

# **Political Economy, Equity and Technical Barriers to Trade<sup>1</sup>**

by

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## **Introduction**

Decisions made in the Uruguay Round and in the technical bodies for international sanitary and phytosanitary co-ordination have tended to favour the major players in international trade. The reverse side of this coin is that some countries are worse off as a result of these agreements or at least are sidelined from being made better off.

The uneven spread of benefits from greater international co-ordination of these measures is a feature of the trading system as a whole, but seems to be particularly aggravated by high levels of inspection and quality control required.

In turn, the widespread use of technical measures to prevent trade emanates from domestic policies in the United States and the EU designed to raise food quality standards to absurd and nit-picking levels.

Some countries have made the effort to match requirements in the US and the EU and hence have been able to join the club. Apparently the costs and benefits of this approach are worthwhile.

But there are many countries who are excluded from agricultural trade by being unable to meet the requirements of the major players.

This paper presents a discussion of the structure of international trade agreements as it affects small countries; the distribution of power between countries; the contribution to discussions at the negotiation level; and the possibilities of changing the agreements to accommodate emerging problems.

## **Political Economy Aspects**

The political economy view of the SPS Agreement is based on the public choice model of government. Political decisions at national and international level are seen as a result of bargaining and exchange between free agents with self-interest the driving force. In a sense, the political 'market' replaces an economic market where exchange takes place and decisions are made according to the strength of the bargaining parties and the amount of power they wish to forgo.

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The Agreement is an attempt to utilise rules of behaviour and penalties for breaches of the rules to improve the conduct of trade between countries. International rules on conditions of trade regarding human and animal health commenced over a century ago over getting rid of smallpox. The rules were developed further in the 1947 GATT in the form of Article XX. Since the end of WWII, several international science bodies have been established to seek common standards for animal, plant and food products.

These bodies were composed of technical representatives from individual countries who negotiated with each other on the relevant standards needed to maintain trade between their respective countries. These agreements were said to be non-political as they were perceived as being accomplished by technical people agreeing among themselves on scientific matters that were without economic and political content.

The rise of consumerism and environmental awareness of resource issues has changed the public view of food quality and human and animal health concerns. This had led to greater attention to domestic programmes for food safety and processes and an increase in expected standards in the major food importing countries. In turn, these countries set the standards for other trading countries especially the food exporters like Australia and New Zealand.

The WTO Agreement on SPS represents the current bargaining position of a few countries who are involved in temperate agricultural product trade. It places emphasis on harmonisation of standards, the use of scientific evidence, the use of the old GATT dispute procedures to resolve conflict, and the continued advisory role of the scientific bodies (*Codex Alimentarius*, the International Plant Protection Convention (IPPC), and the Organisation International Epizootics (OIE)). Decision making procedures in the standards setting agencies could be subject to considerable debate, particularly if it is suspected that particular countries can orchestrate the committee and decision-making procedures to push through measures which are subsequently instrumental in settling SPS disputes in the WTO (Swinbank 1998). Part of the Agreement included specific provisions for less developed countries to phase in protection measures for products which are of special interest to developing countries.

### **Meat Protocols for Pacific Rim Countries**

To get a fix on the scope of SPS measures in different countries and their inequalities we need a fair amount of survey material which is not all that common in this subject area<sup>3</sup>. The point I want to make is well illustrated by a survey of meat protocols for the Pacific Rim Basin undertaken by myself and Allen Petrey (Petrey and Johnson 1992, Johnson 1997). The available information came from the manuals provided to meat exporters by MAF describing import requirements in different destination countries.

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<sup>3</sup> A recent survey is Roberts (1998b). In 1996, the USDA asked field personnel in its Foreign Agricultural Service (FAS), who collectively cover 132 countries, to identify questionable foreign measures that threatened, or blocked US exports of primary or processed agricultural, forestry, and fishery products. Questionable technical barriers were reported for 62 countries. As the author observes, a different major net exporter may face a substantially different distribution of questionable regulatory regimes if the commodity composition of its exports varies from that of the US.

