

7 January 2011

## Sanitary and Phytosanitary Measures

### Part 1

*We are commencing a new series on understanding the WTO Agreement on Sanitary and Phytosanitary Measures (SPS) from the business perspective.*

The SPS agreement enshrines the steps taken by WTO members to encourage free and fair trade by providing for minimizing the implementation of SPS measures by countries in a manner which could result in trade barriers.

#### What is the SPS Agreement?

In general terms, the *WTO Agreement on the Application of Sanitary and Phytosanitary Measures* defines the rights and obligations of the Member countries of the World Trade Organization in relation to their use of food safety requirements, and biosecurity controls.

“Sanitary measures” are concerned with the life or health of humans or animals; “phytosanitary measures” are concerned with plant health.

It is one of two WTO agreements that deal with technical measures. The other is the WTO Agreement on Technical Barriers to Trade, which covers any technical measures that are not specifically covered by the SPS Agreement.

#### The Agreement ...

... reaffirms that WTO Members can adopt and enforce measures necessary to protect human, animal or plant life or health.

... establishes rules to ensure that such measures are not used so as to arbitrarily or unjustifiably restrict trade.

The preamble to the SPS Agreement says 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 con-

ditions prevail or a disguised restriction on international trade”.

The purpose of the Agreement is

“... 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”.

#### Why have the Agreement?

- ◆ SPS measures, like food standards and quarantine controls, can have direct and indirect effects on the possibilities for trade — ranging from additional costs to outright bans.
- ◆ Agricultural, fishery and forestry products are likely to be most affected.
- ◆ Trade in such products is politically sensitive.
- ◆ Inclusion of agricultural products in the Uruguay Round negotiations meant, that governments might try to use SPS measures as an (illegitimate) alternative to tariffs or quotas as a way of limiting import competition against domestic producers. — The SPS Agreement sets out rules to prevent such abuse.

The Uruguay Round included agricultural products within the scope of a GATT negotiation for the first time. Competition from overseas against domestic producers of agricultural products is a very sensitive political issue in many countries.

It was foreseen that even if agreement was reached to reduce tariff levels and quantitative restrictions on trade in agricultural products, trade might not actually be able to increase because of other technical barriers to trade like food safety standards or quarantine measures on imported goods.

Indeed, such sanitary/phytosanitary barriers might be strengthened by some countries to prevent trade competition against their domestic agricultural industries.

The relevant provisions of GATT 1947 could not deal with this threat effectively. The right of a country to protect itself against sanitary/phytosanitary risks was acknowledged in the General Agreement, but the relevant provision was not specific enough to provide an adequate discipline over the application of sanitary and phytosanitary measures. The issues were sufficiently important and complex to require the development of a new, free-standing agreement on the subject.