



oikos Model WTO 2009

POVERTY REDUCTION & TRADE

Chairpaper

Committee on SPS and Biotech
Ines Kehrer / Raphael Baumgartner

April 19-24, 2009
St.Gallen - Geneva



Table of contents

1. SPS and Biotech - An Introduction.....	3
2. SPS Agreement in short - Underestimated importance?	4
2.1 History - Made by technocrats	4
2.2 Principles - Only science matters	4
3. Issues - Fighting poverty with innovations?	7
3.1 Health safety rules - Future challenges	7
3.2 Modern Biotech - A key technology to reduce poverty?.....	8
4. The Committee and the Chairpersons	10
4.1 Negotiating in the Committee	10
4.2 The Chairpersons	11
5.Sources	11
5.1 Online resources	11
5.2 Textbooks	13



1. SPS and Biotech - An Introduction

Having been established as a “club” of like-minded western nations in 1947, the GATT framework for trade evolved into a comprehensive set of rules governing international commercial transactions. More than ten years ago, in 1995, the World Trade Organization (WTO) was founded after the Uruguay Round of negotiations¹. As a result of these negotiations, several new sets of rules were added to the multilateral framework for trade regulation. Not only did these rules encompass general trade in goods, similar to the GATT, but also trade in services (GATS) and related issues including intellectual property (TRIPS), consumer safety (TBT) and animal and plant health (SPS).²

The assumption of the WTO framework is that international trade is beneficial to all – developed as well as developing countries.

The committee you have chosen to join during the oikos Model WTO 2009 focuses on the latter area of animal and plant health under the SPS Agreement. It aims to prevent sanitary and phytosanitary measures to distort international trade, e.g. through unequally applied animal health rules.

It is up to you and your group to find a coherent system of goals that reflect your country’s needs for the present and future reduction of poverty. These negotiation committees are the forum for achieving these goals.

It is very important that all participants have a similar knowledge base. Therefore we recommend you some sources (section 5). This should facilitate easier, more interesting negotiations.

Therefore, it is **not** the chairperson’s responsibility to say what your country’s goals or strategies for attaining these goals should be; that is up to you. As chairpersons, we will only attempt to point out why each of these issues is important and what the key questions in these topics are.

¹ See Hoekman and Kostecki chapter 4.1.

² See Hoekman and Kostecki chapter 2.1.



2. SPS Agreement in short - Underestimated importance?

The SPS³ is a side agreement of the GATT and is also a *lex specialis* regarding the Technical Barriers to Trade (TBT)⁴ Agreement. The principal reason for the SPS's development was to address safety issues associated with the increasing number of non-tariff trade barriers.

2.1 History - Made by technocrats

During the Uruguay round negotiations, the future SPS was not an issue of great importance. In fact SPS drafting was left to technocrats that only had experience in the fields of animal and plant safety, predominantly veterinarians. Astonishingly after adopting the SPS, a number of high profile cases such as the Hormone (DS 26) and Biotech (DS 291)⁵ arose in the WTO dispute settlement system.

2.2 Principles – Only science matters

Food safety is a concern of virtually every country and for this reason imported food-stuffs are tested at the border. Often, there is a thin line between consumer protection and protectionism. The SPS ensures that health safety rules are not abused to protect the local market from food imports. A special committee at the WTO reviews compliance with the SPS and deals with theoretical and administrative questions. Article 12 of the SPS Agreement establishes the Committee on Sanitary and Phytosanitary Measures. One of its tasks is to monitor the process of international harmonization. It holds a list of international standards that have a major trade impact. The list includes information on which countries apply which standards. If a country does not apply an international standard, it should name the reason, in particular when it considers a standard not to be stringent enough. The list makes sure that interested parties can find out if a country applies measures that are unjustifiably strict. The Committee itself doesn't decide whether a measure violates the SPS Agreement, which would have to be done in a dispute. Disputes under the SPS are carried out according to the general WTO dispute settlement body (DSB). According to article 12.6 SPS, all

³ See also Hoekman and Kostecki chapter 5.7.

⁴ See also Hoekman and Kostecki chapter 5.6.

⁵ Especially concerning genetic modified organism (GMO). For further information see source (8).



that the Committee can do is to invite the relevant international organizations to examine the basis of explanations for non-use of such a standard. It cannot make binding decisions whether a country's measure violates the SPS Agreement. Thus, the Committee increases transparency⁶ and is a forum for international consultations, but does not have judicial powers.