The detail is shown in the original source (1992) and it identifies the policy or practice that actually has to be observed by exporters and the reasons lying behind the measures, after the manner of Hillman (1978, 1991). Each country schedule is divided into meat and meat products, edible by-products, and inedible by-products. Each is described with specific certification requirements, terms, and import prohibitions noted. Some countries accept the NZ certification certificate; others have their own [higher] requirements. A summary of the requirements found in the different countries surveyed is found in Table 1.

**1: Table of Country-specific Technical and Certification Requirements for Meat imported into Pacific Rim Countries**

Country	Certification accepted from New Zealand	Trans-shipment restriction	Pigmeat status	Byproduct sterilisation		Whole or part inspection	Labelling specified
				Edible	Inedible		
Australia	NZ	Y	A	Y	Y	-	-
Canada	S	Y	N	-	-	Y	Y
Fiji	NZ	-	N	-	-	-	-
Fr Polynesia	S	-	Trich	-	-	-	-
Hong Kong	NZ	-	St	-	-	Y	-
Indonesia	S	-	-	-	-	-	-
Japan	NZ	-	Trich	-	Y	-	Y
Malaysia	NZ	-	St	Y	Y	-	Y
N Caledonia	S	-	St	-	Y	-	Y
N Zealand	-	Y	-	Y	-	Y	-
PNG	NZ	-	St	Y	-	-	-
Philippines	NZ	-	St	-	-	-	-
S Korea	NZ	-	-	Y	Y	-	Y
Taiwan	NZ	-	-	-	-	-	-
ThailandNZ	-	-	-	-	-	-	-
Tonga	-	-	A	-	-	-	-
US	S	-	-	-	Y	Y	Y
W Samoa	NZ	-	A	-	-	-	-

Certification:

NZ: The NZ Official Meat Inspection Certificate AgM111 is accepted

S: Country specific official Veterinary and Public Health Certificates are required.

Pigmeat:

A: Product free of Aujesky's disease

Trich: Trichinosis tested

St: Sterilised product only

N: Imports refused

No requirement specified:

- No entry

Y: yes

Source: Petrey and Johnson (1992).

The table shows that importing countries are generally sensitive to pigmeat disease status, to possible contamination of product in trans-shipment, to possible transmission of disease in by-products, and to inspection requirements such as labelling and being able to identify the part as against the whole (in case diseased tissue has been removed before export).

The most important feature of the Table is the lack of uniformity in the range of measures for meat and meat products in the countries involved. Generally speaking, the measures are more comprehensive for countries with well-developed food safety systems and the will to train and recruit the necessary veterinary and inspection

services. In some cases, labelling requirements additional to truth-in-labelling appear to be carried to extraordinary lengths (Canada and the US). In some cases, large quantities are involved in trade, in others the trade is minuscule or does not yet exist.

### **Domestic Provisions and the SPS**

In this research the most complicated and the detailed requirements for meat and meat products are those for entry into Canada and the United States [and the EU]. [It is very difficult to discern which measures are discriminatory and which are based on well-defined human and animal health principles]. There is heavy emphasis on labelling procedures and approvals. The requirements for meat appear to be driven by the corresponding US domestic legislation viz. the US Meat Inspection Regulations, the US Wholesale Meat Act 1967, the US Food and Drug Administration [FDA] regulations and other USDA requirements.

New Zealand and Australia have a long record of difficult entry into the US meat market because of technical regulations of this sort. It has to be seen that such international regulations are driven by domestic lobby groups and by the pressure all the time to raise such standards. This process makes it difficult for well-organised exporting countries to meet standards for imported products not to mention those countries with poor facilities, lack of qualified staff, and inadequate representation abroad.

Currently, environmental groups in the US are holding up resolution by AQIS of problems associated with imports of timber in to the US.

