

# CRS Report for Congress

## Sanitary and Phytosanitary (SPS) Concerns in Agricultural Trade

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Prepared for Members and  
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## Summary

Sanitary and phytosanitary (SPS) measures refer to any of the laws, rules, standards, and procedures that governments employ to protect humans, other animals, and plants from diseases, pests, toxins, and other contaminants. Examples of SPS measures include meat and poultry processing standards to reduce pathogens, residue limits for pesticides in foods, and regulation of agricultural biotechnology.

SPS measures can be barriers to trade in agricultural, food, and other products, according to the World Trade Organization (WTO) and others. Notable U.S. disputes have included a European Union (EU) ban on U.S. meats treated with growth-promoting hormones, which a WTO dispute panel ruled was not supported by a risk assessment; and an EU moratorium on approvals of biotechnology products. Foreign countries have often objected to various U.S. SPS measures as well.

Multilateral trade rules allow governments to adopt measures to protect human, animal, or plant life or health, provided that they do not discriminate or use them as disguised protectionism. This principle was clarified in 1994 by WTO members' approval, along with the other so-called Uruguay Round Agreements, of the Agreement on the Application of Sanitary and Phytosanitary Measures. This document sets out the basic rules for ensuring that each country's food safety and animal and plant health laws and regulations are transparent, scientifically defensible, and fair. The United States also has signed, or is considering, numerous regional and bilateral free trade agreements (FTAs) that may contain SPS language.

The United States participates actively in the three major international scientific bodies designated by the WTO to deal with SPS matters: the Codex Alimentarius Commission for food safety, the Office of International Epizootics (OIE) for animal health, and the International Plant Protection Convention (IPPC) for plant health. These bodies meet often to discuss threats to human and agricultural health, evaluate SPS-related disputes, and develop scientifically based SPS standards, which can provide guidance for countries formulating their own national SPS measures.

Although U.S. WTO officials frequently cite the benefits of SPS cooperation under trade agreements, some, among them food safety and environmental advocacy organizations, have been skeptical. They have argued that implementation of the agreements can result in "downward harmonization" rather than upgraded health and safety standards. Defenders counter that trade rules explicitly recognize the right of individual nations to enact stronger protections than international guidelines if they believe they are appropriate and are justified by scientific risk assessment.

In Congress, which must approve legislation if a trade agreement is to be implemented, many Members are interested in how the FTAs might address SPS matters. Some Members may be concerned that as trade agreements lower agricultural tariffs, more countries may turn to SPS measures to protect their farmers from import competition. Also, U.S. SPS rights and obligations are relevant as the 110<sup>th</sup> Congress considers new measures to more closely regulate imported foods.

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# Sanitary and Phytosanitary (SPS) Concerns in Agricultural Trade

## What Are Sanitary and Phytosanitary Measures?

Sanitary and phytosanitary (SPS) measures refer to any of the laws, rules, standards, and procedures that governments employ to protect humans, other animals, and plants from diseases, pests, toxins, and other contaminants. Examples of common SPS measures include meat and poultry processing standards to reduce pathogens, residue limits for pesticides in foods, fumigation requirements for grains and wood packing materials to kill pests, restrictions on food and animal feed additives, and regulation of agricultural biotechnology, to name a few.

International trade rules recognize the rights and obligations of governments to adopt and enforce such requirements. These rules are spelled out primarily in the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). A WTO fact sheet, however, notes that countries can wield SPS measures as barriers to trade in agricultural, food, and other products:

Sanitary and phytosanitary measures, by their very nature, may result in restrictions on trade. All governments accept the fact that some trade restrictions may be necessary to ensure food safety and animal and plant health protection. However, governments are sometimes pressured to go beyond what is needed for health protection and to use sanitary and phytosanitary restrictions to shield domestic producers from economic competition. Such pressure is likely to increase as other trade barriers are reduced as a result of the Uruguay Round agreements. A sanitary or phytosanitary restriction which is not actually required for health reasons can be a very effective protectionist device, and because of its technical complexity, a particularly deceptive and difficult barrier to challenge.<sup>1</sup>

Technical barriers to trade (TBTs) are a related but different category of potential trade barriers. TBTs also are used by governments to regulate markets, protect consumers, and preserve natural resources, but not all TBTs are agricultural: automobile safety standards, cigarette labeling, and pharmaceutical regulations are examples of nonagricultural measures. Examples of TBTs that may affect trade in agricultural and food products include food ingredient or labeling requirements, nutrition claims, quality attributes, animal welfare rules, and packaging regulations.<sup>2</sup>

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<sup>1</sup> Excerpted from *Understanding the WTO Agreement on Sanitary and Phytosanitary Measures*, at the WTO website, [[http://www.wto.org/english/tratop\\_e/sps\\_e/spsund\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/spsund_e.htm)]. The WTO is the global organization that administers the internationally agreed-upon rules of trade between nations.

<sup>2</sup> A different WTO Agreement on Technical Barriers to Trade covers TBTs, including those (continued...)

As trade between two countries expands, more opportunities for disputes may arise. More than 60% of all U.S. agricultural trade in FY2007 was with just five other markets: Canada (two-way trade of \$27.9 billion), the European Union (EU; \$23.1 billion), Mexico (\$22.2 billion), Japan (\$10.1 billion) and China (\$9.9 billion). So it may be no surprise that many of these countries have been cited for numerous SPS-related barriers to imports of U.S. farm and food products. However, similar barriers exist among many other U.S. agricultural trading partners as well.<sup>3</sup>

Congressional interest in SPS barriers in the past has most often focused on foreign barriers to U.S. food and agricultural exports. In 2007, lawmakers' attention began to shift to U.S. imports of such products. This followed the emergence of evidence that adulterated pet food ingredients from China had sickened or killed an unknown number of dogs and cats and been fed to some food animals here and in Canada, as well as a Food and Drug Administration (FDA) announcement that it was detaining all farm-raised seafood from China due to safety concerns.<sup>4</sup>

Following are narrative examples of several SPS problems U.S. exporters have encountered in overseas markets. For a more extensive listing of SPS barriers and food-related TBTs between the United States and its top 10 agricultural trading partners, see Appendix A.

**BSE-Related Beef Bans.** After USDA reported, in December 2003, bovine spongiform encephalopathy (BSE, or mad cow disease) in a Washington dairy cow imported from Canada, most countries banned U.S. beef and cattle products. These included Japan, South Korea, Mexico, and Canada, which together had purchased approximately 90% of U.S. beef exports. Only two additional BSE cases were found among nearly 788,000 U.S. cattle tested during a 27-month special surveillance program. While a growing number of countries are again accepting some types of U.S. beef and/or live cattle, the \$1.4 billion in U.S. beef and veal exports in CY2006 were less than half the CY2003 value of \$3 billion. This is despite extensive U.S. evidence that the products are safe and that U.S. human and animal health safeguards are effective. The BSE-related bans caused losses to the U.S. beef industry in 2004 estimated at between \$3.2 billion to \$4.7 billion.<sup>5</sup>

**EU Meat Hormone Dispute.** The EU in 1989 implemented a ban on the production and importation of meat from livestock treated with growth-promoting

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<sup>2</sup> (...continued)

related to food. This CRS report focuses primarily but not exclusively on SPS measures.

<sup>3</sup> See, for example, Office of the U.S. Trade Representative (USTR), *2007 National Trade Estimate Report on Foreign Trade Barriers*, at [[http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2007/2007\\_NTE\\_Report/Section\\_Index.html](http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_NTE_Report/Section_Index.html)]. Total two-way agricultural trade was \$151.9 billion in FY2007. Trade data accessed January 10, 2008, from USDA's Foreign Agricultural Service, U.S. Trade Internet System, at [<http://www.fas.usda.gov/ustrade/>].

<sup>4</sup> See CRS Report RL34080, *Food and Agricultural Imports from China*, by Geoffrey S. Becker.

