
UNDERSTANDING THE AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES: ROLE OF WTO IN PROMOTING GLOBAL HEALTH OBJECTIVES

Advocate Zoya Siddiqui, LLM, Integral University, Lucknow

ABSTRACT

Historically regarded as primarily a platform for trade liberalization and economic development, the World Trade Organization (WTO) has increasingly acknowledged the significant link between trade and public health. This article examines the unconventional yet crucial function of the WTO in promoting global health initiatives. The organization's involvement in global health is exemplified by one of its key agreements, known as the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), which binds all WTO member countries. This agreement specifically addresses health concerns in relation to international trade. In our current era of globalization, characterized by extensive trade and mutual dependency, the expansion of international trade has heightened health risks, owing to the widespread distribution of goods. These goods may pose potential health hazards, whether toxic or otherwise. The SPS Agreement enables WTO member states to implement protective measures against products that could harbour diseases. This clearly means that the members have freedom to apply measures to protect human, animal and plant life. These measures often take the form of food safety requirements. The article explores the various articles of the agreement and also puts forward various cases to explain the same

Keywords: health, trade, WTO, SPS, dispute

INTRODUCTION

“The doctor of the future will give no medication but will interest his patients in the care of the human frame, diet and in the cause and prevention of disease”—Thomas A. Edison (1847-1931)”¹

Born in a small village of Millan in the US state of Ohio, Mr Edison, who emerged as one of the finest scientist of all times, gave the above mentioned statement which reflects a visionary perspective on healthcare that emphasizes ‘prevention over treatment’². Mr. Edison’s quote envisions a future where doctors focus less on prescribing medication and more on promoting overall well-being. He emphasizes the importance of caring for the human body through proper diet, physical health, and understanding the root causes of diseases. Edison suggests that true health comes from prevention rather than cure, encouraging a proactive approach to wellness. This perspective aligns with modern ideas of holistic and preventive medicine, where lifestyle choices play a crucial role in maintaining health. His vision challenges the conventional reliance on drugs, advocating instead for educating patients to take responsibility for their own long-term health.³ In the context of Mr. Edison’s vision, the WTO has made substantial contributions in the field of health. Indeed!

The foundation of the WTO through the Marrakesh Agreement, agreed in 1994 and effective from January 1, 1995, signified the commencement of a new era in international trade practices. Originally founded to encourage seamless international trade free flow, WTO now boasts 148 members.⁴ The well-known Marrakesh agreement covers the outcomes of many multilateral trade accords included in the Uruguay Round of trade discussions.⁵ The package consists in sixty agreements overall.⁶ One such agreement is Agreement on the application of Sanitary and Phytosanitary measures. Those nations that sign WTO find themselves bound by this SPS

¹ GOODREADS, <https://www.goodreads.com/quotes/13639-the-doctor-of-the-future-will-give-no-medication-but> (last visited May 17, 2025)

² LIBRARY OF CONGRESS, <https://www.loc.gov/collections/edison-company-motion-pictures-and-sound-recordings/articles-and-essays/biography/life-of-thomas-alva-edison/> (last visited May 17, 2025)

³ David Mikkelsen, Thomas Edison on the Doctor of the future, SNOPE (April 17, 2006), <https://www.snopes.com/fact-check/the-doctor-of-the-future/>

⁴ DR. ISHITA CHATTERJEE, INTERNATIONAL TRADE LAW 101 (Central Law Publications 2020)

⁵ INTERNATIONAL TRADE ADMINISTRATION, <https://www.trade.gov/trade-guide-marrakesh-agreement-establishing-wto#:~:text=What%20is%20this%20Agreement%20and,It%20has%20no%20expiration%20date.> (last visited May 17, 2025)

⁶ DR. ISHITA, *supra* note 4, at 105

agreement.⁷

Globalization has resulted in trade liberalisation, therefore enabling the extensive worldwide product circulation. The main dilemma that arises is how can you ensure that your country's consumers are provided with safe food? At the same time, how can you assure that tight health rules do not serve as a pretext to protect domestic producers?⁸ To address these issues, we need to have a fair understanding of the SPS agreement.

HEALTH FOR ALL!

Black's Law Dictionary defines health as follows – 'state of being hale, sound, or whole in body, mind or soul, well being.'⁹ The preamble to the Constitution of World Health Organisation too makes an attempt to define the term 'health'. It states that 'Health is a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.'¹⁰ The definition clearly indicates that the term health encompasses both physical and mental well-being¹¹. In contrast to human health, the terms animal health and plant health are commonly used to refer to the absence of physical disease (a narrow interpretation subject to debate).¹² SPS measures meant to protect human health are classified as a specific branch of health called 'public health'. Public health may be regarded as the set of interventions aimed at health promotion campaigns. It also covers steps taken to avoid the spread of communicable diseases and environmental pollution control measures. To conclude one may say it is a range of initiatives to promote health.¹³

Universal Declaration of Human Rights regards health as a right. Article 25 of the document states - 'everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.....' .¹⁴ The preamble to the Constitution of World Health

⁷ WORLD TRADE ORGANISATION, https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm (last visited May 17, 2025)

⁸ WORLD TRADE ORGANISATION, https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm (last visited May 17, 2025)

⁹ Henry Campbell Black, Black's Law Dictionary, 852 (1968), <https://www.latestlaws.com/wp-content/uploads/2015/04/Blacks-Law-Dictionary.pdf>

¹⁰ WORLD HEALTH ORGANISATION, <https://www.who.int/about/governance/constitution> (last visited May 17, 2025)