New Zealand and Australia have responded to these concerns by becoming very active in international negotiations on the SPS Agreement. One well known authority talks of the G-8 group of countries that most actively participated in the negotiation of the SPS Agreement (Roberts 1998a). The countries were : Argentina, Australia, Canada, the EC, Japan, New Zealand, Thailand, and the United States. The author states that these countries have shown the most willingness to either unilaterally modify regulations to comply with the Agreement, or voluntarily modify regulations after technical bilateral exchanges.

New Zealand has also been involved in a series of exchanges with the EU over SPS matters (Petrey 1989). There has been a long history of negotiation since the Third Country Veterinary Directive was introduced involving conditions in slaughterhouses and worker hygiene. Current concerns involve equivalence for meat export slaughter house approval. We can expect a stiffening of EU attitudes in the future if the introduction of the Euro is anything to go by. Some commentators believe that the euro is a gigantic plot to anchor Germany within a broad European Union to prevent the re-emergence of power politics in Europe (Evening Post Jan 1 1999). The euro launch is the biggest shift in the world financial order since Nixon floated the \$US in 1973. " It is our joint aim to harness the potential in monetary union for economic and labour policy which will boost growth" says LaFontaine, Germany's Finance Minister.

## **Increased Participation Provisions in the WTO SPS Agreement**

Members of WTO have been aware for some time of the inequalities of the system and some of these concerns were addressed in the Uruguay Round. In the SPS Agreement:

`Members are instructed to take account of the special needs of developing countries, and in particular, least developed countries, in the development of SPS measures (Article 10);

To maintain opportunities for exports from developing countries, where the appropriate level of protection permits scope for the phased introduction of new SPS measures, longer periods should be given for products that are of special interest to developing countries;

The SPS Committee is permitted to grant developing countries time-limited exemptions from obligations under the Agreement, taking into account their financial, trade and development needs;

Members should encourage and facilitate the active participation of developing countries in international organisations such as Codex Alimentarius, OIE and IPPC;

Members are encouraged to provide technical assistance to other Members, in particular developing countries, for the purpose of allowing such countries to meet the level of SPS measures protection required in their export markets (Article 9).

Further, the Agreement permits additional time to developing countries to implement all or some of its provisions. Developing countries were permitted an additional two years to comply with all the provisions except those associated with transparency. Least developed countries were permitted an additional five years to comply with the Agreement in its entirety' (Henson and Loader 1998, p.11).

## **Evidence for Low Participation**

According to Henson and Loader (1998), the majority of low and middle income countries are members of the WTO, though the rate of membership (61%) is significantly lower than amongst upper middle or high income countries (79% and 92% respectively). Likewise, the majority of low and lower middle income countries are members of the three major international standards associations, although less than 30% are members of the WTO and all three of these organisations.

In terms of members with `national enquiry points' and `national notification agencies', only 53% of low and middle income countries have specified an enquiry point and only 51% have specified a national notification agency. These proportions include the 29 least developed countries that are not required to comply until year 2000. Given the fundamental importance of the transparency conditions to the working of the SPS Agreement, this indicates an important weakness in the participation of the developing countries.

In terms of the participation of developing countries in meetings of the SPS Committee in Geneva, almost 50% attended no meetings of the SPS Committee and less than 20% attended five or more meetings. In interpreting these figures it should be noted that many developing countries do not have permanent missions in Geneva and amongst those that do, one person is typically responsible for all WTO matters.

A number of countries have raised concerns about their ability to participate effectively in the SPS Agreement. They have suggested that the key issue is not whether they attend Codex, OIE, or IPPC or SPS Committee meetings but whether they are able to understand and contribute to the discussions that take place.

In terms of notifications of new standards or departures from international standards, only 29% of low and lower middle income countries had issued any notifications, whilst the notifications by these countries accounted for only 17% of the total. A number of developing countries have raised concerns about the nature of the SPS Agreement itself and how it is being implemented, with the suggestion that this also constrains the ability of developing countries to participate effectively in the Agreement. (Henson and Loader, *op cit*, pp.11-15).

