measures and taken into account the specific situations and problems of developing countries and their needs for enhanced levels of technical assistance. Together with the reduction in tariffs and quantitative barriers to trade in food and agricultural products agreed to in the Uruguay Round, they have raised the potential access of developing countries to international markets. This new context should have wider positive implications for developing country food and agricultural sectors, leading to overall improvements in quality management, the quality of products for the domestic market and enhanced export potential.

Yet many developing countries are finding it difficult to meet the SPS measures of the developed countries, and are concerned that in practice, their access to export markets for some food and agricultural products is being hindered, rather than encouraged, in the wake of the agreements. It is necessary to assess the impact of the SPS and TBT Agreements and their measures on exports of developing countries as a way to identify means by which to reduce possible negative effects.

The FAO is currently undertaking a global study on the economic impact of the SPS and TBT Agreements on developing countries, the results of which will be available in mid 2001. Some available estimates already suggest that the magnitude of lost trade owing to difficulties in complying with SPS measures of developing countries can be quite large. The Department of Agricultural and Food Economics of the University of Reading (HENSON et al., 2000) recently evaluated several case studies for problems faced in meeting SPS measures for exports of various food products to the European Union (EU): Indian meat and shrimp, Vietnamese fish, Egyptian potatoes, East African countries' fresh fish, Zimbabwean horticultural produce, etc. The authors concluded that there were significant trade losses because of failure to meet SPS requirements. A recent World Bank study on the effect of the new, more stringent EU aflatoxin regulations on the African exporters of groundnuts estimated that the loss could be as high as US\$ 250 million (OTSUKI et al., 2000).¹ An FAO study on the impact of the August – December 1997 EC ban of shrimp imports from Bangladesh estimated the cost at US\$14.6 million (CATO, 1998; CATO and LIMA DOS SANTOS, 1998). Although similar estimates are not available for developing country exports to North America, the evidence of import detentions by the United States Food and Drug Administration (FDA) suggests that these may also be significant (Table I).

¹ See the article in this volume by DIMANCHE and KANE describing Senegal's preparations to meet these new restrictions.

The University of Reading study concluded that a number of factors limit developing countries' ability to meet developed country SPS requirements, the most important being: (i) the level of access to scientific and technical expertise and information, and (ii) the incompatibility of the SPS requirements with prevailing production and/or marketing methods of developing countries. The study also revealed the wider resource and infrastructure constraints of developing countries and their inability not only to comply with the SPS requirements, but – just as important to the trading partners – to demonstrate compliance when it had been attained.

Developing countries find that their advanced trading partners do not adequately take into account their needs when setting SPS standards, that the time allowed between notification and implementation of SPS requirements is too short, and that insufficient technical assistance is provided to help them cope with the new trading environment.

Part of the problem relates to the ineffective levels of participation of most developing countries in the mechanisms of the SPS Agreement and in the development of SPS-related measures. In particular, they are frequently limited in their ability to participate effectively in the transparency mechanism (no expertise to respond to notifications within the 60-day period). They also lack the expertise to carry out risk assessment when their own SPS measures are different from those of developed countries, or to participate in dispute settlement procedures of the WTO, either as defendant or complainant. Finally, their participation in international standards setting bodies (Codex, IPPC, and OIE) is often limited both in quantity and quality and does not ensure proper consideration of their concerns and interests.

Potential Solutions

To overcome these difficulties and ensure that developing countries are not penalized by the SPS and TBT Agreements, the following solutions should be considered:

- Longer periods for compliance. Developing countries should be allowed a longer period of time to comply with a new SPS/TBT measure following notification. The current 60-day period is inadequate.
- Greater account of the impact on developing countries in setting SPS requirements. When considering a new, more restrictive SPS/TBT measure, developed countries should take into account the ability of their developing trading partner to comply with these measures and the impact that these measures may have on their economies.
- Greater harmonization of SPS requirements. The harmonization of national SPS and TBT requirements, in developed as well as in developing countries, with international standards, guidelines and recommendations would go a long way toward eliminating technical barriers and promoting international food and agricultural trade.
- Greater levels and more appropriate technical assistance. This needs to be directed to gaining technical expertise and developing domestic quality control systems, to enhance developing country capability to comply with SPS/TBT requirements.
- Legal assistance, to enable developing countries to participate in dispute settlement.
- Revision of developing countries' own administrative arrangements to facilitate meeting SPS requirements.

