

A popular guide for activists

Sanitary and Phytosanitary Measures

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Sanitary and Phytosanitary Measures

Sanitary and phytosanitary measures (SPS), as well as other technical, quality, and environmental standards can be, and have been, used as barriers to trade. During the Uruguay Round of two separate documents were formulated:

- The first was the Agreement on SPS measures, directly related to human, plant and animal health issues linked to trade in agricultural products.
- The second was the Agreement on Technical Barriers to Trade (TBT), which covered technical regulations and standards, and conformity assessment procedures.

Sanitary and Phytosanitary Measures

- In order to reduce arbitrary conduct of trade regulations, the SPS Agreement contains the **concept of transparency**, which requires governments to provide information regarding their sanitary and phytosanitary measures and any changes to these measures (**Article VII of the SPS Agreement**). The Agreement also promotes the concept of **harmonization** (**Article III**).
- Although the SPS Agreement does not impose any international sanitary and phytosanitary standards, it encourages governments to "harmonize" their SPS measures with the existing international standards developed by organizations such as the Codex Alimentarius Commission and the International Office of Epizootics.

Sanitary and Phytosanitary Measures

- The SPS Agreement elaborates the procedural framework in which governments deal with their sanitary and phytosanitary issues. The **dispute settlement system (Article XI)**, the **risk assessment procedures (Article V)**, and the establishment of the **SPS Committee (Article XII)** are aimed at creating a more transparent and efficient food safety and agricultural trade regime. Finally, the SPS Agreement provides some **preferential arrangements** for developing countries.

Sanitary and phytosanitary measures (or SPS measures) are those rules, regulations and policies that countries put in place to protect the health and safety of humans, animals and plants. They include such things as food inspection rules and rules affecting the importation of plants and animals.

The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

Members,

Reaffirming that no Member should be prevented from adopting or enforcing measures necessary to protect human, animal or plant life or health, subject to the requirement that these measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between Members where the same conditions prevail or a disguised restriction on international trade;

Desiring to improve the human health, animal health and phytosanitary situation in all Members;

Noting that sanitary and phytosanitary measures are often applied on the basis of bilateral agreements or protocols;

Desiring the establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in order to minimize their negative effects on trade;

Article 2: Basic Rights and Obligations

1. Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.
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.

3. Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.
4. Sanitary or phytosanitary measures which conform to the relevant provisions of this Agreement shall be presumed to be in accordance with the obligations of the Members under the provisions of GATT 1994 which relate to the use of sanitary or phytosanitary measures, in particular the provisions of Article XX(b).

Article 3 : Harmonization

1. To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist, except as otherwise provided for in this Agreement, and in particular in paragraph 3.
2. Sanitary or phytosanitary measures which conform to international standards, guidelines or recommendations shall be deemed to be necessary to protect human, animal or plant life or health, and presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994.

3. Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification, or as a consequence of the level of sanitary or phytosanitary protection a Member determines to be appropriate in accordance with the relevant provisions of paragraphs 1 through 8 of Article 5.(2) Notwithstanding the above, all measures which result in a level of sanitary or phytosanitary protection different from that which would be achieved by measures based on international standards, guidelines or recommendations shall not be inconsistent with any other provision of this Agreement.

4. Members shall play a full part, within the limits of their resources, in the relevant international organizations and their subsidiary bodies, in particular the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention, to promote within these organizations the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures.
5. The Committee on Sanitary and Phytosanitary Measures provided for in paragraphs 1 and 4 of Article 12 (referred to in this Agreement as the "Committee") shall develop a procedure to monitor the process of international harmonization and coordinate efforts in this regard with the relevant international organizations.

Developing Countries and SPS

Developing countries have complained over the years that:

- SPS measures and inspections tend to become stricter when there are agricultural surpluses in the domestic markets of industrialized countries.
- They have also criticized the long periods required by industrialized countries to complete the pest and disease studies needed to allow the import of new agricultural products from developing countries.

Finger and Schuler (2000) have calculated the relatively important budgetary costs that some of the operational requirements of 33 different WTO commitments (and not only the SPS Agreement) may impose on low income developing countries. WTO regulatory issues should be in alignment with the real developmental needs of developing countries, separately from compliance with WTO legal texts.

For instance, SPS issues related to human health should be approached as part of the improvements needed to protect the local population from food-borne diseases and not only as a way to comply with trade regulations.

As a general proposition, it seems imbalanced to ask low-income countries to devote to the administrative machinery required to implement WTO obligations resources that represent, as a percentage of the GDP, a larger share than what industrialized countries assign to similar functions.