### **Constraints on the Participation of Developing Countries in the SPS Agreement**

Henson and Loader (*op cit*, p.16) identify the following constraints to participation:

**SPS control systems:** Many developing countries have relatively unsophisticated SPS control systems. At the extreme, they may be non-existent, for example if SPS control measures are not applied. Typically, they are poorly resourced and lack effective systems of conformity assessment and/or enforcement;

**Awareness and understanding of the SPS Agreement:** There is evidence that many key agencies in developing countries are not aware of the nature and implications of the SPS Agreement. In part, this reflects the fact that WTO matters are typically the responsibility of ministries of commerce and trade, whereas SPS measures are typically managed by ministries of agriculture. Although the SPS Agreement Secretariat has provided technical assistance in an attempt to first improve awareness and then develop specific understanding of the Agreement, it is evident that much work remains to be done;

**Technical capabilities:** The scientific and technical capability of developing countries is typically less than that of developed countries. This includes infrastructure such as laboratory and research facilities as well as scientific and technical expertise. Problems are particularly acute in new or fast developing areas, a clear example is risk assessment.

**Organisational structures:** Effective participation in the notification procedures of the SPS Agreement requires efficient and effective communication and co-ordination between government departments. In many cases responsibilities are poorly defined and there is a lack of clearly defined communication channels. As a result, developing countries may require considerably more time than developed countries to consider and respond to regulatory proposals. (Henson and Loader 1998, p.16).

## Current WTO Response

In a recent document (WTO 1998), the secretariat has summarised the concerns identified by developing countries in the implementation of the SPS Agreement and their suggestions for possible means of alleviating these concerns. The concerns identified and proposed responses are:

1. Concern: the need to ameliorate the general understanding of the SPS Agreement.  
Response: increased use of training and technical assistance.
2. Concern: the need for a more specific understanding of the implementation of certain provisions of the SPS Agreement.  
Response: training in concepts of risk analysis, appropriate level of protection, equivalence and disease free areas.
3. Concern: difficulties with internal regulatory infrastructure.  
Response: need for internal reorganisation of agencies to cover food safety, animal health, and plant health.
4. Concern: countries have pointed at inadequate harmonisation of importing country requirements.  
Response: active participation of developing country officials at the different steps in the development of new standards.
5. Concern: difficulties with transparency and notification procedures.  
Response: more time for comment on notifications.
6. Concern: need for more clarity in SPS notifications.  
Response: provision of more information to developing countries. [underlining in document]

I find it a bit difficult to respond to these observations myself. They seem to be largely dealing with procedures and processes and nothing to do with principles. They certainly do not raise issues of discrimination (except in a broad way) against developing countries which is what one would expect. Most of these points are also picked up by Henson and Loader (op cit).

It appears to me that there is a reservoir of complaints that are yet to surface created by the very lack of participation discussed above. In the case of equivalence, there is an expectation that mutual recognition agreements can be readily negotiated, whereas in reality the exporting Member will encounter considerable handicaps in pressing its case (Swinbank 1998). For developing countries, in particular, the chore of objectively demonstrating that its SPS measures meet the importing Member's standards can quickly exhaust the exporter's technical capacity, and recourse to the disputes settlement procedure may well be beyond its means. Swinbank also notes that reform is likely to be slow. 'If a group of developing countries continue to view with distrust the relevance of the provisions on equivalence, and special and differential treatment, and their perception of a democratic deficit in the decision-making procedures of the international standard-making bodies, those concerns are likely to be pursued outside the SPS Committee; as are other countries' concerns about the *modus operandi* of the Dispute Settlement Body'.

## Reflections on Discrimination against Third Countries

1. The very nature of technical standards for trade in food products mitigates against countries with lower educational resources and control systems.
2. International standards are determined by the countries with the most resources and are driven by domestic concerns.
3. Technical standards are detailed, change with each product and country, and are basically difficult to harmonise.
4. International meetings are remote, expensive, and complicated by technical agendas.
5. Many countries appear to have been shut out of trade in temperate foodstuffs (though the evidence has not been collected directly).
6. There is a reservoir of discontent building up created by the participation problem and the small country problem.
7. Swinbank believes it will take some time for these problems to be resolved.

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