

Master of International Trade Policy and Law (MITPL 4)

Agriculture, SPS and TBT

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Monday 13 February 2017

Menu for this week

Monday: SPS

Tuesday: TBT

Wednesday: Agriculture

Thursday: Viet Nam

➤ **Friday 11:30: Climate Change and Trade**

Friday: Exams – and beyond

Menu for Today

- ✚ Quick presentations, Group formation, and
Final exam preparations

1. Introduction

Tea Break

2. SPS Agreement

- ✚ Questions and discussion

1. Introduction/Reminder: WTO in Six Slides

1. WTO – What's this?

- The WTO provides a forum for **negotiations and agreements** aimed at reducing obstacles to international trade, thus contributing to economic growth and development.
- The WTO also provides a **legal and institutional framework** for the implementation and monitoring of these agreements, as well as for **settling disputes** arising from their interpretation and application.
- Currently WTO = 17 **multilateral trade agreements** (and some more).
- Further info at the WTO website
(https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm)

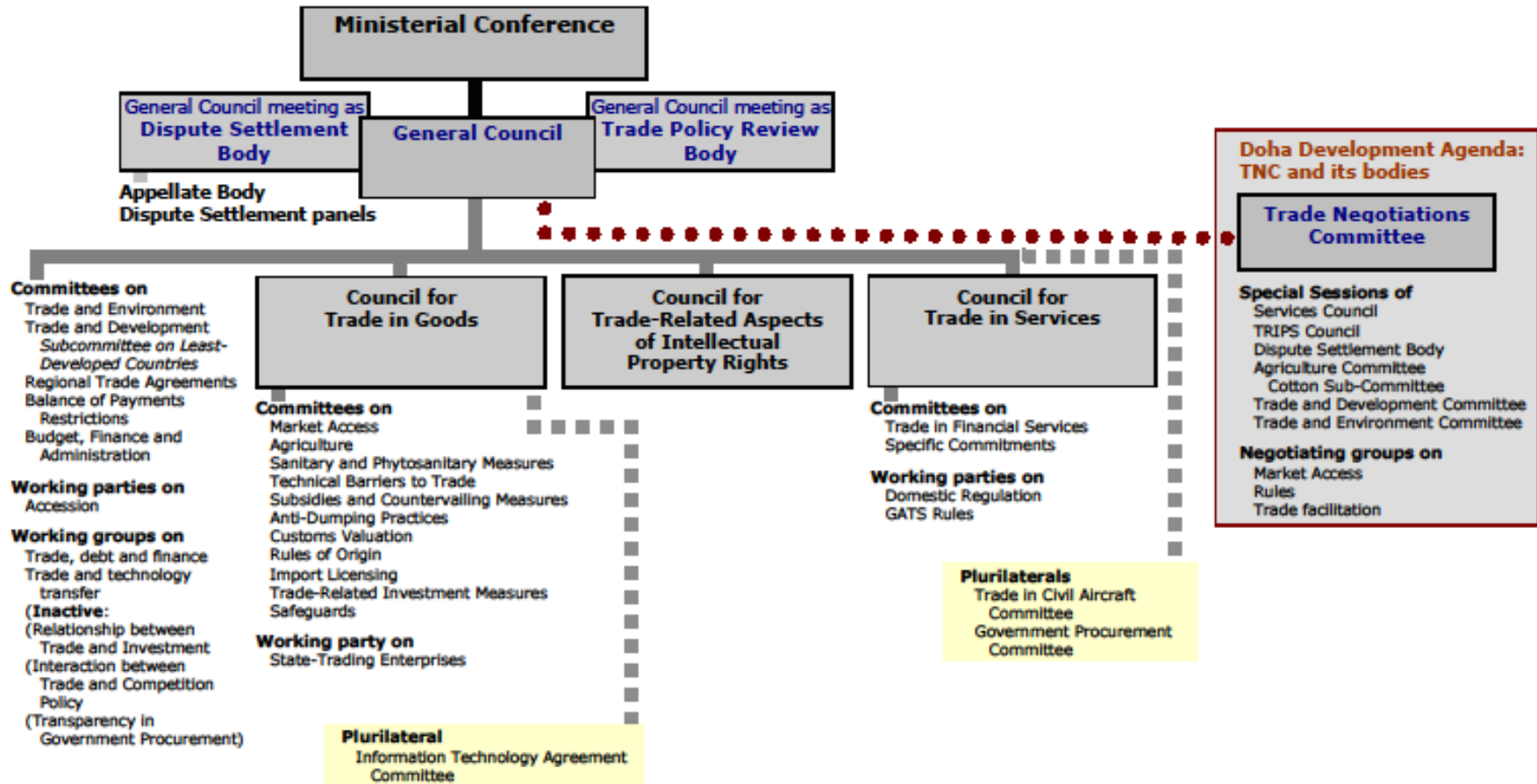
2. Basic structure of the WTO agreements