Disputes under the SPS are carried out according to the general WTO dispute settlement body (DSB)⁷.

In short, the SPS claims that a country can use trade distorting measures based on sanitary and phytosanitary purposes if and only if there is scientific evidence that the imported product is harmful (art. 2.2)⁸. Risk assessment itself has to be scientifically based (art. 5.2) suggesting the vital importance of science to politics. In cases of insufficient scientific evidence the standards of international organisations and of other members should be employed (art. 5.7). This provision was important in two major cases in the WTO disputes settlement: EC⁹ – Hormones (DS 26) and EC– Approval and Marketing of Biotech products (DS 291). In both disputes there is a clash between two different regulatory “philosophies”: The U.S. allows food modification unless they have been proven to be dangerous, whereas the EU tends to be more responsive to consumer fears often banning modifications until their safety is proven. Both cases are still not settled.

Despite these differing approaches to food safety, the SPS prescribes that the standards of different countries have to be equivalent (art. 4.1). Article 4.1 of the SPS Agreement states that a WTO member shall accept all sanitary or phytosanitary measures equivalent to its own if they provide the safety level it deems appropriate. This means that SPS measures can differ from country to country if they all provide for the same level of safety. This provision does not contradict article 3 of the SPS agreement which aims at international harmonization. The safety standards are to be harmonized not the individual safeguard measures and procedures.

To avoid a large number of scientific standards, the SPS also refers to ones of international organisations like *Codex Alimentarius*, which should harmonize the different national standards. According to article 3.1 of the SPS Agreement, sanitary and phy-

⁶ Source (4) IPFSAPH (2009) allows research on the implementation of the SPS Agreement of most countries.

⁷ For general information about the DSB see Hoekman and Kostecki chapter 3.

⁸ See for an official introduction WTO (1998) source (7) and source (9) [legal text].

⁹ European Community [EC].



to sanitary measures shall be harmonized on as wide a basis as possible. Members shall base these on international standards, guidelines or recommendations, where they exist. The three most relevant standard-setting organizations for the SPS Agreement are named in annex A 3.a-c to the agreement.

Food safety	The FAO/WHO Codex Alimentarius Commission
Animal health	International Office of Epizootics [OIE]
Plant health	The FAO's Secretariat of the International Plant Protection Convention [IPPC]

Applying these standards makes legal disputes arising from the country's SPS measures unlikely. Governments can also use standards from another international organization if every other WTO member can join it as well. Basically, all members shall have the possibility to participate in the creation of international standards relevant to the SPS Agreement.

Consequently Agreement made those international standards almost binding. Countries can only apply higher standards if they can provide a scientific justification for it (article 3.3 SPS).

Each deviation from those (lower or higher standards) must be based on science and explained to the trading community transparently (art. 7). Article 5 of the SPS Agreement deals with this determination of the appropriate level of protection. In general, countries shall base their safety standards on risk assessment techniques recommended by the relevant international organizations (art. 5.1), on scientific evidence and knowledge about testing techniques (art 5.2).

Article 5.7 applies to cases where scientific evidence is insufficient, for example if the extent of potential damage to health is yet unknown. In that case, a country can provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. The country must actively seek to obtain all information to assess the safety standard needed. If it can't obtain sufficient information from international organizations or from other members' safety measures, it has some discretion in defining its standards, but these



are provisional: as soon as there is new research, it must re-evaluate the standards applied. The SPS established a notification duty for measures of sanitary and phytosanitary purposes to all members of the WTO (art. 7). Developing and least developed countries should be supported by developed countries in attaining the standards of the latter (art. 9 and art. 10).

3. Issues - Fighting poverty with innovations?

3.1 Health safety rules – Future challenges

The SPS is becoming increasingly important for several reasons:

- Firstly, the most important products of developing and least developed countries are commodity goods (e.g. food and resources). With reduced protectionist measures in agriculture, developing countries will export more goods to developed and other developing countries.
- Secondly, modern biotechnology produces plants and animals with new properties.¹⁰ The spread of these technologies will challenge the SPS especially with regards to questions of responsibility in case of damage. Furthermore, it will confront the principles of scientific evidence as the only means of permitting food import restrictions. However, the consumer reservations could allow governments to abuse these interests for protectionist measures.
- Thirdly, new technologies lead to questions of intellectual property or development as a whole. We assume that trade can guarantee a reduction of poverty. One side effect of trade is the transfer of technology to countries that have not been able to develop a particular technology themselves. “Green” biotechnology¹¹ has a potential to provide better crops to poor countries.