<sup>5</sup> See CRS Report RS21709, *Mad Cow Disease and U.S. Beef Trade*, by Charles E. Hanrahan and Geoffrey S. Becker, for more information and citations.

hormones. The ban caused an estimated \$100-\$200 million in lost U.S. exports annually. The EU justified the ban to protect the health and safety of consumers, but several WTO dispute settlement panels subsequently ruled that the ban lacked scientific justification and was inconsistent with WTO trade rules. The EU refused to remove the ban, and the United States declined an EU offer of compensation in the form of an expanded quota for hormone-free beef. The U.S. government was granted the right to, and did, impose 100% retaliatory tariffs on \$116 million of EU agricultural imports. Efforts by both sides to resolve this long-running dispute so far have not succeeded.<sup>6</sup>

**EU Biotechnology Approvals.** In May 2003, in WTO dispute settlement, the United States, along with Canada and Argentina, challenged the EU's de facto moratorium since 1998 on biotechnology product approvals. Although the EU claimed to have lifted the moratorium in May 2004 by approving a genetically engineered (GE) corn variety, the three complainants pursued the case, in part because a number of EU member states continue to block biotech products, even those the EU itself deems acceptable. The moratorium reportedly has cost U.S. corn growers some \$300 million in exports to the EU annually. The EU approach presumes that the products of biotechnology are inherently different from their conventional counterparts and should be more closely regulated; the United States, Canada, and Argentina believe they are not. On February 7, 2006, the WTO dispute panel agreed in part with the complainants' arguments, ruling in its interim confidential report that a moratorium had existed, that bans on EU-approved GE crops in six EU member countries violated WTO rules, and that the EU failed to ensure that its approval procedures were conducted without "undue delay." The WTO Dispute Settlement Body adopted the panel's report on November 21, 2006.<sup>7</sup>

**China Meat and Poultry Measures.** The United States views China's general lack of transparency as a continuing problem, particularly with regard to SPS measures, which often are imposed without notifying the WTO, and sometimes are overly burdensome, appear to lack a scientific foundation, or raise significant concerns about unfair national treatment.<sup>8</sup> Of note are several related to meat and poultry. More than 3 ½ years since it closed its market to U.S. beef due to BSE, China has continued the ban despite repeatedly receiving extensive technical information on all aspects of U.S. safeguards and reassurances of their effectiveness, according to U.S. officials.

China in early 2004 had imposed a ban on poultry imported from anywhere in the United States after a case of low-pathogenic avian influenza (LPAI) was found in Delaware. The U.S. government declared that China had demonstrated progress in following international standards after it lifted the nationwide ban in late 2004, keeping it in place only for poultry from states with LPAI. Still, the United States

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<sup>6</sup> See CRS Report RS20142, *The European Union's Ban on Hormone-Treated Meat*, by Charles E. Hanrahan; and for updates, CRS Report RL30732, *Trade Conflict and the U.S.-European Union Relationship*, by Raymond J. Ahearn.

<sup>7</sup> See also CRS Report RS21556, *Agricultural Biotechnology: The U.S.-EU Dispute*, by Charles E. Hanrahan, and for updates, CRS Report RL30732.

<sup>8</sup> USTR, *The 2007 National Trade Estimate Report on Foreign Trade Barriers*.

believes, any ban in response to LPAI is inconsistent with international standards. In other actions, China has enforced zero-tolerance standards for certain pathogens (e.g., *Salmonella* and *E. coli O157:H7*) in raw meat and poultry products, which resulted in the suspension of more than one dozen U.S. meat and poultry facilities. The United States believes that a zero tolerance is not achievable for some pathogens in all products; some levels may be unavoidable and do not present an unacceptable risk to consumers. Moreover, argues the United States, the Chinese may not enforce the standards consistently or apply them equally to domestic poultry products.<sup>9</sup> More recently, China in July 2007 suspended imports from approximately one dozen U.S. processing plants after it said its inspectors found chicken products contaminated with bacteria and pork products with unapproved feed additives. U.S. interests asserted that the move was in retaliation for U.S. actions against imports of Chinese pet food ingredients and seafood for safety reasons.

China is among numerous other nations that have argued that the United States maintains its own — in their view, frequently unjustifiable — SPS measures and TBTs. Past examples they have proffered include a prohibition against shrimp imports from Southeast Asian countries because their trawlers do not use the type of nets required of U.S. shrimpers to protect sea turtles (the WTO has since ruled that the ban was applied in a discriminatory manner); overly burdensome animal disease rules affecting EU imports; pending mandatory country-of-origin labeling on fresh meats and produce; and U.S. import restrictions against more than 100 products because foreign pest risk analyses have not been completed. Noting that agricultural trade must freely move in both directions, many analysts argue that if U.S. challenges to other nations' measures are to have credibility, U.S. interests must be prepared to acknowledge their own barriers and to negotiate their removal.

This approach is viewed with suspicion by some critics that include a number of consumer advocacy organizations. For example, a July 2007 report by Public Citizen's Global Trade Watch asserted that some of the recently negotiated free trade agreements "prioritize facilitating access for imports over consumer safety" — by committing the United States to defer to substandard foreign safety regulations and thus exposing consumers to even more potentially unsafe imported foods.<sup>10</sup> The Office of the U.S. Trade Representative (USTR) responded with a fact sheet arguing that all of the trade agreements permit the United States to "unilaterally determine the appropriate level of protection for food products" and that no foreign country can force the United States to accept unsafe products or lower safety standards.<sup>11</sup> Consumer advocates countered that although all imported foods must by law meet U.S. safety standards, U.S. officials have been unwilling or unable to enforce the standards, especially at a time when imports are, in critics' view, far outpacing inspection resources.

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<sup>9</sup> See also USDA, Foreign Agricultural Service, *China Poultry and Products Semi-Annual Report 2006* (GAIN Report CH6004).

<sup>10</sup> Public Citizen's Global Trade Watch. *Trade Deficit in Food Safety: Proposed NAFTA Expansions Replicate Limits on U.S. Food Safety Policy That Are Contributing to Unsafe Food Imports*. July 2007.

<sup>11</sup> USTR, "U.S. Food Safety and Trade: Myth vs. Fact," accessed October 12, 2007 at [[http://www.ustr.gov/Document\\_Library/Fact\\_Sheets/2007/Section\\_Index.html](http://www.ustr.gov/Document_Library/Fact_Sheets/2007/Section_Index.html)].

## Measuring Economic Impacts

SPS barriers and agriculture-related TBTs can impose significant economic costs on agricultural and food exporters, by forcing them to make expensive changes in production or marketing in order to comply. A foreign SPS action can halt all imports of a product, resulting in major losses for the exporting industry.

The Office of the U.S. Trade Representative (USTR) annually publishes a lengthy report documenting foreign trade and investment barriers and U.S. efforts to reduce them. This report, required by the Omnibus Trade and Competitiveness Act of 1988 (P.L. 100-418), categorizes, describes, and in some cases quantifies these barriers on a country-by-country basis. Sixty-two major trading partners are covered in the 2006 report.<sup>12</sup> SPS measures and TBTs are generally detailed in each country's profile and, where feasible, their impacts on U.S. exports are quantified by USTR.

Understanding the total costs of agricultural non-tariff barriers (NTBs) such as SPS and TBT measures can be helpful for gauging the overall level of trade protection that various countries enjoy, and for determining how much importance to assign to reducing such barriers in trade negotiations. However, efforts to inventory and quantify these barriers have proven challenging. One difficulty is that, "since NTBs lack tariffs' transparency and are often embedded within complex regulatory schemes, reducing these NTBs generally requires more work than reducing tariffs does."<sup>13</sup>

Two USDA agencies, the Economic Research Service (ERS) and the Foreign Agricultural Service (FAS), attempted to estimate the impacts on U.S. exports in 1996, using information gathered from, among other sources, USDA's foreign agricultural attaches and industry groups. Working from that database, FAS found in 1997 more than 350 measures negatively affecting an estimated \$5.8 billion in potential U.S. agricultural exports. East Asia had the most technical barriers, with an estimated impact on U.S. exports of nearly \$2.9 billion. The Americas accounted for nearly \$1.3 billion and Europe for more than \$900 million. Processed products accounted for about \$1.3 billion of the \$5.8 billion total. Others were grains and oilseeds (about \$1.3 billion); animal products (nearly \$900 million); fruits and vegetables (over \$600 million); and "other products" including cotton, seeds, nuts, fish and forestry products (about \$1 billion in all).<sup>14</sup>

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<sup>12</sup> USTR, *The 2006 National Trade Estimate Report on Foreign Trade Barriers*.

<sup>13</sup> Scott Bradford, *The Extent and Impact of Food Non-Tariff Barriers in Rich Countries*, Brigham Young University research paper, January 2006.

<sup>14</sup> See, for example, David Orden and Donna Roberts, Foreword to *Understanding Technical Barriers to Agricultural Trade*, proceedings of a conference of the International Agricultural Trade Research Consortium, January 1997; Roberts and Kate DeRemer, *Overview of Technical Barriers to U.S. Agricultural Exports* (Staff Paper AGES-9705), March 1997; Roberts, Timothy E. Josling, and David Orden, *A Framework for Analyzing Technical Trade Barriers in Agricultural Markets* (Technical Bulletin 1876).