<i>Umbrella</i>	AGREEMENT ESTABLISHING THE WTO		
	Goods	Services	Intellectual property
<i>Basic principles</i>	GATT	GATS	TRIPS
<i>Additional details</i>	Other goods agreements and annexes (incl. Ag , SPS , and TBT)	Services annexes	
<i>Market access commitments</i>	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
<i>Dispute settlement</i>	Dispute Settlement Understanding (DSU)		
<i>Transparency</i>	TRADE POLICY REVIEWS		

3. WTO – Organigramme

WTO structure

All WTO members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, and plurilateral committees.



Key

- Reporting to General Council (or a subsidiary)
- Reporting to Dispute Settlement Body
- ■ ■ ■ ■ Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members
- ● ● ● ● Trade Negotiations Committee reports to General Council

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

4. WTO Slang

1. One big idea: **NON-DISCRIMINATION**

2. Two principles:

- 1) No discrimination **among** foreigners

Most Favoured Nation (MFN)

(GATT Art.I / GATS Art.II / TRIPS Art.4)

- 2) No discrimination **of** foreigners (vs nationals)

National Treatment (NT)

u^b GATT Art.III / GATS Art.XVII

With several **EXCEPTIONS**:
Discrimination is OK for

1) **MFN**:

through **RTAs** **if** covering “substantially all the trade”

(GATT Art.XXIV / GATS Art.V / NO exception for TRIPS!)

2) **NT**:

through **tariffs**

(GATT Art.II / Schedules)

- 3) and a few more ... (e.g. Art. VI, XIX, XX, XXI)

5. « GATT 1994 » and the New Rules for Non-Tariff Barriers

- One single objective : to eliminate **discrimination** (MFN/NT) and negative trade effects of NTB:
 - Prohibition of **quantitative restrictions** (Art.XI)
 - Non-discrimination through internal **taxation** (Art.III:2)
 - Non-discrimination through **regulatory measures** (Art.III:4)
- Marrakech Agreement (WTO) integrates Tokyo Round plurilaterals on SPS and TBT (« Single Undertaking »)



Can you still protect your producers? And your health, the environment, low wages, halal certification?

 Short answer: **YES, if** non-discriminatory!]

6. Like Products – a GATT reminder

«**Likeness**» under **GATT Art.III** is assessed in a case-by-case analysis, with **four factors**:

- 1) physical characteristics (properties, nature & quality of a product)
- 2) product end uses (and life cycles?!)
- 3) consumer tastes and habits (perception and behaviour)
- 4) tariff classification (HS)

Whether «non-product related PPM» are making products «like» is still debated.

This is a very important debate e.g. for climate change action, or for social standards differences!

Questions to you

1. What are the most important WTO/GATT rules?
2. What is the difference between protection and protectionism?
3. Why did Viet Nam join the WTO?

Policy Space vs Market Access

- More market access + more rules = less policy space
- Mutually agreed and ensured market access as a means for economic growth (and welfare) may conflict with policy space (and autonomy).
- The main reason for these rules lies in the natural tension between (i) domestic regulations to address health, environmental and other concerns and (ii) trade, especially in food and agricultural products.
- Alternatives:
 - Abide by the rules or pay the price for autonomy?
 - Negotiate or litigate?