Questions remain, however, which could be addressed within the second issue to be discussed in the Model

- Are these developing countries able to afford these technologies?

¹⁰ See source (6) WHO (2005) chapter 2.

¹¹ There is systematization of biotech in colours:

green: agricultural
blue: aquatic
red: medicine
white: industrial



- How can we make the monitoring of food safety standards affordable to least developing and developing countries?
- If yes, can industrialized countries still shut their markets off from imports of biotech commodities because of consumer reservation? Would that be fair play?
- Is that notion of fair play even relevant to the SPS or the WTO system?

3.2 Modern Biotech – A key technology to reduce poverty?

In order to avoid long debates on the definition of Biotech we introduce the definition of the Food and Agricultural Organization (FAO). The FAO is a partner of *Codex Alimentarius*, one of the international standards recommended to countries in order to comply with the SPS. The FAO (2003) (source (3)) defines biotechnology, a term often used interchangeably with GMOs, as follows:

“Modern Biotechnology” means the application of:

- i)** *In vitro* nucleic acid techniques, including recombinant deoxyribonucleic acid (DNA) and direct injection of nucleic acid into cells or organelles, or
- ii)** Fusion of cells beyond the taxonomic family, that overcome natural physiological reproductive or recombinant barriers and that are not techniques used in traditional breeding and selection.

“Conventional Counterpart” means a related organism/variety, its components and/or products for which there is experience of establishing safety based on common use as food.”

The FAO’s definition of GMOs can be applied in a WTO context as Article 3.1 and Annex A SPS state that the relevant standard setting international organization for food safety is the FAO Codex Alimentarius Commission.

Without a doubt biotechnology is becoming increasingly important to the modern world. In medicine it has been vital for developing new therapies (e.g. human insulin from genetically engineered bacteria) and in agriculture it has been a key technology to establishing more productive and pest-resistant plants. Attitudes towards biotechnology vary widely between countries. Whilst the U.S. use a variety of GM crops, many EU member states are reluctant to cultivate them. Consumers are sceptical about the possible side effects of these foods on their own health and the ecosystem as a whole. Generally speaking, biotechnology used for medical purposes – “red” bio-



technology – is in developed countries less controversial than the use of GM crops – “green” biotechnology.

With regard to developing countries, crops improved through biotechnology can be part of the solution for providing their citizens with sufficient food. The U.N. Development Programme and the 2002 World Food Summit have called for more investment in biotechnology to help fight hunger and poverty. Unfortunately there are risks, for example ecosystems could be thrown off balance as GM crops tend to be more robust than their conventional counterparts. Also, poor countries could become dependant on multinational corporations that invent the GM crops, as seeds harvested from them often cannot be used for growing new plants in the next season (so called „terminator crops“).

With regard to the SPS, it will be interesting to determine what implications the spread of biotechnology has on the SPS rules and how these rules manage trade of GMOs. Not only biotechnology has implications for the SPS. But it should be clarified how genetic engineering will be dealt with under SPS.¹²

Generally speaking, SPS measures are aimed at ensuring that an imported animal or plant product doesn't pose a threat to the health of the citizens, animals or plants in the importers territory. Consequently, GMO issues arise under the SPS Agreement only where it is contentious if they pose a danger to animal, plant and human health. If and when this is the case, however, cannot be discussed under the SPS Agreement. Other organizations seem more appropriate to answer this question, e.g. the international organizations that the Annex A to the SPS Agreement names explicitly.

Some interesting questions are:

- How can one strike a balance between the hope for poverty reduction and the possible dangers of green biotech?
- How can the risks of GMOs be assessed in a way that is consistent with SPS?
- Which forum is appropriate to prescribe such risk assessment standards for biotechnology?

¹² Source (2) offers you the possibility to do some research on specific countries (e.g. EC).