Other studies have attempted to estimate the trade losses of all food-related NTBs — not only SPS measures and TBTs but also import quotas, safeguard measures, licensing rules, and so forth. One, by Bradford, uses internationally comparable price data to estimate the tariff equivalents of the food-related NTBs employed by nine “rich” nations of the OECD (Organisation for Economic Cooperation and Development). Bradford’s computer simulation suggests that if all food NTBs there were removed, economic welfare would increase annually by \$185 billion in eight of these “rich” countries and by \$50 billion in less developed countries. Bradford finds that Japan and the EU have the highest levels of non-tariff protection, while the United States has the lowest among the countries studied.<sup>15</sup>

## The U.S. SPS Framework

The United States, like other countries, has in place an extensive, often intersecting, system to protect consumers from unsafe food and agricultural products and to protect its animal and plant resources from foreign pests and diseases. A variety of statutes and implementing regulations, directives, and administrative procedures underpin this system. These essentially constitute the nation’s SPS measures. Major authorities are briefly described below.

At the same time, U.S. officials work cooperatively with other governments, frequently within international scientific bodies, to develop commonly recognized guidelines for SPS measures (and TBTs) that will promote balanced but safe trade in plants, animals, agricultural and food products.

### U.S. Regulatory System

**Food and Agricultural Products.** Within the Department of Health and Human Services, the Food and Drug Administration (FDA) oversees the safety of most human and animal foods and drugs, primarily under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 *et seq.*). The primary exceptions are meat and poultry and their products, which are regulated by USDA’s Food Safety and Inspection Service (FSIS) under the Federal Meat Inspection Act (21 U.S.C. §601 *et seq.*) and the Poultry Products Inspection Act (21 U.S.C. §451 *et seq.*). USDA’s Animal and Plant Health Inspection Service (APHIS) has lead responsibility for animal and plant health under the Animal Health Protection Act (7 U.S.C. §8301 *et seq.*) and the Federal Plant Protection Act (7 U.S.C. §7701 *et seq.*). Pesticides are regulated by the independent Environmental Protection Agency (EPA) under the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §136 *et seq.*).

Each of the responsible agencies has promulgated an extensive body of regulations to implement these laws, all of which apply to imports as well as domestic products. For example, plants, animals, and their products require an APHIS import permit. Whether a product can be imported and the conditions for entry are dependent upon an APHIS risk assessment of a product and where it originated, taking into account internationally recognized scientific guidelines — i.e.,

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<sup>15</sup> *The Extent and Impact of Food Non-Tariff Barriers in Rich Countries.*

for animal health, the Office of International Epizootics (OIE), and for plant health, the International Plant Protection Convention, (IPPC). The risk assessment usually culminates with formal rules in the *Federal Register*. FSIS evaluates foreign meat and poultry programs to ensure their equivalency with U.S. requirements and reinspects samples at the border. FDA requires imports to comply with the same safety and labeling standards that apply to domestic foods.<sup>16</sup>

**Biotechnology.** The basic federal guidance for regulating biotechnology products is the Coordinated Framework for Regulation of Biotechnology (51 *Fed. Reg.* 23302), published in 1986 by the White House Office of Science and Technology Policy (OSTP). A key principle is that genetically engineered products should continue to be regulated according to their characteristics and unique features, not their production method — that is, whether or not they were created through biotechnology. The framework relies on existing statutory authority (such as those noted above) and regulations to ensure the safety of biotechnology research and products, including food and agricultural products.<sup>17</sup>

**Homeland Security.** After the 2001 terrorist attacks, Congress created the Department of Homeland Security, whose agents now play a major role in inspections of imports, including food and agricultural products. Most of APHIS's border inspection functions and personnel were moved into the new department. Congress also passed the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 the (“Bioterrorism Act,” P.L. 107-188), which requires all foreign as well as domestic food manufacturing and related companies to register with the FDA, and requires that the FDA receive prior notifications of all food imports into the United States. Although this provision was supported by an FDA risk assessment, many foreign exporters have viewed it as a major new burden on them.

**Other Relevant Programs.** In addition to these major authorities, numerous other laws provide the basis for U.S. SPS measures and TBTs. The Agricultural Marketing Agreement Act of 1937 (7 U.S.C. 601 *et seq.*) is an example of a TBT-related law. This law, among other things, provides the authority for requiring imported commodities to meet the same or similar grade, size, or other quality requirements as domestic products if they are regulated by a federal marketing order. Within the U.S. Department of Commerce, the National Oceanic and Atmospheric Administration enforces provisions of the Marine Mammal Protection Act and the Endangered Species Act that require certain fishing techniques to protect, respectively, dolphins and sea turtles.

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<sup>16</sup> The adequacy of the U.S. system that oversees the safety of imported foods has come under considerable scrutiny recently. See also CRS Report RL34198, *U.S. Food and Agricultural Imports: Safeguards and Selected Issues*, by Geoffrey S. Becker.

<sup>17</sup> See CRS Report RL32809, *Agricultural Biotechnology: Background and Recent Issues*, by Geoffrey S. Becker and Tadlock Cowan.

## U.S. Strategy for Addressing SPS Concerns

The U.S. process for identifying and dealing with SPS (and TBT) issues is an important consideration. For agriculture, most of this effort is coordinated, at least in the initial stages, by staff of FAS, the lead USDA trade agency. FAS staff maintain a database on foreign SPS and agriculture-related TBT measures with a potential impact on trade, even those which may comply with WTO or other international trade agreement provisions.

An office of FAS is the designated WTO “enquiry” point for communicating with other countries on SPS measures.<sup>18</sup> This office also shares information with and from industry groups and exporters, USTR, FAS’s overseas posts, and various regulatory agencies such as USDA’s Animal and Plant Health Inspection Service and Food Safety and Inspection Service, the Environmental Protection Agency, and the HHS Department’s Food and Drug Administration.

FAS chairs a weekly meeting of USDA technical staff from various USDA agencies to discuss the status of emerging and ongoing SPS/TBT issues, including options for resolving a potential dispute. Intra-USDA meetings are held monthly. USTR chairs an interagency group (i.e., both USDA and non-USDA agencies with SPS responsibilities) that meets regularly on WTO SPS issues.

When SPS and TBT concerns arise, technical and other government officials usually initiate at least informal dialogue with countries concerning the measure in question. They also are communicating with affected industries in the private sector, both to keep them informed and to gather additional information. It is at this level that an SPS issue is most likely to be resolved when USDA or other government experts discuss its scientific aspects with their foreign counterparts. These staff-level discussions often help the importing and exporting parties to clarify their differences, and to determine mutually acceptable conditions for importing the affected product that will not compromise the importing party’s safeguards.

However, not all problems can be solved in this manner. Eventually, bilateral consultations with the foreign country over an outstanding SPS or TBT issue might be pursued by USTR, with USDA’s assistance. USTR also can decide at any point to elevate the issue via a complaint to the WTO or, if a Canadian or Mexican measure, the North American Free Trade Agreement (NAFTA), triggering formal

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<sup>18</sup> WTO members are required to notify the WTO of their SPS measure whenever there is no international standard or the SPS measure substantially differs from the international standard and the measure may have a significant effect on trade among WTO members (SPS Agreement, Annex B). See also “SPS Language in International Trade Agreements” later in this report. The United States made more than 600 SPS notifications between August 2005 and September 2007 alone, according to FAS. (The figure includes addendums, revisions and corrections.)

dispute resolution procedures.<sup>19</sup> (Other FTAs generally defer dispute settlement to the WTO procedures.)

USDA officials noted that they have been taking a more “holistic” approach to SPS work than in the past. Rather than simply identifying and trying to fix each SPS-related trade problem as it arises, they attempt to forestall possible disputes by (1) cooperating with other governments in international scientific forums and (2) supporting “capacity building” within countries that lack satisfactory regulatory systems or that are new to the world trading system.<sup>20</sup>

**International Standards Bodies.** The three major international organizations for SPS are the Codex Alimentarius Commission for food safety, the OIE for animal health and diseases, and the IPPC for plant health. U.S. government scientists participate actively in these organizations, which meet periodically to discuss current and anticipated threats to human and agricultural health, evaluate SPS-related disputes, and develop common, scientifically based SPS standards. Such standards are voluntary and are intended to provide guidance for countries in formulating their own national SPS measures and, ultimately, to help resolve trade disputes.