2. The Sanitary and Phytosanitary Measures Agreement (SPS)

- ✚ A problem with two heads:
 - ✚ How do you ensure that your country's consumers are being supplied with import food that is safe to eat — “safe” by the standards you consider appropriate?
 - ✚ And at the same time, how can you ensure that strict health and safety regulations are not being used as an excuse for protecting domestic producers against your food exports?

Basic principles

Protection and Food Safety YES, Protectionism NO

- Measures necessary for the protection of human, animal or plant life or health from certain specified risks, for legitimate health reasons and pest prevention.
- Explicit reference to international standards (Codex for humans, OIE for animals, IPPC for plants)
- Negotiated with Agriculture Agreement, intended as a solution to the hormones dispute EC-US

Scope (Art.1.1 and Annex A para 1)

- The SPS Agreement “applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade”
 - Any such measures *aiming at* the protection of animal or plant life or health within the territory of the Member from risks arising from (a) pests (b) food additives (c) diseases carried by animals or plants; or (d) to prevent or limit “other damage” within the territory of the Member from the entry, establishment or spread of pests.
 - Includes all relevant regulations and procedures
- Whether a measure is an SPS measure depends on its *aim and purpose*.

Standard-Setting: Qualified Rights

- ✚ Countries have the **right to set their own standards**. But regulations must be based on science.
- ✚ They should be applied only to the extent necessary to **protect human, animal or plant life or health**.
- ✚ And they should **not arbitrarily discriminate** between countries where identical or similar conditions prevail.

Standard-Setting: Procedural Obligations

- ✚ The agreement includes provisions on **control, inspection and approval procedures**. Governments must provide advance notice of new or changed sanitary and phytosanitary regulations, and establish a national enquiry point to provide information. The agreement complements that on technical barriers to trade.
- ☀ Are biotech products in Vietnam
 - ☀ Legal?
 - ☀ GM imports subject to approvals?

Entities covered

- All central government bodies
 - “Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies” [and] “take such reasonable measures as may be available to them [to ensure that such bodies] “comply with the relevant provisions of this Agreement.”
(Art.13)
- What about private standards?! And SDT?

How do SPS rules treat risk?

❖ **Risk Analysis** = **Risk Assessment** + **Risk Management** (+ where necessary and justified: **Precaution**)

 There is **NO** Zero Risk!

Standard-Setting: Risk Assessment

- ✚ Member countries are encouraged to use **international standards**, guidelines and recommendations where they exist. When they do, they are unlikely to be challenged successfully in a WTO dispute.
- ✚ Members may also use higher standards if there is scientific justification. They can also set higher standards based on appropriate **assessment of risks** so long as the approach is consistent, not arbitrary. And they can temporarily apply the “**precautionary principle**”, a kind of “safety first” approach to deal with scientific uncertainty (Art. 5.7).

Standard-Setting: Risk Management

- ✚ The agreement still allows countries to use **different standards and different methods of inspecting products**. So how can an exporting country be sure the practices it applies to its products are acceptable in an importing country?
- ✚ **Equivalence**: If an exporting country can demonstrate that the measures it applies to its exports achieve the same level of health protection as in the importing country, then the importing country is expected to accept the exporting country's standards and methods.

The “Precautionary Principle”

- **Provisional Measures (Art.5.7):** allowed if (1) imposed in respect of a situation where *relevant scientific evidence is insufficient*; (2) adopted on the basis of *available pertinent information*; (3) not maintained unless the Member *seeks to obtain the additional information* necessary for a more objective risk assessment; and (4) be *reviewed* accordingly within a reasonable period of time. (*Japan–Agricultural Products II, US/Canada–Continued Suspension, Japan–Apples and EC–Biotech*)
 - The trigger for applicability of Art.5.7 is the *insufficiency of the scientific evidence*, not the provisional nature of the measure at issue.

