

Nicolas de Sadeleer

The PP in international law and related trade issues



Professor at St Louis
University Jean
Monnet Chair

www.tradeenvironment.eu

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PP in International Trade Law

1. WTO

+ A) SPS

+ B) TBT

2. TTIP

+ A) SPS

+ B) TBT

SPS

The WTO Agreement on the Application of SPS Measures

SPS does not require a full international harmonisation.

However, incentives to adopt SPS measures that conform to intl. standards such as the ones of Codex alimentarius (Article 3(3)).

- + irrebutably deemed to be necessary
- + rebutably deemed to be consistent with both SPS and GATT

SPS

- + Members remain free to set their own appropriate level of protection (ALOP)
- + Right to depart from intl. standards (Article 3(3)).

Article 2(2). Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence, except as provided for in paragraph 7 of Article 5.

SPS

RISK ASSESSMENT SUPPORTING MEASURES DEPARTING FROM INTERNATIONAL STANDARDS

Article 5(1). Members shall ensure that their sanitary or phytosanitary measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

SPS

NON DISCRIMINATORY APPROACH

- + **Article 5(5)**. With the objective of achieving **consistency** in the application of the concept of appropriate level of sanitary or phytosanitary protection against risks to human life or health, or to animal and plant life or health, each Member shall avoid **arbitrary or unjustifiable distinctions** in the levels it considers to be appropriate in different situations, if such distinctions result in discrimination or a disguised restriction on international trade.

SPS

PROPORTIONALITY TEST

+Article 5(6).when establishing or maintaining sanitary or phytosanitary measures to achieve the appropriate level of sanitary or phytosanitary protection, Members shall ensure that such measures are **not more trade-restrictive than required to achieve their appropriate level of sanitary or phytosanitary protection**, taking into account technical and economic feasibility.

PROVISIONAL MEASURES

Article 5(7). In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the **additional information** necessary for a more objective assessment of risk and **review** the sanitary or phytosanitary measure accordingly within a reasonable period of time.

DICHOTOMY BETWEEN SCIENCE AND NON-SCIENCE

Article 5(1). Sufficient scientific evidence. The departure from intl. standards must be justified by a RA.

RA/Annex (4) SPS Agr.// Demonstration of the risk in terms as of probability and not possibility.

Article 5(7). « pertinent available information »

The only evidence that is sufficient remains scientific

Insufficient information loses its scientific character

Article 5(1) – RA

United States — Continued Suspension of Obligations in the EC — Hormones Dispute

- + New EU RA (on 17 beta-oestradiol) challenging the former RA account for scientific evidence.
- + RA must be supported by COHERENT REASONING AND RESPECTABLE SCIENTIFIC EVIDENCE AND MUST BE OBJECTIVELY JUSTIFIABLE.
- + The conclusions of the RA must find sufficient support in the scientific evidence relied upon.

Article 5(7). SPS Provisional Measures

- + **Insufficiency** = « body of available scientific evidence does not allow, in quantitative or qualitative, the performance of an adequate RA » (Japan/Apple case and EC/Biotech cases).

United States — Continued Suspension of Obligations in the EC — Hormones Dispute

- + The AB had to address the issue whether Art 5(7) could be triggered where a RA fails to establish a **cause-effect relationship**.
- + **New scientific evidence casts doubts as to the validity of former scientific evidence.**
- + Article 5(7) encompasses new scientific evidence deemed to be **insufficient** because **inconclusive**.

TBT

TBT Agreement applies to technical regulations and standards (product characteristics, process and production methods related to product characteristics, terminology, symbols, packaging, etc.)

The Members to the TBT Agreement must notify their proposed technical regulations in two situations :

- a) There are no relevant international standards issued by international standardising bodies (ISO).
- b) Where the proposed technical regulation or proposed conformity assessment procedure **is not in accordance** with relevant international standards or relevant guides or recommendations issued by international standardising

TBT

The member sets its own ALOP, which may be zero risk.

- + necessary measures at the levels it considers appropriate,
- + measures necessary for the protection of its essential security interest.

No government should be prevented from adopting technical regulations and standards to fulfill a legitimate (Article 2,2).

SPS Chapter in the TTIP

Article 4(4). Each Party shall endeavour to ensure that products originating in the other Party that are subject to technical regulation can be marketed or used across all the territory of each Party on the basis of a single authorisation, approval or certificate of conformity.

TBT Chapter in the TTIP

+ Article 9(1). The importing Party shall accept sanitary and phytosanitary measures of the exporting Party as equivalent to its own if the exporting Party objectively demonstrates to the importing Party that its measure achieves the importing Party's appropriate level of protection.



conclusions



WASSILY KANDINSKY SQUARES WITH CONCENTRIC RINGS



+ desadeleer@fusl.ac.be

+ www.desadeleer.eu