Probably the most adequate approach for developing countries is to insist on receiving the technical and financial assistance considered in the SPS Agreement (Articles 29 and 30) to build and improve their own systems of quality control and health and safety standards centered on their own needs to improve health and sanitary domestic conditions, and the regulatory burdens of compliance should, at the very least, not represent shares of the GDP larger than what industrialized countries devote to similar functions.

Impact of the SPS Agreement: Case of USA

The United States, as the largest agricultural exporter, has benefited from the SPS Agreement since it helps American agricultural interests by reducing arbitrary and unscientific trade barriers in foreign markets. For example, the U.S. Department of Agriculture (USDA) regards the conclusion of the SPS Agreement as a major victory against unfair trade restrictions. In fact, a U.S. farm lobby insisted that Australia and New Zealand open their markets of fruit and poultry respectively, by relaxing their sanitary and phytosanitary measures that are not scientifically justified.

A more conspicuous example of the U.S. position in sanitary and phytosanitary issues is the EU ban on U.S. beef ingested growth hormones from 1989. This was expected to be "a test case for the Uruguay Round SPS Agreement." In September 1997, the WTO dispute panel ruled in favor of the United States, insisting that the EU import ban would violate the SPS Agreement since it did not provide scientific ground. Despite subsequent EU appeals against this decision, the WTO Appellate Body again supported the U.S. position in January 1998. The Appellate Body, however, took a more conciliatory position towards the EU, adding that the EU could establish a higher standard to protect consumers even if its proof is not unanimously shared among the scientific community.

This recent decision encouraged the **EU** to propose that the revised SPS Agreement include consumer preference as the justification of SPS measures. Consequently, EU interests appear incompatible with the existing provision of the SPS Agreement which U.S. export sectors have supported.

It is not surprising, however, that environmentalists and consumer activists in countries with "high" standards are generally fearful of any international attempts which might result in lowering of their standards. In fact, U.S.-based NGOs have recently filed their comments on the SPS Agreement. They recommended that international standards mentioned in the Agreement constitute "floors, not ceiling(s)," that the WTO allow public participation in SPS deliberations, and that the role of Codex Alimentarius and other standards be re-examined.

Although these groups do not necessarily oppose the SPS Agreement, it is essential for the U.S. government to accommodate some activist voices in order to strengthen its position on trade liberalization. It can do so by communicating that the U.S. safety standards, which are scientifically justified, provide sufficient protection for consumers. According to the USDA, the U.S. regulatory system currently assures consumer safety through pre-market assessment and approval, production monitoring, statistical sampling and inspection of imported products. It also maintains that all trade agreements which the U.S. signs guarantees the sovereign right to set its own level of protection for human, animal, and plant health.

WHAT USA IS DOING TO OTHERS

The 'Sunshine Project', a non-profit group based in Seattle and Hamburg, has complained that the United States government was planning the testing and widespread application of microbial fungus to attack plants producing coca, opium poppy and cannabis (marijuana). This microbial fungus use, the group notes, is prohibited in the United States itself, while the UN General Assembly in 1998 had specifically turned down proposals for use of pathogens to kill narcotic crops.

WHAT USA IS DOING TO OTHERS

The microbial pathogens, the Sunshine Project says, poses risks to human health and to biodiversity, and its use is being promoted abroad, in Asia and the Amazon regions, by the United States as part of its war against narcotics. The pathogens have been tested only for their effectiveness against 'weeds', and not for safety for human health and environment grounds.

WHAT USA IS DOING TO OTHERS

The NGO group says that the US has begun conducting test programs on fungi (Pleospora sp. and others) to kill opium poppy and marijuana. In the Andes and western Amazon, the US is planning testing and widespread application of a fungus that attacks coca -- Fusarium oxysporum, f.sp. Exythoroxilum.

