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SPS measures and possible market access implications for agricultural trade in the Doha Round: An analysis of systemic issues

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Murali Kallummal

Abstract

Even as the Doha Round seeks to address tariff liberalization issues in a comprehensive manner, the imbalance in the outcome of market access for developing country exporters will be particularly glaring in the case of fresh agricultural and processed food products. There is growing evidence that protectionism from the usage of non-tariff barriers such as SPS measures has increased tremendously in the recent past. This paper discusses an analysis of the SPS notifications made by WTO Member countries from 1995 to July 2010, which found that 53 per cent of total SPS notifications during that period were made by developing countries. However, developed countries are using their national standards to a more significant extent than Doha developing countries. The adoption of differing national standards creates significant barriers to trade, with developed country standards being higher in many cases. Frequently, these standards are not matched by the developing countries' technological capabilities. Furthermore, there are some systemic issues in the SPS Agreement and its implementation that bias its outcome against developing and least developed countries. Thus, there is an urgent need for discipline in the usage of SPS measures as a tool for "disguised" protectionism. This can be best achieved by harmonizing the standards across WTO Members under the three intra-governmental bodies already identified by the SPS Agreement. Given the principle of national treatment, this means that the imperative for developing country governments to support the technological upgrading of their domestic agricultural sectors has become extremely urgent.

Key words: Agreement on Sanitary and Phytosanitary Measures, transparency, non-tariff measures, ad-valorem equivalents, technological gap, harmonization, WTO

JEL codes: F13, F14, O19

Introduction

One of the less analysed issues of the World Trade Organization (WTO) negotiations is the imbalance in market access that still prevails in the global arena between developed and developing countries; this is the result of the increased use of non-tariff measures, such as standards/regulations as trade policy instruments, while simple average most-favoured nation (MFN) tariffs continue to decline. This issue is really alarming in the case of the agricultural trade, wherein the WTO negotiations have led to substantial disciplining of the tariff structure and are expected to further it at the culmination of the Doha Round, while non-tariff measures (NTMs) such as Sanitary and Phytosanitary (SPS) standards are on the rise.

While engaging in international trade, one fundamental requirement has been that imported agricultural products must be safe for human consumption and not pose risks to human, animal or plant health. Thus, countries have always imposed regulations or standards in order to ensure food safety as well as to avoid the introduction of diseases and pests through trade. Trade in agricultural commodities and related standards or regulations have co-existed since the beginning of international trade.¹

The General Agreement of Tariffs and Trade (GATT), the first multilateral agreement regulating international trade (also referred to as “Standards Code”), was not intended to address issues related to agricultural trade. The first recorded comprehensive effort to address the issue of NTMs together with tariffs was in the “Meeting notes by the secretariat” (May 1973)² with specific emphasis on non-agricultural products.³ However, under Article XX(b), some exceptions were provided to enable members to implement domestic measures necessary for protecting human, animal or plant life or health. Members had the right to take such measures as long as they were not applied in a manner that would be arbitrary or unjustifiably discriminate among countries, or serve as a disguised restriction on international trade.⁴

Nearly 15 years later, when the Agreement on Agriculture (AoA) was formalized by the signing of the WTO Agreement in 1995, it was considered important to govern agriculture-specific standards and regulations. The Agreement on Sanitary and Phytosanitary measures thus came into existence, setting out the basic rules for food safety, and animal and plant health standards. The need for these standard/regulations arose primarily from the tariff reduction commitments under the WTO Agreement.⁵ Therefore, these regulations ensured food safety and other objectives that largely originated from domestic production processes and technological capabilities related to agricultural products in different countries as well as their local health requirements. Hence, they were fundamentally discriminatory and led to disguised protection of the domestic agricultural sector in particular countries.

The SPS Agreement allows countries to set their own standards. It also mandates that these regulations must be based on science and should be applied only to the extent necessary to protect human, animal or plant life or health. Further, these standards or

¹ Previously, this excluded the exchange of food and other agricultural products as part of any aid programmes.

² Available at the Stanford University library.

³ Basically, this meeting addressed all issues related to standards that were first introduced in the Tokyo Round of GATT, when it was known as the “Standard Codes”.

⁴ See Jaiswal, 2003, and Das, 2008.