The SPS Committee

- 3 annual meetings without binding decisions
- Consultations on «Specific Trade Concerns» (Art.12.1): useful « wailing wall »
- Adherence to international standards (Art.12.2-12.4)
- Periodic Self-Evaluation (Art.12.7)

- Viet Nam SPS Office, Room 105A, Block A10, Ministry of Agriculture and Rural Development, No. 2 Ngoc Ha Street, Ha Noi (<http://www.spsvietnam.gov.vn>)
- **Specific SPS Trade Concerns (as of 2015)**
(<http://spsims.wto.org/web/pages/search/stc/Search.aspx>)
 - Vietnam *Raising*: 0
 - *Addressed* to Vietnam: 1 (next slide)
 - *Supported* by Vietnam: 3 (Australian import restrictions on prawns and prawn products; EC Regulation No. 1099/2009 on humane treatment of animals at the time of slaughter; EU testing of pesticide residues)

Specific SPS Trade Concern raised against Vietnam (only 1)

- In March 2011, the United States (+ EU, AUS, NZ, Chile) expressed concerns about Viet Nam's implementation of a temporary ban on the importation of *offal products*. While Viet Nam had cited food safety concerns for the implementation of the ban, in spite of repeated requests from several trading partners, Viet Nam had neither notified the WTO of this measure, nor had it provided any scientific justification for the ban. (G/SPS/R/62, paras. 28-31)
 - (<http://spsims.wto.org/web/pages/edition/stc/SpecificTradeConcern.aspx?ID=1831889>)

The Standards and Trade Development Facility (STDF)



The screenshot shows a web browser window displaying the STDF website. The browser's address bar shows www.standardsfacility.org. The website features a large background image of a green agricultural field with a dirt road. The STDF logo is in the top left, and navigation links for 'ABOUT US', 'FUNDING OPPORTUNITIES', 'PROJECTS', 'THEMATIC ACTIVITIES', 'INFORMATION RESOURCES', and 'VIRTUAL LIBRARY' are in the top right. A search bar is also present. Below the navigation, a text block reads: 'The Standards and Trade Development Facility is a global partnership that supports developing countries in building their capacity to implement international sanitary and phytosanitary (SPS) standards, guidelines and recommendations as a means to improve their human, animal, and plant health status and ability to gain or maintain access to markets.' Below this, a blue banner states: 'NEXT DEADLINE FOR SUBMISSION OF FUNDING PROPOSALS: 26 DECEMBER 2014'. A section titled 'RECENT THEMATIC ACTIVITIES' contains four small images: a shipping port, fresh produce, fish in baskets, and people in a laboratory.

NEXT DEADLINE FOR SUBMISSION OF FUNDING PROPOSALS: 26 DECEMBER 2014

RECENT THEMATIC ACTIVITIES



<http://www.standardsfacility.org/>

SPS Dispute Settlement Cases relevant for Vietnam

1. *DS18 Australia-Salmon*
2. *DS26/48 EC-Hormones*
3. *DS320/321 US/CAN-Continued Suspension*
4. *DS76 Japan-Agricultural Products II*
5. *DS245 Japan-Apples*
6. *DS291-293 EC-Biotech*
7. *DS367 Australia-Apples*
8. *DS392 US-Poultry (China)*
9. *DS447 US-Animals (Argentina)*
10. *DS448 US-Fresh Lemon (Argentina)*

SPS in a nutshell

- Health protection measures can affect international trade (**aims and purpose**)
- In such cases the SPS Agreement applies
 - to the exclusion of TBT Agreement
 - SPS-compatible measures are presumably GATT 1994-compatible
- Right to take measures conditioned by **necessity, scientific base, non-discrimination**
- **Harmonisation** and Appropriate Level of Prot.
- **Risk assessment and risk management** (vs precaution if insufficient science)
- **Equivalence, Regionalisation, Controls, S&D**

Menu for Tomorrow

3. TBT Agreement (+ Presentation Ms. Uyen)

4. Application of the SPS and TBT Agreements

Tea Break

 (“mid-term test”) **SPS and TBT Quiz**

 Questions and discussion