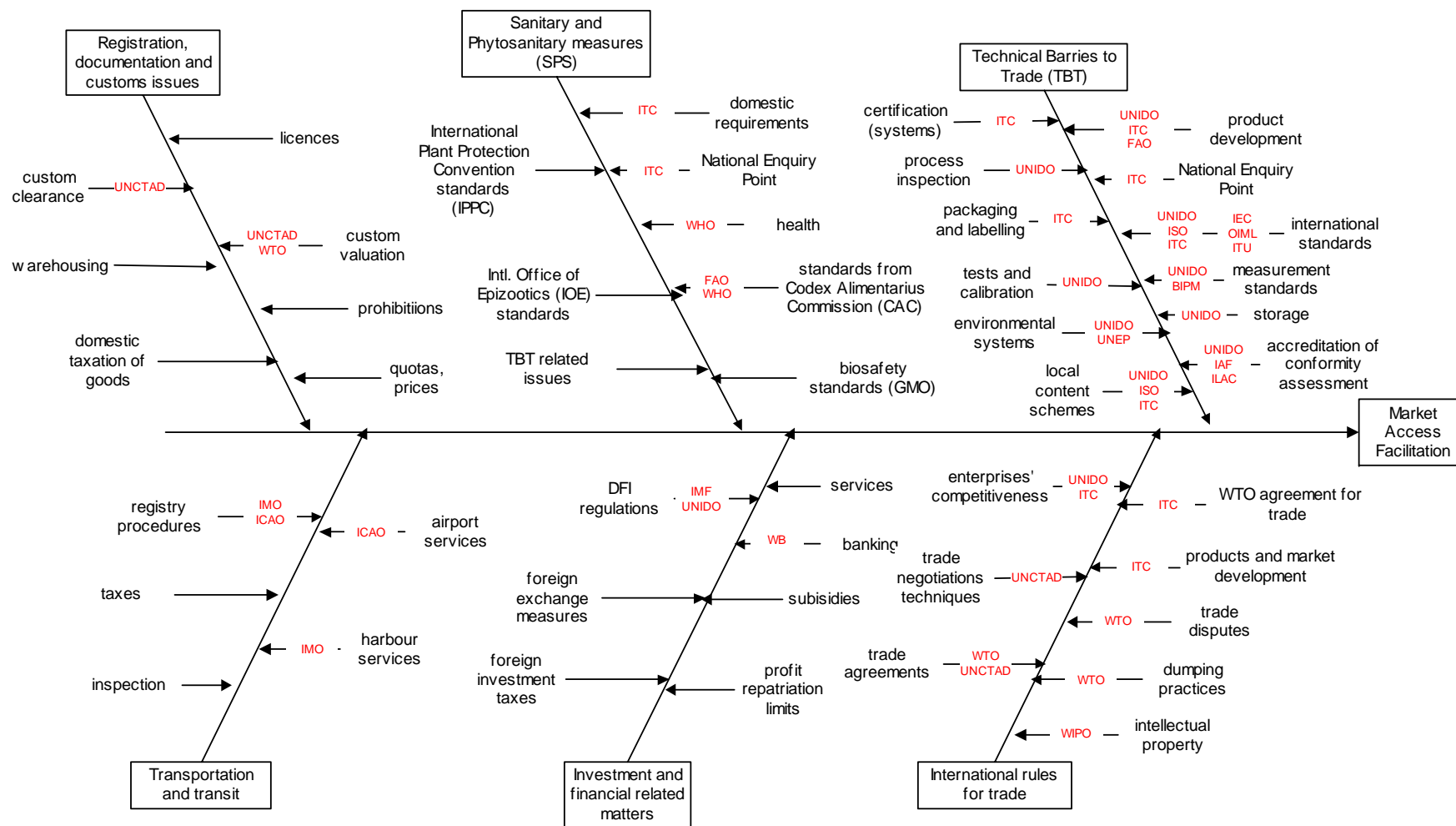
Case of Victorian Lake Fish industry *Situation Before*

- **Major fish industry (Nile perch) developed around Lake Victoria, shared by Tanzania 51%, Uganda 43% and Kenya 6%**
- **Revenues from exports exceeded USD 200 million/year**
- **Employment for almost 500.000 people**
- **Favorable ground for local suppliers and complementary industries.**