⁵ The Agreement bound countries developed and developing equally into many disciplines on tariff and quotas.

regulations should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail, thus stressing the need for the application of the MFN principle. In order to achieve this objective, the SPS Agreement encourages Members to use international standards, guidelines and recommendations where they exist. Members may adopt SPS measures that result in higher levels of health protection, or introduce measures related to health concerns for which international standards do not exist, provided that a thorough and scientific risk assessment validates the claim for a regulation. Since the use of these measures may have a negative impact on market access, WTO makes it mandatory for all Members to notify such SPS regulations/standards to the WTO Secretariat, which are passed onto WTO Members for transparency purposes.⁶

The SPS Agreement also established a Committee on Sanitary and Phytosanitary Measures to provide a forum for consultations about food safety or animal and plant health measures that affect trade, and to ensure the implementation of the SPS Agreement. The committee normally meets three times per year and issues regular guidelines that address consistency in the decisions dealing with safety and health risks, and which are designed to aid governments in avoiding arbitrary or unjustifiable decisions.

While the agreement was meant to harmonize Member countries' NTMs related to agricultural products, the use of international standards, guidelines and recommendations is not legally binding. Hence, any WTO Member can maintain higher standards based on appropriate assessment of risks as long as the approach is consistent and there is scientific justification. That is, the agreement still allows Member countries to use different standards and different methods of inspecting products. However, these exceptions in the application of SPS and Technical Barriers to Trade (TBT) measures have led to some imbalance in the process of WTO negotiations as a whole.

On the one hand, Members have been doing away with the use of tariffs as a trade policy tool. Although in GATT⁷ and the Uruguay Round the emphasis was primarily on ad-valorem tariffs, with the Doha Round completion certain unattended aspects of tariffs such as non-ad-valorem tariffs will also be addressed under the Ad-Valorem Equivalents (AVEs).⁸ The Doha Round will thus address tariff liberalization more comprehensively, even if the most "balanced" outcome under the tiered-tariff approach (currently under consideration) may still be biased towards the developed countries and against the developing countries. However, the imbalance for developing country exporters will be

⁶ This is in accordance with the transparency clause of Annex B of the SPS Agreement and Article 21 of the TBT Agreement of WTO.

⁷ The Tokyo Round (1973-1979) of GATT initiated the negotiations under "Tariffs, non-tariff measures, framework Agreements" within the membership of 102 countries. It continued GATT's efforts to progressively reduce tariffs. The results included an average one-third cut in customs duties in the world's nine major industrial markets, bringing the average tariff on industrial products down to 4.7%. The tariff reductions phased in over a period of eight years, involved an element of "harmonization"; the higher the tariff, the larger the cut, proportionally. However, it failed to come to grips with the fundamental problems affecting farm trade and also stopped short of providing a modified agreement on "safeguards" (emergency import measures). Nevertheless, a series of agreements on non-tariff barriers did emerge from the negotiations, in some cases interpreting existing GATT rules, in others breaking entirely new ground. In most cases, only a relatively small number of (mainly industrialized) GATT members subscribed to these agreements and arrangements. Because they were not accepted by the full GATT membership, they were often informally called "codes".

⁸ The first formal WTO Secretariat note on the issue of Ad Valorem Equivalents was titled "*Calculation of Ad Valorem Equivalents (AVEs): Data requirements and availability*", TN/AG/S/11, 15 November 2004. This was as part of the Doha Round Ministerial Mandate. See also Babili, 2009.

particularly noticeable in the case of agricultural products, given the growing evidence that the use of non-tariff measures (SPS and TBT standards) has increased tremendously.⁹ Despite this concern of a growing protectionist use of NTMs in the wake of trade liberalization, there have been limited attempts to rigorously study the wholesome effects of trade liberalization that go beyond the impact of tariff liberalization.

In this context, the Centre for WTO Studies (CWS) has collated and created databases on WTO-compatible, non-tariff measures such as SPS and TBT that are being implemented by countries, based on Members' submissions to the WTO Secretariat as mandated under the SPS and TBT Agreements. Approximately 14,786 (under TBT) and 11,434 (under SPS) measures were notified to WTO from January 1995 to December 2010. In terms of product coverage, while the TBT notifications relate to approximately 75,995 products at the HS four-digit level, the SPS notifications are applicable to more than 90,665 products. The average product coverage of a single SPS notification is approximately eight products.

This paper presents the findings of an analysis based on the CWS database¹⁰ of SPS measures notified by WTO Members from January 1995 to July 2010. Section 1 presents the global scenario as well as the Indian scenario regarding the use of SPS measures. It also briefly discusses the use of SPS measures in the context of the proliferation of FTAs and related problems. Section 2 discusses some systemic issues that are observed in the SPS agreement and its implementation, and which bias its outcome against developing country and least-developed country (LDC) Members. Section 3 provides the conclusion and offers some policy suggestions for rectifying the systemic issues in the Agreement with the aim of helping to achieve a more balanced outcome for developing countries.

1. An analysis of NTM standards (SPS and TBT) since 1995

The non-tariff measures (SPS and TBT Standards) increased from just 576 notifications in 1995 to 1,305 notifications in 2004, and subsequently doubled to 3,257 notifications by 2010 (figure 1).

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