For example, in 2004 and 2005, the United States joined with Canada and Mexico in gaining key changes to the OIE’s guidelines for recognizing the trade status of countries with BSE (bovine spongiform encephalopathy, or mad cow disease). The new guidelines seek to emphasize the effectiveness of a country’s BSE safeguards rather than merely the number of cases it reports. Using the new guidelines, the OIE in May 2007 formally recognized the United States, Canada, and four other countries as having “controlled BSE risk,” essentially supporting these countries’ arguments that many types of their beef products should be accepted for import.<sup>21</sup>

**Trade Capacity Building.** WTO members have agreed to provide technical assistance and outreach to other members, particularly developing countries. Overarching objectives are to help them understand the SPS provisions in international agreements, their scientific basis, the fundamentals of risk assessment, and how to build and administer regulatory programs. USDA administers a number

<sup>19</sup> Sections 301 et seq. of the Trade Act of 1974 delineate the domestic legal authority and procedures for U.S. officials in investigating and challenging unfair trade practices, and enforcing U.S. rights under international trade agreements. Interested parties, including agricultural groups, can — and do — petition USTR to initiate such procedures under Section 301 if they believe that a challenge is warranted and that the Administration is not addressing the issue. For an explanation of Section 301, see House Committee on Ways and Means, *Overview and Compilation of U.S. Trade Statutes* (WMCP 108-5), June 2003, beginning on page 119. See also archived CRS Report RL31296, *Trade Remedies and Agriculture*, by Geoffrey S. Becker and Charles E. Hanrahan.

<sup>20</sup> Personal communication with Bob Macke, FAS, and Eric Nichols, APHIS, May 5, 2006.

<sup>21</sup> OIE Resolution No. XXI, *Recognition of the Bovine Spongiform Encephalopathy Status of Member Countries*, accessed on the Internet on October 12, 2007 at [[http://www.oie.int/eng/info/en\\_statesb.htm?e1d6](http://www.oie.int/eng/info/en_statesb.htm?e1d6)].

of programs to build foreign expertise in biotechnology, food safety, animal health, and plant health, such as the Cochran Fellowships, which train senior and mid-level agricultural officials from middle-income countries and emerging democracies.

The Agricultural Growth and Opportunity Act (AGOA; 19 U.S.C. 3701 *et seq.*) seeks to spur economic development and help integrate Africa into the world trading system through U.S. trade preferences and other benefits to Sub-Saharan African countries that meet certain criteria relating to market reform and human rights. Among many AGOA provisions are those which emphasize U.S. technical assistance to improve these countries' compliance with U.S.-type SPS requirements.<sup>22</sup>

USDA's holistic approach also likely will be reflected in a functional and management reorganization which FAS unveiled in 2006. One of four major organizational components in the agency's policy area is an "Office of Scientific and Technical Affairs" to continue as the industry portal for SPS and TBT issues and as the WTO enquiry point.<sup>23</sup> In addition, as described in its FY2007 budget submission to Congress, USDA for the first time enunciated explicitly an SPS goal, to "support adoption and application of science-based SPS regulations to facilitate agricultural trade."<sup>24</sup>

## SPS Accomplishments Report

USDA's Animal and Plant Health Inspection Service (APHIS) publishes an annual report which attempts to document and quantify the value of its "accomplishments" in reducing SPS barriers. In FY2005, for example, APHIS resolved 79 trade-related issues permitting U.S. exports valued at nearly \$1.4 billion to occur in more than 44 countries, according to the report. More specifically:

- Fifty-three of these issues involved the *retention* of \$480 million in sales to existing markets, including the reopening of a number of key beef and ruminant product markets that had closed due to concerns about BSE in the United States.
- Resolution of SPS concerns led to the *expansion* of existing product trade in 23 foreign markets, resulting in \$896 million in additional exports. Among products that experienced expanded sales were citrus exports to China, hay to Japan, and wheat to Mexico.
- Three new markets valued at a total of \$16 million in FY2005 were *opened* — U.S. apples gained entry to Japan after fireblight restrictions were eased; Mexico began accepting U.S. nectarines,

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<sup>22</sup> See, for example, CRS Report RL31772, *U.S. Trade and Investment Relationship with Sub-Saharan Africa: The African Growth and Opportunity Act and Beyond* by Danielle Langton.

<sup>23</sup> FAS, *Reorganizing to Meet Global Trade Challenges*, April 2006 fact sheet. The reorganization was approved in August 2006 and implementation began later that year. See *FAS Reorganization Implementation Begins*, November 2006 fact sheet, at [<http://www.fas.usda.gov/info/factsheets/reorg06.asp>].

<sup>24</sup> USDA, *2007 Explanatory Notes*.

plums, and peaches; and Korea has decided to allow imports of U.S. medical products of bovine origin.<sup>25</sup>

Asian markets accounted for 56% of these accomplishments (by value) in FY2005. Europe and the Middle East accounted for 26% and the Americas for 18%, according to the report. By value of product, 64% of the accomplishments were in fruits and vegetables, 24% in animal products, and 12% in grains and oilseeds.

The report also notes that APHIS implemented a number of changes to its own import requirements that provided new or expanded market access for nine countries and a total of nine commodities. This reverse trade was valued at nearly \$1.3 billion in FY2005. APHIS stated that SPS changes have opened the U.S. border to clementines from Chile, orchids from Taiwan, and honeybees from New Zealand and Australia. Canada has gained expanded U.S. access for its beef and ruminants products, Mexico for avocados, and China for Ya pears, APHIS reported.

The FY2006 report, dated January 2007, does not similarly quantify the dollar value of APHIS accomplishments. It does note, however, that its efforts had helped to retain trade in 12 markets and either expanded or opened new trade in 14 markets. On the import side, APHIS said it helped 15 markets gain or expand access to the United States for various products.

## **SPS Provisions in International Trade Agreements**

In recent years, the United States has concluded or is negotiating a growing number of multilateral, bilateral, and regional trade agreements. These agreements aim to reduce the tariffs, import quotas, and other barriers that countries use to limit imports and to protect their domestic industries, including agriculture. As tariffs decline or disappear, scrutiny can shift to use of SPS measures, which are another way nations may attempt to protect their domestic producers from import competition.<sup>26</sup>

Present multilateral rules date back to the development and signing of the General Agreement on Tariffs and Trade (GATT) in 1947. A number of subsequent

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<sup>25</sup> APHIS, *SPS Accomplishments Report, Fiscal Year 2005* (published May 2006). More detailed breakouts by commodity and country appear in tables accompanying the report. The SPS issues in the report are limited to those for which APHIS has lead responsibility — i.e., animal and plant health but not food safety. APHIS states that no other agency publishes a similar SPS accomplishments report.

<sup>26</sup> U.S. political leaders have sought multilateral, bilateral, and regional trade agreements to achieve several longstanding, and interrelated, trade policy objectives. These objectives are to expand markets for U.S. exports, protect domestic industries from unfair trade practices, promote world economic growth, and support foreign policy and national security. See, for example, CRS Report RL31356, *Free Trade Agreements: Impact on U.S. Trade and Implications for U.S. Trade Policy*, by William H. Cooper. Other sources for this section include the websites of the USTR at [<http://www.ustr.gov>] and the WTO at [[http://www.wto.org/english/thewto\\_e/thewto\\_e.htm](http://www.wto.org/english/thewto_e/thewto_e.htm)].

negotiating rounds led up to the establishment of the WTO on January 1, 1995.<sup>27</sup> The WTO is responsible for administering the multilateral agreements. The current set which now governs global trade are known collectively as the Uruguay Round (UR) Agreements. The UR Agreements are designed to set out clear (transparent) and fair trade rules and to eliminate policies that distort and reduce trade among countries. Examples of such policies may be domestic and export subsidies, import tariffs, import quotas, restrictions on foreign investment, arbitrary and unscientific regulations, among others. The agreements also spell out procedures for global trade cooperation, such as periodically reviewing individual countries' trade commitments, policies and performance, and for resolution of trade disputes.

With regard to SPS measures, GATT Article XX allows governments to adopt measures necessary to protect human, animal or plant life or health, provided that they do not arbitrarily or unjustifiably discriminate or use this as disguised protectionism. This principle was clarified in 1994 by WTO members' adoption, along with the other UR agreements, of the Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement). This document sets out the basic rules for ensuring that each member country's food safety and animal and plant health laws and regulations are transparent, scientifically supportable, and fair.

## WTO (1994 Uruguay Round) SPS Provisions

Among the areas covered by the SPS Agreement are the following.<sup>28</sup>

**Basic Rights and Obligations.** Members have the right to take SPS measures “necessary for the protection of human, animal, or plant life or health,” as long as they are not inconsistent with the language of the SPS Agreement, are “based on scientific principles,” “not maintained without sufficient scientific evidence,” “do not arbitrarily or unjustifiably discriminate...,” and are “not applied in a manner which would constitute a disguised restriction on international trade” (excerpts from Article 2). Members could have SPS measures that result in a higher level of protection than relevant international standards, but only under prescribed circumstances such as scientific justification (as in Article 3.3, under “Harmonization.”)

