

Resolving Trade Disputes Arising from Trends in Food Safety Regulation

The Role of the Multilateral Governance Framework

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Issue: There were substantial new developments in food safety regulation in many countries during the past decade, including new and more stringent standards for many hazards. Some new regulatory developments may mitigate potential barriers to trade, while others may hinder trade. In 1995, members of the World Trade Organization (WTO) agreed on a set of multilateral rules that would recognize the legitimate need for countries to adopt sanitary and phytosanitary (SPS) regulations while establishing a framework to reduce their trade-distorting aspects. Under these rules, WTO members have reported numerous complaints related to food safety regulations. Resolving these conflicts is one of the biggest challenges facing the international trade system. A perceived failure to accommodate legitimate differences in food regulations could increase opposition to trade liberalization in general.

Background: New approaches to food safety regulation emerged in industrialized countries during the 1990s following changes in science, markets, and consumer awareness (see box). The most significant trends include the growing use of scientific risk analysis as a basis for food regulation and the adoption of the Hazard Analysis and Critical Control Point (HACCP) system as a basis for new regulation, often of microbial pathogens in food.

These new regulatory trends have several implications for how food safety standards affect international trade. For example, new kinds of regulation or public intervention that focus on voluntary information provision (e.g., provision of certification for certain kinds of production practices) can facilitate trade, even when standards and requirements differ among countries. Other food safety trends can impede trade. For example, where new process standards set out requirements for how a food is produced, it can be

Trends in food safety regulation in industrialized countries in the 1990s

- The growing use of risk analysis,
- Having public health as the primary goal of food safety regulation,
- Recognizing that a farm-to-table approach is often desirable for addressing food safety hazards,
- Adopting the Hazard Analysis and Critical Control Point (HACCP) system as a basis for new regulation often of microbial pathogens in food,
- Increasing the stringency of standards for many food safety hazards,
- Adding new and more extensive regulation to handle newly identified hazards, and
- Improving market performance in food safety through provision of information to consumers.

difficult to determine if imported products are as safe as those produced domestically. Whether certain kinds of process requirements are necessary or sufficient to achieve an equivalent risk outcome can be subject to dispute.

Coincident with these trends in regulation, WTO members negotiated an Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) to provide a framework for determining the legitimacy of SPS measures that restrict trade and for resolving potential trade conflicts. The SPS Agreement requires members to notify the WTO of proposed changes in regulations. This enables trading partners to raise questions or objections to the notified changes. These complaints provide some evidence of the extent to which new food safety regulations have created barriers to trade.

Findings: WTO members submitted more than 2,400 SPS notifications to the WTO between 1995 and 2001. WTO members have taken advantage of this notification process, registering 187 complaints in the SPS Committee since 1995. More than half of these complaints (108) were related to human health measures, including both food and animal feed regulations. Developed countries were most often the source (68 percent) as well as the target (67 percent) of complaints that identified these regulations as trade impediments.

The commodity/hazard sources for complaints provide some insight into tensions over regulations in international agricultural markets (see table). Complaints related to the regulation of encephalopathies, primarily bovine spongiform encephalopathy (BSE), accounted for nearly half of the objections to food safety regulations since 1995, indicating the significant disruption to international trade caused by BSE outbreaks. BSE outbreaks account for the high number of complaints related to animal products.

WTO members have averted, diffused, and resolved a number of food-safety-related disputes under the terms of the SPS Agreement since 1995. The Agreement's requirement that measures be based on scientific risk assessment has been key. However, a few disputes remain unresolved because of disagreement over the role that other factors,

such as animal welfare, should play in food safety policies. WTO members have occasionally been successful in lowering the transaction costs of trade through agreements that recognize the equivalence of trading partners' measures and adoption of international standards. More widespread use of equivalence agreements is hampered by their significant administrative burden. The impact of international standards on trade has been limited by the lack of up-to-date standards in some cases. The generality of some international standards, which allows a number of different national approaches to implementing them, also limits their impact on trade. The WTO and other institutions continue to work on an array of projects, such as identifying priorities for technical assistance for developing countries, that can help countries satisfy the food safety objectives of importing countries while increasing trade.

Information Source:

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Distribution of complaints related to human health measures in the WTO's SPS Committee, 1995 - 2001¹

| Commodity | Complaints against measures regulating: | | | | | | | Total |
|--------------------------------|---|----------------|---------------------|-------------------------|---------------------|--------------------|--------------------|------------|
| | TSEs ² | Food additives | Foodborne pathogens | Toxins and heavy metals | Veterinary residues | Pesticide residues | Other ³ | |
| Multiple animal products | 44 | — | — | 8 | — | — | — | 52 |
| Meat and meat products | 4 | — | 8 | 2 | 2 | — | — | 16 |
| Multiple agricultural products | — | 1 | — | 13 | — | — | 2 | 16 |
| Dairy/eggs | — | — | 6 | 1 | — | — | 2 | 9 |
| Processed products | — | — | — | 5 | — | 1 | 3 | 9 |
| Feedstuffs | 2 | — | — | 1 | 2 | — | — | 5 |
| Horticultural products | — | — | — | — | — | 1 | — | 1 |
| Cereals | — | — | — | — | — | — | — | 0 |
| Total | 50 | 1 | 14 | 30 | 4 | 2 | 7 | 108 |

¹Entries exclude "repeat interventions" made by WTO members who registered complaints against the same measure more than once.

²Transmissible spongiform encephalopathies (TSEs) include bovine spongiform encephalopathy (BSE).

³Complaints related to measures that regulated multiple hazards or genetically modified products, or had unknown objectives.

Source: WTO Summaries of the Meetings of the Committee on Sanitary and Phytosanitary Measures, G/SPS/R series, 1995-01 and authors' calculation.

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