INTERNATIONAL LEGAL FRAMEWORK
OUTLINE

1. International Regulatory Framework
2. The SPS Agreement
INTRODUCTION

• The regulatory framework that governs international trade comes under the broad umbrella of the World Trade Organization

• Established as a forum for governments to negotiate trade agreements, facilitate trade between countries and to reduce impediments to trade
WTO

• Established 1\textsuperscript{st} January 1995 (replacing GATT)

• Means to achieve objectives of WTO
  • Trade Liberalization
  • Reduction of tariffs and other barriers to trade and elimination of discriminatory treatment in international trade relations
GATT and SPS

• The GATT had provided some discipline to national food safety and animal and plant health protection measures which affect trade since its creation in 1948.

• Most favoured nation clause
• Principle of national treatment
GATT Exception

Countries could take measures to protect human, animal, or plant life or health as long as these did not unjustifiably discriminate between countries where the same conditions prevailed or were not designed to be a disguised restriction to trade.
WTO Agreement on the application of Sanitary and Phytosanitary measures

• WTO-SPS agreement was negotiated to facilitate trade while allowing countries to put in place measures to protect health.

• It sets out the rights and responsibilities of WTO Members that wish to take action to restrict imports in order to protect human, animal or plant life or health.
WTO-SPS Agreement

• **SANITARY** – Relating to Animals (Food safety animal health)

• **PHYTOSANITARY** - Relating to plants (Plant health)
WTO-SPS Agreement

• The agreement requires, however that:

1. There be **scientific and technical evidence** that a **potential risk** to human, animal or plant health **exists** and that

2. The measures are applied in such a way as to not overly interfere with trade
SPS Measures

SPS measures may take many forms

Examples:

• Inspection of products
• Requiring that products come from a pest/disease free area
• Specific treatment or processing of products
KEY PROVISIONS of the WTO-SPS AGREEMENT
KEY PROVISIONS

• Sovereignty
• Technical justification
• Harmonization,
• Risk assessment
  Equivalence
• Least Trade
  Restrictive

• Transparency.
• Regionalization
• Appropriate level of protection
• Technical assistance/special treatment
• Control, inspection and approval procedures
• Consistency
Key Provisions: **Sovereignty**

An importing country has the right to protect human, animal and plant life and health from the introduction of pests and diseases into their territories.
Scientific justification Articles 3 & 5

• There must be **scientific evidence** to indicate that there is a risk to animal or plant life or health
Key Provisions: **Scientific justification**

Measures can be scientifically justified in one of **two ways**

1. Conduct a scientific **risk assessment**
   Or
1. Based on **international standards**
Whose Standards?

WTO SPS Agreement
The ‘3 sisters’
Standard-setting organisations

- **food safety**
  - CODEX
  - [Image of a burger]

- **animal health and zoonoses**
  - OIE
  - [Image of a chicken]

- **plant health**
  - IPPC
  - [Image of a tree]
Harmonization

• establishment,
• recognition and
• application of

Common SPS measures by different countries.
Key Provisions: Equivalence

• An importing country should recognize as equivalent an alternative measure that achieve the same level of protection.
Assessment of Risk  

*Article 5.1*

• Members **shall** ensure that their SPS measures are **based on**

•—an assessment, as appropriate, of the risks to human, animal or plant life or health,

•—taking into account risk assessment techniques developed by the relevant international organizations.
Assessment of Risk Article 5.1 -5.2

• non-use of international standard requires risk assessment
• no need to carry out “own” risk assessment
• risk assessment need not be quantitative
• risks must be ascertainable, not just theoretical
• can go beyond controlled lab conditions, assess risk in real world
• risk assessment can consider divergent, minority scientific views
Minimizing Negative Trade Effects *Articles 5.4*

Members *should*,

when determining the appropriate level of sanitary or phytosanitary protection

take into account the objective of *minimizing negative trade effects*
Consistency *Articles 5.5*

Members *shall*

avoid *arbitrary* distinctions

in appropriate level of SPS protection (ALOP) considered in *different* situations

if distinctions result in *discrimination* or disguised restrictions on trade
Least trade restrictive Article 5.6

• Once you have determined the NEED for
  • an SPS measure

  AND

• Have determined the LEVEL of protection needed

  must select

• least-trade restrictive measure to achieve ALOP
• (technically and economically feasible)
Transparency

• Governments are required to notify other countries of any new or changed sanitary and phytosanitary requirements which affect trade

• Governments assume an obligation of Notification:
  • To the WTO
  • To other member countries
Risk assessment – exception

Article 5.7 – provisional measures

Members may provisionally adopt SPS measures
✓ when relevant scientific information is insufficient
✓ on the basis of available information

In such circumstances, Members shall
✓ seeks to obtain additional information to assess risk
✓ review the measure within a reasonable period of time
Thank You