**Harmonization and Equivalence.** To facilitate trade, countries are encouraged to use relevant international standards and work toward harmonization — that is, the adoption of common SPS measures. To promote harmonization, the agreement cites, as sources of scientific expertise and globally recognized standards for food safety, Codex Alimentarius; for animal health and diseases, OIE; and for plant health, IPPC. Equivalence means that each importing country must accept the SPS measures of another country as equivalent to its own (even if they are not exactly the same), as long as the exporting country objectively demonstrates to the importing country that its measures achieve the same level of protection. (Harmonization and Equivalence are covered under Articles 3 and 4, respectively).

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<sup>27</sup> In 2007, approximately 150 countries were WTO members.

<sup>28</sup> The text of the SPS agreement can be accessed through the following WTO website: [[http://www.wto.org/english/tratop\\_e/spis\\_e/spisund\\_e.htm](http://www.wto.org/english/tratop_e/spis_e/spisund_e.htm)].

**Risk Assessment.** The agreement requires member countries to base their SPS measures on an appropriate assessment of the actual risks involved, taking into account internationally recognized risk assessment techniques (Article 5).

**Transparency.** In recognition that SPS regulations can be unclear or even capricious, countries must have a mechanism for notifying others in advance about measures that could affect trade, and providing a means to ask questions about, and comment on, them. Each must have an office, or “Enquiry Point,” to respond to requests for more information on new or existing measures (Article 7).

**Regionalization.** Until recently, a country tended to ban an entire country’s exports (of a product) from entry, if that product was associated with an unwanted pest or disease in the exporting country. That is, all such products from the exporting country were prohibited, even if they came from a region without the disease or pest. Regionalization provides for acceptance of such imports if the exporting country can demonstrate that they are from a disease-free or pest-free area (Article 6).

**Implementation and Oversight.** Within other articles of the agreement are provisions that permit developing countries to delay compliance with respect to SPS measures affecting imports, and that establish an SPS committee within the WTO to provide a forum for information exchange, to periodically review implementation of the agreement and governments’ compliance with it, to monitor progress in global harmonization of standards, and to work closely with the appropriate technical organizations on SPS matters. The committee has met approximately 35 times since the agreement’s inception.

## TBT Provisions

Another UR document of related significance is the Agreement on Technical Barriers to Trade. It “protects the right of Members to adopt measures which ensure the quality of exports; protect human, animal, or plant life; protect the environment; or prevent deceptive practices, as long as these measures do not breach the disciplines set forth in the [TBT] Agreement. Many of the disciplines in the TBT agreement are essentially identical to those in the SPS agreement [including the obligation to notify and allow for comments on proposed standards affecting trade], but the TBT Agreement explicitly states that SPS measures are bound only by the terms of the SPS agreement.”<sup>29</sup>

## Dispute Settlement Provisions

As noted, governments can, and often do, resolve SPS (and other trade) disagreements informally through bilateral and multilateral discussions, usually among technical experts (e.g., scientists, health professionals) and, if necessary, higher-level trade officials. Those which cannot be resolved may be elevated to formally established dispute procedures. Within the WTO, these procedures are spelled out in another UR agreement called the Understanding on Rules and Procedures Governing the Settlement of Disputes. Under the pre-UR dispute

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<sup>29</sup> *Overview of Foreign Technical Barriers to U.S. Agricultural Exports.*



settlement procedures, a country involved in the dispute could effectively block a decision against it, which is not permissible under the current procedures.

If a WTO dispute settlement panel ultimately determines that a country's SPS (or TBT) measure, for example, is inconsistent with WTO obligations, and WTO members adopt the panel or any appellate body report, the defending country is expected to withdraw the measure. Compensation and retaliation are available as temporary remedies. If compensation is not provided to the complaining country by the defending country, and the two still fail to reach a mutually acceptable solution, the WTO panel can authorize trade retaliation if the complaining country so requests. Such retaliation generally takes the form of higher tariffs against a portion of the defending country's exports to the complaining country.<sup>30</sup>

## WTO Reviews of the SPS Agreement

The WTO SPS Agreement provides for a periodic review, by the SPS committee, of the agreement's operation and implementation. The first review was conducted in March 1999; a second, the most recent, was in June 2005. Although the agreement had been in force for 10 years at the time of this second review, the committee reported that some WTO members were "still in the process of adjusting to and implementing the new disciplines." Nonetheless, the agreement has benefitted both importing and exporting nations. No member had proposed changes to the basic provisions or questioned its science-based requirements.<sup>31</sup>

During these two reviews, the committee discussed at length the range of SPS issues and proposals, from equivalence, transparency, and harmonization in standards among countries to technical assistance and special and differential treatment for development countries and dispute resolution. Also discussed at the second review were specific trade-related SPS concerns raised by WTO members, cooperation within the three standard-setting bodies (Codex, OIE, and IPPC), and clarification of terms and SPS provisions, among other topics. The 2005 report includes recommendations on each of these topics.

Over the first 12 years of the SPS agreement (1995-2006), various members had brought 245 specific SPS trade problems to the committee. Eighty of them were reported by WTO to have been resolved or partially resolved. By subject, 40% were related to animal health, 29% to plant health, 27% to food safety, and 4% to other concerns.<sup>32</sup>

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<sup>30</sup> For more on dispute settlement, see CRS Report RS20088, *Dispute Settlement in the World Trade Organization: An Overview*, by Jeanne J. Grimmett.

<sup>31</sup> WTO, Committee on Sanitary and Phytosanitary Measures, *Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures* (G/SPS/36), adopted by the committee on June 30, 2005.

<sup>32</sup> WTO, Committee on Sanitary and Phytosanitary Measures, *Specific Trade Concerns* (G/SPS/GEN/204.Rev. 7), February 6, 2007.

Not all of these disputes were raised to the level of a formal complaint, however. Of the 369 trade disputes of all types that were formally brought to the WTO's dispute settlement system from 1995 through 2007, 31 have been alleged violations of the SPS agreement. Appendix B lists these SPS disputes and their status as of late 2007.

## Doha Development Agenda

The November 2001 Doha Declaration launched the most recent round of multilateral negotiations to reform trade. This round has not yet been concluded, in part because WTO members have been unable to settle their wide differences over how to further reform trade in agricultural products. Negotiators are attempting to reach agreement across three broadly inclusive agricultural “pillars”: export subsidies, domestic support, and market access.<sup>33</sup>

The 1994 SPS agreement itself is not being renegotiated. However, the Doha Declaration does instruct governments to address a variety of SPS implementation issues and concerns which were raised mainly by developing countries. More specifically, the Doha Declaration:

- clarifies that in the 1994 SPS agreement, the “longer timeframe” given to developing countries to comply with other countries’ new SPS measures is normally meant to be at least six months;
- clarifies that the 1994 agreement’s “reasonable interval” between publication of a country’s new SPS measure and its entry into force should also mean, normally, at least six months;
- instructs the SPS committee to develop expeditiously a more specific program for all countries to make use of the agreement’s equivalency provisions;
- directs the SPS committee to review the operation of the agreement at least once every four years;
- urges the WTO Director-General to continue to facilitate developing countries’ participation in the development of international SPS standards; and
- encourages WTO members to provide the necessary financial and technical assistance to enable least-developed countries to implement the SPS agreement and to respond to measures that could impair their trade.

## SPS Provisions in Regional and Bilateral Agreements

Bilateral and regional agreements between the United States and other countries also can and do contain references to SPS and TBT matters (see **Table 1**). However, with the exception of the North American Free Trade Agreement (NAFTA), such provisions generally are not as extensive as in the UR agreements. These FTAs are not intended to address any specific SPS disputes or issues between the United States

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<sup>33</sup> See CRS Report RL33144, *WTO Doha Round: The Agricultural Negotiations*, by Charles Hanrahan and Randy Schnepf.

and the other country or countries. But U.S. negotiators at times have taken advantage of the negotiating sessions leading up to an agreement, or the subsequent ratification and implementation period, to raise and attempt to resolve such outstanding issues.