- How can the requirement for scientific justification of measure in the SPS be applied to questions of GMOs when there is no acknowledged risk assessment mechanism yet?
- Shall there be additional rules specifically for GMOs? Would that create an incentive to “soften” the SPS by creating more and more exceptions?
- Would a common scheme for the interpretation of existing SPS rules with respect to GMOs be enough? And if so how would this be determined and implemented

These questions are only starting points for your preparation for the oikos Model WTO SPS committee negotiations. We believe that you will come up with questions important for “your” country by doing your own research. Please raise issues that your country would like to see on the negotiation agenda. Send them to us, so that we can prepare for fruitful and efficient negotiations.

4. The Committee and the Chairpersons

4.1 Negotiating in the Committee

Bear in mind that there is more to negotiation than it may seem. To make the most of the Model WTO experience, we recommend at the very least you skim through a book on negotiation. There should be a large choice of these in your library. There are recommended readings in the resources section below (e.g. Lewicki, Barry & Saunders (2007)). After reading a few chapters, you should have an idea of how the process of negotiation works and how to influence it. During the Model WTO, we will apply a set of discussion rules that are published on the Model WTO website (see therefore source (5)).



4.2 The Chairpersons

As chairpersons we set the agenda of the WTO model. Furthermore we moderate the debates. We do not actively participate in the negotiations, but we have some discretion to influence the process by consulting with the different parties.

Ines Kehrer

I am in the 6th semester and am majoring in International Affairs. Through my studies I have become fascinated by international law. I spent an exchange semester in Korea, which provided me with an understanding of the country's economic development and relations whilst introducing me to WTO law. By participating in the oikos Model WTO I hope to expand on that knowledge, and get to know interesting people from all over the world.

Email: ines.kehrer@student.unisg.ch

Raphael Baumgartner

I study International Affairs at the University of St. Gallen, however, I maintain an interest in natural sciences. Through participation in the oikos WTO model and as a chairperson in the SPS and Biotech committee I feel that I can combine these interests to make a valuable contribution to the discussion.

Email: raphael.baumgartner@student.unisg.ch

5. Sources

5.1 Online resources

(1) FAO. (2009). *Biotechnology (GM-Food)*. Retrieved February 18, 2009, from http://www.fao.org/ag/agn/agns/biotechnology_en.asp
[general remarks on biotech, link to the Codex Alimentarius]

(2) FAO. (July 2008). *Biotechnology Policy Documents of FAO Members*. Retrieved March 16, 2009, from <http://www.fao.org/biotech/country.asp>



- (3)** FAO. (2003). *Principles for the risk analysis of foods derived from modern biotechnology*. Retrieved February 24, 2009, from http://www.fao.org/ag/agn/agns/biotechnology_codex_en.asp
- (4)** IPFSAPH. (February 18, 2009). *Country*. Retrieved March 1, 2009, from <http://www.ipfsaph.org/servlet/CDSServlet?status=ND1jdGhodHB3d3dmYW9vcmdhb3NpcGZzYXBoZ2VvZ3JhcGh5YmQmNj1lbiYzMzoqJjM3PWtvcw~~>
[very useful for research for your country's position in implementing the SPS Agreement]
- (5)** oikos. (2008). *Rules*. Retrieved March 12, 2009, from <http://stgallen.oikos-international.org/projekte/wto/the-simulation/rules.html>
- (6)** WHO. (2005). *Modern food biotechnology, human health and development: an evidence-based study*. Retrieved February 16, 2009, from http://www.who.int/foodsafety/publications/biotech/biotech_en.pdf
[good overview over importance of biotech and different biotechnologies]
- (7)** WTO. (1998). *Understanding the SPS Agreement on Sanitary and Phytosanitary Measures*. Retrieved March 23, 2009, from http://www.wto.org/english/tratop_e/sps_e/spsund_e.htm
- (8)** WTO. (without date) *Dispute settlements: find the disputes*. Retrieved February 10, 2009, from http://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm - results
[useful, for research on the Biotech (DS 291) and Hormone case (DS 26)]
- (9)** WTO. (without date). *The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)* [legal text]. Retrieved February 22, 2009, from http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm



5.2 Textbooks

Hoekman, B. M., Kostecki, M. (2001). *The political economy of the world trading system: the WTO and beyond* (2nd ed.). -Oxford: Oxford University Press.

Lewicki, R. J., Barry, B. & Saunders, M.D. (2007). - *Essentials of negotiation* (4th ed.). Boston, Mass.: McGraw-Hill.