- Greater regional co-operation between developing countries on SPS issues.

Some of these solutions lie with the individual trading partners; others with groups of countries wishing to act in a coordinated manner; still others will require reforms at the level of the international institutions responsible for SPS/TBT matters.

Conclusion

Food safety is not the luxury of the rich, but the right of all. Access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger, was reaffirmed by the World Food Summit in 1996. Improved food security means regular access of more people to adequate food. Trade provides these opportunities.

In Seattle in late 1999, at the launching of a new round of global trade talks, advanced countries were reminded of the commitments made in Marrakech to assist the least developed and food-importing countries. So far, many of these commitments have not been followed through. These countries are now insisting on full implementation before accepting new obligations.

There is a general and real concern that the potential benefits of poverty alleviation and higher levels of food security through globalization will not be shared equally by all. Fair access to markets remains a key issue to be solved. Developing countries will not only need the political will but also greater flexibility within the WTO rules to support their own agricultural and rural development, as well as technical and financial aid from their advanced trading partners.

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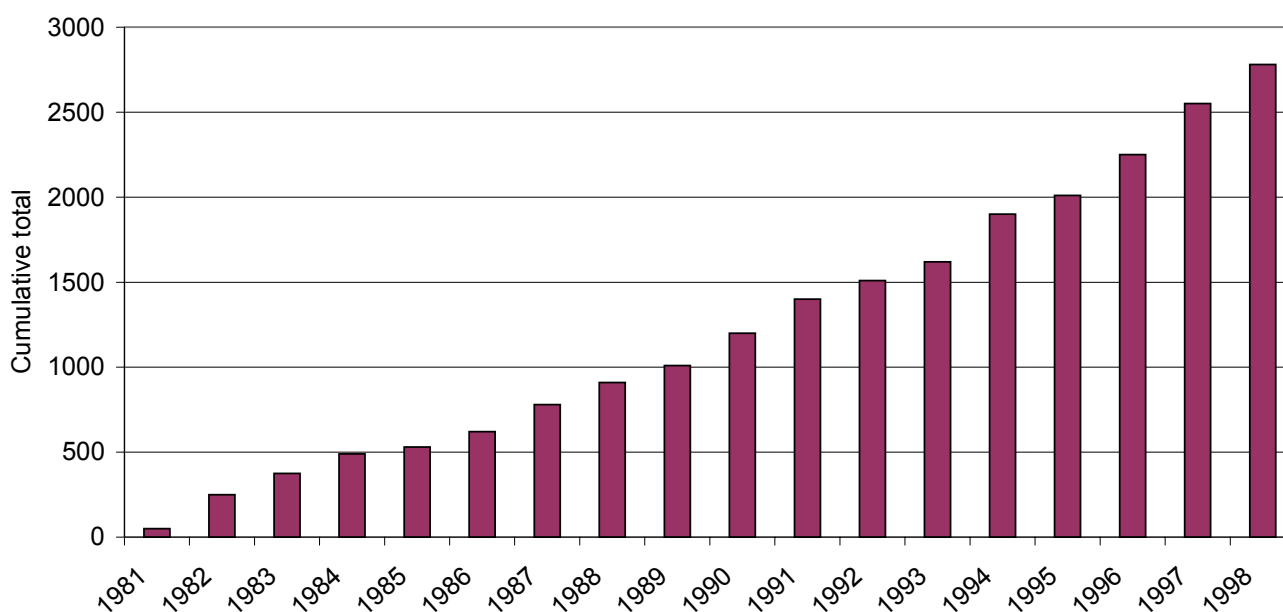
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Table I. Number of contraventions cited for US Food and Drug Administration import detentions, June 1996 to June 1997

Reason for contravention	Africa	Lat. America & Caribbean	Europe	Asia	Total
Food additives	2	57	69	426	554
Pesticide residues	0	821	20	23	864
Heavy metals	1	426	26	84	537
Mold	19	475	27	49	570
Microbiological contamination	125	246	159	895	1 425
Decomposition	9	206	7	668	890
Filth	54	1 253	175	2 037	3 519
Low acid canned foods	4	142	425	829	1 400
Labeling	38	201	237	622	1 098
Other	51	68	39	151	309
Total	303	3 895	1 184	5 784	11 116

Source: FAO (1999)

Figure 1. Notifications of technical measures to GATT/WTO, 1981-98



Source: OECD (1997) and WTO as cited in HENSON et al. (2000)