**Table 1. SPS Provisions in FTAs**

Agreement	SPS Provisions
<b>North American FTA:</b> NAFTA, between United States, Canada, and Mexico; entered into force 1/1/94.	SPS provisions contained in Section B of Chapter Seven, Agriculture and SPS Measures; much more extensive than in other bilateral and regional FTAs. Generally parallel provisions in UR SPS agreement. Also contains (in Chapter 20) dispute resolution mechanism for challenging SPS barriers. Those bringing dispute can choose either the WTO or NAFTA process; in SPS cases, respondent can steer dispute into NAFTA arena under certain circumstances.
<b>U.S.-Israel FTA:</b> Earliest FTA; entered into force 9/1/85.	Article 9 (Health) directs two sides to review their veterinary and plant health rules to ensure they are applied in a nondiscriminatory manner and do not obstruct trade. Also calls for consultations over any difficulties to “...allow trade in agricultural products insofar as they do not endanger animal and plant health.”
<b>U.S.-Jordan FTA:</b> Entered into force 12/17/01.	No SPS section. However, a separate Joint Statement on WTO Issues recognizes encourages consultations on SPS equivalence.
<b>U.S.-Singapore FTA:</b> Entered into force 1/1/04.	No SPS section, but declares in preamble both parties’ commitment to reduction of technical and SPS barriers to trade.
<b>U.S.-Chile FTA:</b> Entered into force 1/1/04.	Chapter Six reaffirms both countries’ rights and obligations under WTO SPS agreement; also establishes bilateral committee to enhance understanding of each’s SPS measures and to consult extensively and regularly on SPS matters.
<b>U.S.-Australia FTA:</b> Entered into force 1/1/05.	Chapter VII reaffirms both countries’ rights and obligations under WTO SPS Agreement; establishes committee like that in Chile FTA. Further directs USDA-APHIS and counterpart, Biosecurity Australia, to chair standing technical working group intended to address, on an ongoing basis, all trade-related SPS matters that arise during each country’s rulemaking and risk assessment processes. Side letters agree to cooperate on securing science-based international standards on BSE.
<b>U.S.-Morocco FTA:</b> Entered into force 1/1/06	Chapter 3-B reaffirms rights and obligations of both parties under the WTO SPS agreement. No SPS committee. Side letter intended to facilitate exports of U.S. beef and poultry by addressing Morocco’s concerns about antibiotics and other substances in beef and poultry.
<b>U.S.-Dominican Republic-Central American FTA:</b> Between United States, Dominican Republic (DR), Costa Rica, El Salvador, Guatemala,	DR-CAFTA reaffirms all parties’ rights and obligations under WTO SPS agreement, establishes standing SPS committee like that in the Chile and Australia agreements, but further specifies which agencies in each country to be represented. Side letters with Costa Rica and El Salvador agree to cooperate with the United States on scientific and technical work to achieve market access for poultry. U.S. side letter with DR states that the DR “shall not grant or deny import licenses based on sanitary or

Agreement	SPS Provisions
Honduras, Nicaragua, approved by Congress in 2005; entered into force for <b>El Salvador</b> 3/1/06; <b>Honduras</b> and <b>Nicaragua</b> , 4/1/06; <b>Guatemala</b> , 7/1/06; DR, 3/1/07. <b>Costa Rica</b> approved by U.S. 8/2/05.	phytosanitary concerns, domestic purchasing requirements, or discretionary criteria. [DR] shall enforce any sanitary or phytosanitary measures that it imposes separately from its import-licensing system.”
<b>U.S.-Bahrain FTA:</b> Entered into force 8/1/06.	SPS chapter (Six) reaffirms two countries’ rights and obligations under the WTO SPS agreement. No SPS committee.
<b>Proposed U.S.-Andean Nations FTA:</b> Agreement with <b>Peru</b> signed 4/12/06; President signed implementing bill on 12/14/07 (P.L. 110-138). Agreement with <b>Colombia</b> signed 11/22/06.	Chapter Six in both agreements reaffirms parties’ rights and obligations under the WTO SPS agreement and creates a standing committee to address SPS matters. Each has S&P side letters attached to agreement. (With progress stalled on a regional FTA, the United States has worked to forge bilateral agreements with the Andean nations.)
<b>U.S.-Oman FTA:</b> Signed Jan. 19, 2006; U.S. approved 9/26/06. Awaiting Oman ratification.	Both parties reaffirm their rights and obligations under WTO SPS agreement. No SPS committee.
<b>U.S.-Panama FTA:</b> Signed 6/28/07.	Chapter Six reaffirms two countries’ rights and obligations under the WTO SPS agreement and creates a standing committee to address SPS matters. In a separate SPS agreement, Panama is to accept equivalency of the U.S. meat and poultry inspection system; to provide access for all U.S. beef and poultry, and related products, on the basis of accepted international standards; to streamline import documentation requirements for U.S. processed foods; and to affirm recognition of the U.S. beef grading system, among other things.
<b>U.S.-South Korea FTA:</b> Signed 6/30/07.	Chapter Eight reaffirms two countries’ rights and obligations under the WTO SPS agreement and creates a standing committee to address SPS matters. (The FTA would not directly address the reopening of Korea to U.S. beef, which was banned in Dec. 2003 due to BSE concerns. As of Oct. 2007 the market was still largely closed, and some in Congress have signaled the FTA will not be considered until Korea begins accepting more significant quantities.)

**Sources:** USTR; CRS Report RL31356 (Cooper); CRS Report RL34134, *Agriculture in U.S. Free Trade Agreements: Trade with Current and Prospective Partners, Impact, and Issues*, by Remy Jurenas.

For example, during the U.S.-Australia FTA negotiations, U.S. officials secured a commitment from Australia that it would work to ease inspection procedures that have impeded U.S. imports of pork, citrus, apples and stone fruit. In a side letter to the 2006 proposed U.S.-Peru FTA, Peru pledges to use international standards in

opening its markets to U.S. beef and pork. Similar side letters accompany recent FTAs with other Latin American countries.

Foreign countries also have used the FTA arena to press their own concerns about U.S. SPS measures or TBTs. For example, in a side letter to the pending U.S.-Colombia FTA, the United States agreed to meet on the issue of labeling non-Colombian coffee as Colombian.

Recently concluded trade agreements reference each party's rights and obligations under the WTO SPS agreement, and some establish standing committees to consult on and resolve SPS problems on an ongoing basis. These provisions generally reflect U.S. SPS objectives which the Administration has enunciated in letters notifying Congress of its intent to negotiate various FTAs.

## **Other Opportunities for Addressing SPS Issues**

Besides the broader trade agreements cited above, the United States and other governments frequently employ other types of mutual agreements, memoranda, and letters to deal specifically with SPS-related concerns and/or to formalize mutually acceptable conditions for trade in food and agricultural goods. The following are some notable examples of these arrangements.

**The Cartagena Biosafety Protocol.** The protocol, an outgrowth of the 1992 U.N. Convention on Biological Diversity (CBD), is a multilateral agreement intended to provide for the safe handling, transfer, and international movement of living modified organisms. Nearly 100 countries have signed the protocol, which enables countries to obtain information about biotech organisms before they are imported and recognizes countries' right to regulate them consistent with international agreements, among other provisions. Because the United States is not a party to the 1992 CBD, it cannot be a party to the protocol, but it attempts to work with the ratifying countries to ensure that implementation does not harm U.S. exports.<sup>34</sup>

**U.S.-EU Veterinary Equivalency Agreement.** The United States and the EU signed this agreement in July 1999. It is aimed at facilitating trade, through mutual recognition by each party that the other's SPS standards for animal products — even where not identical — provide an equivalent level of protection to public and animal health. The agreement has preserved several billion dollars annually in two-way trade in animals and products, according to USDA. Despite the agreement, U.S. exporters continue to encounter major barriers to a number of important products. For example, the EU was expected to import more than 600,000 metric tons of broiler meat in 2007, but the United States, a major world supplier, has not supplied any for some 10 years. The EU's 1997 ban on the use of anti-microbial

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<sup>34</sup> See archived CRS Report RL31970, *U.S. Agricultural Biotechnology in Global Markets: An Introduction*, by Geoffrey S. Becker.

treatments for sanitizing poultry carcasses effectively halted U.S. poultry exports to the EU, even though the use of anti-microbial treatments is approved by FDA.<sup>35</sup>

**Bilateral Market Access Agreements.** One of the steps required of countries seeking to join the WTO is the completion of bilateral market access agreements with other countries. On May 31, 2006, the United States signed such an agreement with Vietnam. Part of that agreement commits Vietnam to recognize the U.S. beef, pork, and poultry inspection as equivalent to its own; to implement regulations governing shelf-life and biotechnology in a non-trade disruptive manner; and to resume trade in U.S. bone-in beef and beef offal from animals under 30 months of age. Similarly, the United States signed a bilateral access agreement with Russia on November 19, 2006, and SPS measures, particularly Russia's SPS measures hindering exports of U.S. poultry and meat, were among the key issues during the negotiations.