Case of Victorian Lake Fish industry *Effect of Lake Fish Poisoning*

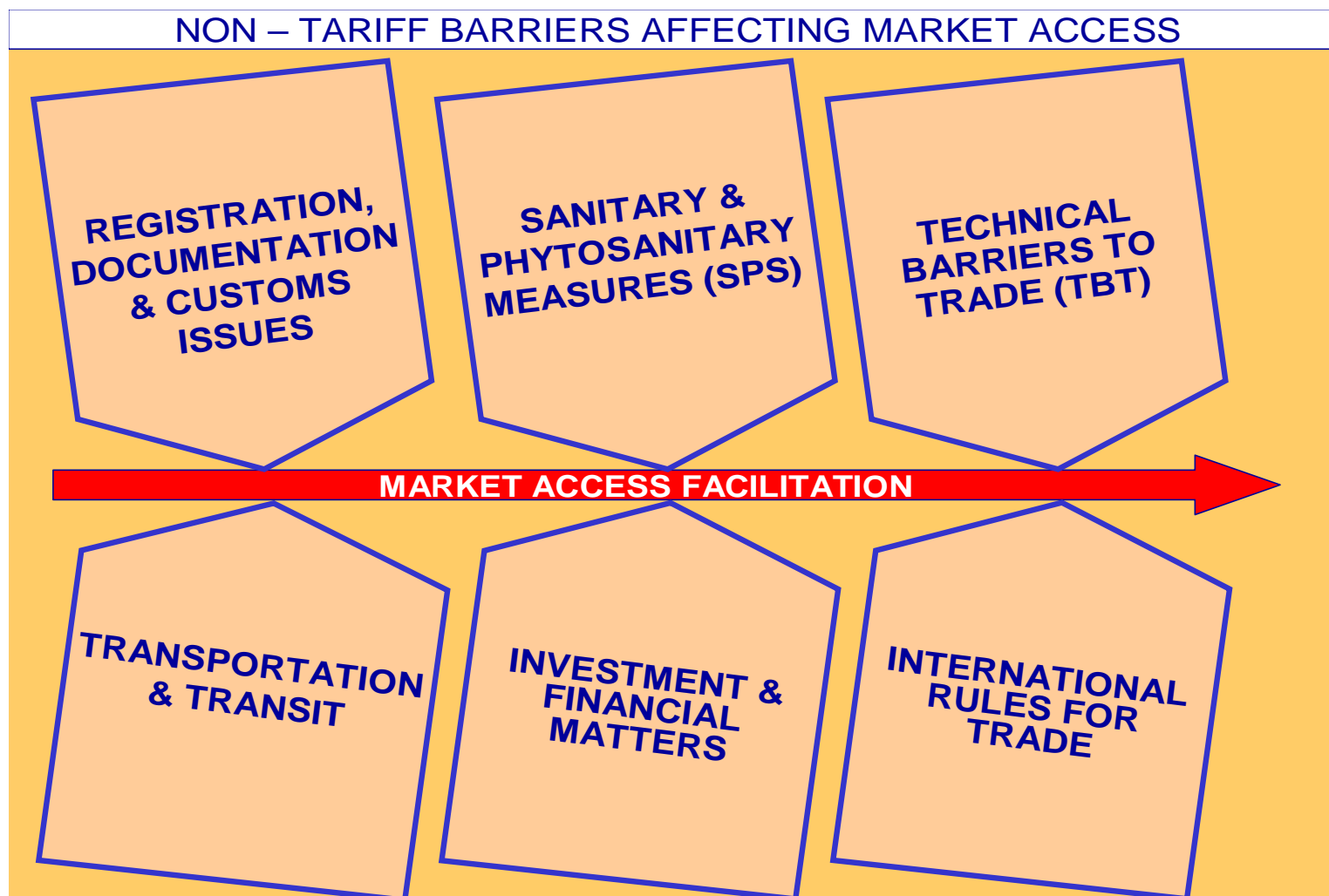
- **EU export ban imposed in 1999**
- **Fish exports dropped by 50% in Tanzania and Uganda**
- **30% of workers lost their jobs**
- **Most of the fish factories closed or worked far below capacity**

NON-TARIFF BARRIERS AFFECTING MARKET ACCESS



Graphic 1 - Means-End diagram for market access facilitation

UNIDO - 22/Apr/02



SPS & CAPACITY SHORTFALLS of LDCs

Supply unable to produce goods of competitive quality and quantity.

Standards Often incompatible with international standards.

Metrology and testing No recognized laboratory capacities.

Trade Little say in international trade agreements

Marketing and export promotion Unable to identify and attract target consumers

STANDARDS ARE HIGHER THAN REQUIRED

EU Standards 1.4 DEATHS PER BILLION (per year)

African Export LOSS of Exports BY 64%=\$ 670 million

STANDARDS ARE EXPENSIVE TO MEET

**SPS
IMPLEMENTATION** \$ 150 million to bring in needed
institutions for Compliance

STANDARDS IN BANGLADESH

**Bangladesh's
Testing
Capacity for
Fishery**

**Hazard Analysis and Critical Point
(HACP) EU and US standard**

***This the exporters had to develop under
the EU pressure.***

Special and differential (s&d) treatment for developing countries??

(SANITARY, PHYTOSANITARY MEASURES COMMITTEE 1-3 APRIL 2003)

The SPS Committee adopted, in principle, a procedure proposed by Canada to ensure greater responses to specific requests for special and differential treatment, and transparency regarding these responses.

When the committee reviewed recommended transparency procedures in March 2002, Egypt proposed adding an "S&D box" to the form used for notifying SPS measures to the WTO, so that the notifying government could spell out any special treatment for developing countries, such as technical assistance, or more time for these countries to adjust to the new requirements.

At the June 2002 meeting, Canada suggested as an alternative that members agree to consultations whenever a developing country has identified a problem relating to a notified SPS measure. The results of this consultation would then be notified to the SPS Committee.

THANK YOU!!

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