## Concluding Observations

U.S. government and WTO reports and press releases frequently cite the benefits of the SPS and TBT agreements and progress made, under these agreements, in resolving disputes and facilitating trade between countries. However, some, among them food safety and environmental advocacy organizations, and groups that have more broadly opposed efforts toward globalization and toward harmonization of world trading rules, have long expressed skepticism. They have argued that implementation of the agreements can result in “downward harmonization” rather than upgraded health and safety standards. This can happen when, for example, a WTO dispute settlement panel questions the scientific underpinnings of a U.S. safeguard, and/or the United States agrees to an effectively lower standard in order to bring trade negotiations with another country to a successful conclusion.<sup>36</sup>

Others counter that the current trade agreements explicitly recognize the right of individual nations, as well as states and localities, to enact stronger protections than international guidelines if they believe they are appropriate. The United States is especially well-positioned against challenges, because its health and safety policies are scientifically defensible, U.S. officials have argued.

The WTO itself has asserted that countries can “to some extent apply the ‘precautionary principle,’ a kind of ‘safety first’ approach” where scientific

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<sup>35</sup> USDA, FAS, *Analysis of U.S. Poultry Meat Trade with the EU: Past, Present, Future* (GAIN Report E35166), August 25, 2005. Also, USDA, FAS, *Livestock and Poultry: World Markets and Trade*, April 2007.

<sup>36</sup> Such arguments were explored, for example, in a speech by Bruce Silverglade, Director of Legal Affairs at the Center for Science in the Public Interest, a consumer advocacy organization. Entitled “Should the SPS Agreement Be Amended? A Modest Proposal to Restore Public Support,” it was delivered April 4, 1998, at a public policy conference at Georgetown University. Accessed at [<http://www.cspinet.org/reports/sps.htm>].

uncertainty exists.<sup>37</sup> More specifically, the precautionary principle suggests that if scientific evidence is insufficient or inconclusive regarding a practice's or product's potential dangers to human, environmental, animal, or plant health, that product or practice should be prohibited if there are reasonable grounds for concern. The EU has been criticized by U.S. and other interests for shielding itself behind this principle to impose otherwise scientifically unsupportable barriers to food imports that exporting nations deem to be safe. On the other hand, some advocates believe that the SPS agreement too severely limits use of the principle.<sup>38</sup>

The effectiveness and flexibility of the SPS and TBT rules also are likely to be tested by rapidly emerging changes in food production technology, such as biotechnology and nanotechnology. Neither appeared to be imminent concerns when the agreements were finalized in 1994. Many believe that the SPS and TBT agreements provide the foundation for developing transparent, science-based trade guidelines, as well as an effective framework for resolving disputes in these areas. Others have argued that the Doha round should have revisited the agreements more closely with regard to these or other new technologies.

Nanotechnology may provide the next test of existing international SPS rules. A 2005 *Duke Law and Technology Review* article argues that measures regulating trade in nanotechnology likely would be subject to the SPS agreement and that it could be used to objectively balance the relative risks and benefits of trade in nanotechnology products. But, as the same article cautions, nanoparticles can present unique health and environmental risks.<sup>39</sup>

The President must submit all FTAs to Congress, which in turn must pass implementing legislation if the United States is to participate. FTAs have become a significant U.S. trade policy tool. Each one can affect the U.S. economy, including the food and agricultural sector, and the impact will vary across the range of crop and livestock products traded between the United States and another FTA signatory.

Many Members of Congress are already following closely a number of ongoing SPS-related trade disputes that, they believe, have negatively affected agricultural producers in their states and districts. Also, lawmakers have expressed concern that as recently signed trade agreements lower agricultural tariffs, countries may turn more and more to SPS measures to protect their farmers from import competition.

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<sup>37</sup> Source: WTO, *Understanding the WTO Agreement on Sanitary and Phytosanitary Measures*. These are addressed in Article 5.7, Article 3.3, and the preamble of the SPS agreement.

<sup>38</sup> Friends of the Earth International, *Trade and People's Food Sovereignty*, position paper, April 2003. The document also charged that "the Codex is so heavily influenced by food and chemical corporations that the standards it sets may be lower than those already in place in many nations."

<sup>39</sup> Nanotechnology enables scientists and engineers to manipulate matter at the molecular and atomic levels in order to obtain materials and systems with significantly improved properties. James D. Thayer, "The SPS Agreement: Can it Regulate Trade in Nanotechnology?" 2005 *Duke L. & Tech. Rev.* 0015. Accessed at [<http://www.law.duke.edu/journals/dltr/articles/2005dltr0015.html>].

These Members have stated that SPS matters will be among the factors they will consider in voting for new FTAs. The success of the U.S.-Korea FTA implementing legislation is expected to hinge at least in part on some farm-state Members' perceptions of Korea's progress in reopening its market to U.S. beef.

Meanwhile, international SPS rights and obligations could come into play if the U.S. Congress considers legislation placing new restrictions and requirements on food imports. As noted, such bills are being proposed in the wake of a number of highly publicized adulteration incidents related to food and agricultural imports from China. Any new measures are likely to be closely scrutinized by U.S. trading partners for their adherence to international trade rules.



## Appendix A. Selected SPS Concerns Between the United States and Top 10 Agricultural Trade Partners, CY2006<sup>40</sup>

Trade Partner	Total Trade (Two-Way)	Exports To	Imports From	Selected U.S. SPS Concerns	Selected Foreign SPS Concerns About U.S.
	(value in millions)				
Canada	\$25,383	\$11,951	\$13,432	Fortified foods (e.g., cereals, orange juice) regulated as drugs.	Mandatory retail country of origin labeling (COOL) for specified food commodities (only seafood implemented to date); longstanding complaint on S. Dakota and other state bans on entry of some Canadian cattle, swine and grain trucks.
EU	21,873	7,408	14,465	Longstanding problems with EU's oversight of biotech, including delayed approvals, restrictive labeling, traceability, and co-existence rules, and contradictory policies by many Member States. Barriers to animal product trade include EU meat hormone directive (not based on science), U.S. poultry meat restrictions, lack of risk assessment behind some animal byproduct restrictions; unreasonable barriers to dietary supplements and to use of wood packaging materials.	Overly strict animal disease control rules, notably ban on ruminants and products due to BSE, which do not recognize OIE guidelines; failure to fully apply principle of "regionalization" in animal disease outbreaks; ongoing difficulties exporting milk products due to "Grade A" requirements; continuing obstacles to EU exports of potted plants; notification on refrigeration and labeling requirements for shell eggs; rule on solid wood packing materials; undue SPS obstacles to imports of citrus fruits, plants/nursery stock; import procedures for fruits and vegetables. Longstanding complaint on restrictions on EU poultry imports. <sup>41</sup>

<sup>40</sup> Includes some food-related TBTs; see text for definition. This listing is intended to be illustrative, not comprehensive. For example, some foreign concerns about U.S. SPS measures may be missing because more authoritative information was not readily available. Also, some issues listed here may have been resolved by this printing.

<sup>41</sup> a. Source (part): European Commission, United States Barriers to Trade and Investment, Report for 2006. Issued February 2007.

Trade Partner	Total Trade (Two-Way)	Exports To	Imports From	Selected U.S. SPS Concerns	Selected Foreign SPS Concerns About U.S.
	(value in millions)				
Mexico	20,272	10,881	9,391	SPS measures have created barriers to exports of certain U.S. agricultural goods, including grains, seed products, apples, stone fruit, pork, beef, poultry, citrus, wood and wood products, dry beans, avocados, potatoes and eggs. Inadequate live animal inspection facilities at ports of entry; periodic avian flu-related poultry import restrictions; zero tolerance standard for <i>Salmonella</i> in raw meat; SPS procedures at border do not always reflect U.S.-Mexico agreements.	Restrictive regulations for Mexican trucks; SPS restrictions on melons.
China	8,976	6,711	2,265	Numerous issues, including overall lack of transparency on SPS measures and failure to, or delay in, notifying WTO of such measures; continuing ban on U.S. beef not scientifically justified; periodic or ongoing bans on poultry due to AI concerns or to overly restrictive pathogen standards; ban on U.S. pork due to concern about feed additives (approved in U.S.); overly restrictive food additive standards; concerns about food labeling rules, biotechnology rules.	Mandatory retail COOL for specified food commodities, (only seafood implemented to date); failure to expeditiously lift suspension of Chinese imports of Ya pears due to fungus concerns; failure to distinguish BSE status of country in imposing BSE-related import requirements; U.S. rule on importation of artificially dwarfed potted plants from China not necessary and not viable given China's production system; new restrictions on imports of Chinese farmed seafood.

Trade Partner	Total Trade (Two-Way)	Exports To	Imports From	Selected U.S. SPS Concerns	Selected Foreign SPS Concerns About U.S.
	(value in millions)				
Japan	8,843	8,390	453	Numerous, including increasing use of SPS, TBT standards to block ag imports; often not based on science or international guidelines, e.g., unwarranted fumigation of lettuce; continuing unscientific ban on much U.S. beef due to BSE; overly restrictive food additive and feed additive rules; some biotech oversight concerns; unnecessary bans on U.S. poultry due to AI concerns. Failure to use international standards for pest risk analysis. Plant and animal quarantine system is one of most restrictive in the world (source: USTR).	
Indonesia	3,144	1,102	2,042	Burdensome registration and testing requirements for all food imports; restrictions on fruit and vegetable imports due to unwarranted concerns about fruit flies; continuing limits on U.S. beef due to BSE.	
S. Korea	3,069	2,851	218	Overly restrictive food safety standards (such as not recognizing food additives U.S. considers safe); continuing ban on U.S. beef due to BSE; not using regionalization in animal health rules; burdensome labeling requirements including on biotech products; specific problems with functional and organic foods imports.	
Australia	3,007	520	2,487	Stringent SPS regime; bans on U.S. ag products have included Florida citrus, stone fruit, poultry meat, and apples; biotechnology issues.	
Taiwan	2,675	2,477	198	Plant and animal quarantine measures not always based on sound science, GMO labeling rules.	

Trade Partner	Total Trade (Two-Way)	Exports To	Imports From	Selected U.S. SPS Concerns	Selected Foreign SPS Concerns About U.S.
	(value in millions)				
Brazil	2,518	287	2,231	Numerous SPS issues including biotech; bans on U.S. low-risk beef, on poultry and poultry products due to alleged lack of reciprocity, and on Western U.S. wheat.	Concerns about food facility registration and shipment pre-notification provisions of U.S. Bioterrorism Act.
Colombia	2,348	868	1,480	Pet foods, cattle and beef (BSE related ban partially eased in 2006), nutritional supplements.	Concerns about the labeling of non-Columbian coffee as Columbian.
Chile	2,073	296	1,777	Food import rules (e.g., repeated review and testing requirements); ban on some U.S. beef products; biotech issues.	Various actions taken by local U.S. governments hindering Chilean agricultural imports.
<b>WORLD</b>	<b>\$136,274</b>	<b>\$70,948</b>	<b>\$65,326</b>		

**Sources:** Data are from USDA, Foreign Agricultural Service, "U.S. Trade Internet System" at [<http://www.fas.usda.gov/ustrade/>]. Except as noted, source for U.S. SPS concerns is USTR, *2007 National Trade Estimate Report on Foreign Trade Barriers*, at [[http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2007/2007\\_NTE\\_Report/Section\\_Index.html](http://www.ustr.gov/Document_Library/Reports_Publications/2007/2007_NTE_Report/Section_Index.html)], and *2006 National Trade Estimate Report on Foreign Trade Barriers*, at [[http://www.ustr.gov/Document\\_Library/Reports\\_Publications/2006/2006\\_NTE\\_Report/Section\\_Index.html](http://www.ustr.gov/Document_Library/Reports_Publications/2006/2006_NTE_Report/Section_Index.html)]; sources for other countries' concerns are various WTO documents including *Trade Policy Review: United States*, March 2006; and minutes of SPS committee meetings.

## Appendix B. WTO Formal Disputes Invoking SPS Agreement

*(italics indicate complaint referred to a WTO dispute settlement panel)*

Complaining Country	Target Country	Nature of Complaint (WTO dispute number)	Status
U.S.	Korea	Inspection procedures for fresh fruits (WT/DS3)	Mutually satisfactory solution notified July 2001
U.S.	Korea	Inspection procedures for fresh fruits (WT/DS41)	Mutually satisfactory solution notified July 2001
U.S.	Korea	Shelf-life requirements for frozen processed meats and other products (WT/DS5)	Mutually agreed solution notified July 1995
<i>Canada</i>	<i>Australia</i>	<i>Import restrictions on fresh, chilled, or frozen salmon (WT/DS18)</i>	<i>Mutually agreed solution notified May 2000</i>
<i>U.S.</i>	<i>Australia</i>	<i>Import restrictions on fresh, chilled, or frozen salmon (WT/DS21)</i>	<i>Mutually agreed settlement notified November 2000</i>
Canada	Korea	Restrictions on treatment methods for bottled water (WT/DS20)	Mutually agreed solution notified April 1996
<i>U.S.</i>	<i>EC (EU)</i>	<i>Prohibition of meat from animals treated with growth-promoting hormones (WT/DS26)</i>	<i>Suspension of concessions authorized July 26, 1999</i>
<i>Canada</i>	<i>EC</i>	<i>Prohibition of meat from animals treated with growth-promoting hormones (WT/DS48)</i>	<i>Same panel handled both complaints (see above)</i>
<i>U.S.</i>	<i>Japan</i>	<i>“Varietal testing” requirement for fresh fruits (WT/DS76)</i>	<i>Mutually agreed solution notified September 2001</i>
EC	India	Quantitative restrictions on agricultural and other products (WT/DS96)	Mutually agreed solution notified April 1998
EC	U.S.	Restrictions on poultry imports (WT/DS100)	Consultations requested August 18, 1997; pending

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Complaining Country	Target Country	Nature of Complaint (WTO dispute number)	Status
Switzerland	Slovakia	BSE-related restrictions on cattle and meat (WT/DS133)	Consultations requested May 11, 1998; pending
India	EC	Restrictions on rice imports (WT/DS134)	Consultations requested May 28, 1998; pending
<i>Canada</i>	<i>EC</i>	<i>French measures affecting asbestos (WT/DS135)</i>	<i>SPS agreement not invoked in the reports</i>
Canada	EC	Restrictions due to pine wood nematodes (WT/DS137)	Consultations requested June 17, 1998; pending
Canada	U.S.	State restrictions on movement of trucks carrying live animals and grains (WT/DS144)	Consultations requested September 25, 1998; pending
U.S.	Mexico	Measures affecting trade in live swine (WT/DS203)	Consultations requested July 10, 2000; pending
Thailand	Egypt	GMO-related prohibitions on imports of canned tuna with soybean oil (WT/DS205)	Consultations requested September 22, 2000; pending
Ecuador	Turkey	Import requirements for fresh fruit, especially bananas (WT/DS237)	Mutually agreed solution notified November 2002
<i>U.S.</i>	<i>Japan</i>	<i>Restrictions on apples due to fire blight (WT/DS245)</i>	<i>Dispute panel established July 2004; found Japanese restrictions are contrary to SPS agreement July 2005; mutually agreed solution notified August 2005</i>
Hungary	Turkey	BSE-related restrictions on pet food imports (WT/DS256)	Consultations requested May 3 2002; pending
<i>Philippines</i>	<i>Australia</i>	<i>Restrictions on fresh fruits and vegetables, including bananas (WT/DS270)</i>	<i>Panel established August 2003; reports not yet circulated</i>
Philippines	Australia	Restrictions on pineapple (WT/DS271)	Consultations requested October 18, 2002; pending
EC	India	Export and import policy (WT/DS279)	Consultations requested December 23, 2002; pending

Complaining Country	Target Country	Nature of Complaint (WTO dispute number)	Status
Nicaragua	Mexico	Phytosanitary restrictions on black beans (WT/DS284)	Mutually agreed solution notified March 2004
<i>EC</i>	<i>Australia</i>	<i>Quarantine regime (WT/DS287)</i>	<i>Panel established November 2003; mutually agreed solutions notified March 2007</i>
<i>US</i>	<i>EC</i>	<i>Moratorium on approvals on marketing of biotech products (WT/DS291)</i>	<i>Panel established August 2003; same panel handled three complaints; WTO dispute panel interim confidential report ruled February 7, 2006 that a moratorium had existed, that bans on EU-approved GE crops in six EU member countries violated WTO rules, and that EU failed to ensure that its approval procedures were conducted without “undue delay.” Other U.S. claims rejected. Panel reports adopted November 2006; parties’ mutually agreed time for implementation (1 year) ended November 21, 2007</i>
<i>Canada</i>	<i>EC</i>	<i>Moratorium on approvals on marketing of biotech products (WT/DS292)</i>	
<i>Argentina</i>	<i>EC</i>	<i>Moratorium on approvals on marketing of biotech products (WT/DS293)</i>	
Hungary	Croatia	Transmissible spongiform encephalopathy (TSE)-related restrictions on live animals and meat products (WT/DS297)	Consultations requested July 2003; pending
New Zealand	Australia	Phytosanitary measures required for apples (WT/DS367)	Consultations requested August 2007

**Source:** WTO Committee on Sanitary and Phytosanitary Measures. *Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures (G/SPS/36)*, July 11, 2005; also, WTO updates posted on the Internet through September 2007 at [[http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm)].