¹¹ TRACEY EPPS, INTERNATIONAL TRADE AND HEALTH PROTECTION : A CRITICAL ASSESSMENT OF WTO'S SPS AGREEMENT 10 (Edward Elgar Publishing Limited 2008)

¹² *Id* at 11

¹³ TRACEY, *supra* note 11, at 11

¹⁴ UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited May 17, 2025)

Organisation too gives a similar view. It states -‘The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race, religion, political belief, economic or social condition.’ It also states that governments have a responsibility to assure achievement of this right which can be done through adequate health measures.¹⁵

However, like any other right, the rights provided under UDHR are not absolute. They have their limitations.¹⁶ This is evident by the text of Article 29(2) which states – ‘In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others ...’¹⁷. The above mentioned article of UDHR is in line with the aims of The Brundtland Commission Report 1987. The report defined sustainability as “meeting the needs of the present without compromising the ability of future generations to meet their own needs.” Hence to achieve sustainability we require an approach that takes into consideration environmental concerns along with economic development.¹⁸ Since fauna and flora are two integral components of our environment, SPS agreement in a way helps achieving the objectives of The Brundtland Commission Report 1987.

OVERLAPPING AIMS OF WTO AND WHO

The preamble of Marrakesh Agreement establishing the World Trade Organization states – ‘Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living...’¹⁹ Some similar purpose is observed in the preamble to constitution of WHO which states that the enjoyment of good health is every human being's fundamental rights.²⁰ Thus the above mentioned texts make it evident that both

¹⁵ WORLD HEALTH ORGANISATION, <https://www.who.int/about/governance/constitution> (last visited May 17, 2025)

¹⁶ UNITED NATIONS, <https://www.ohchr.org/en/press-releases/2018/12/universal-declaration-human-rights-70-30-articles-30-articles-article-29> (last visited May 17, 2025)

¹⁷ UNITED NATIONS, <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited May 17, 2025)

¹⁸ UNITED NATIONS, <https://www.un.org/en/academic-impact/sustainability#:~:text=In%201987%2C%20the%20United%20Nations,development%20needs%2C%20but%20with%20the> (last visited May 17, 2025)

¹⁹ WORLD TRADE ORGANISATION, https://www.wto.org/english/docs_e/legal_e/marag_e.htm (last visited May 17, 2025)

²⁰ WORLD HEALTH ORGANISATION, <https://www.who.int/about/governance/constitution> (last visited May 17, 2025)

the organisations aim to improve health of the globe.

LINK BETWEEN TRADE AND HEALTH

Cross-border flows of commodities, services, people, and capital can impact health in several ways, including the spread of infectious diseases, promotion of unhealthy lifestyles, and migration of healthcare professionals. Health and the health industry have been impacted by broader trends in trade liberalization. Historically, commerce and health have operated as independent policy areas; nevertheless, developments such as those outlined above indicate that the two policy sectors will become increasingly intertwined.²¹

FOOD TRADE

Food has been traded for many thousands of years. Food, which is essential for everyone's life, was one of the first products that some people were able to produce in surplus, allowing them to sell it for other goods. There is compelling logic to food commerce; some countries do not produce enough food to meet their demands and rely on imports to ensure food security.²² Other countries produce more than they require and seek to export since the domestic market is insufficient to absorb the surplus. Engaging in food trading is logical due to the inherent vulnerabilities of food production, which is contingent upon various climatic factors and exhibits a sluggish response to alterations in both agricultural conditions and market prices.²³

Greater trade and financial liberalization has resulted in increased food imports and exports.²⁴ During the first 20 years of the primary liberalization period, 1980-1981 to 2000-2001, the total value of global agricultural commerce increased from US\$243 billion to US\$467 billion, representing an annual rate of increase of 4.9% in 1980 and 3.4% in 1990. Between 2003 and 2007, the value of global agricultural exports experienced a consistent increase, ultimately reaching nearly US\$1,128 billion by 2007. Food products accounted for 80% of these exports, with the remaining 20% consisting of non-food items such as cotton, rubber, tobacco, and

²¹ SCIENCEDIRECT, <https://www.sciencedirect.com/science/article/pii/S1098301512041538#:~:text=Trade%20can%20affect%20health%20outcomes,%2C%20health%20outcomes%20%5B%5D>. (last visited May 17, 2025)

²² CORINNA HAWKES, *TRADE, FOOD DIET AND HEALTH* 16 (Wiley Blackwell 2010)

²³ *Id* at 17

²⁴ MARIANNA B. KARTTUNEN, *TRANSPARENCY IN THE WTO SPS AND TBT AGREEMENTS* 23 (Cambridge university press 2020)

wood.²⁵

SPS AGREEMENT DISCUSSED

BRIEF HISTORY

Concerns regarding the safety of imported food, alongside suspicions of protectionist practices, have long been prevalent in the trade of agricultural products, spanning nearly 150 years. Prior to the implementation of the Uruguay Round in 1995, all technical regulations were governed by the GATT Standards Code, which aimed to abolish technical standards that unreasonably hindered international trade. However, the Code did not establish an adequate framework to differentiate between necessary and unnecessary regulations. This lack of clarity, coupled with insufficient enforcement mechanisms, rendered the GATT largely ineffective in imposing discipline on non-tariff measures.²⁶ As a result, the Uruguay Round supplanted the Standards Code with two distinct agreements: one focused on sanitary and phytosanitary measures (SPS) and the other aimed at regulating non-sanitary measures (TBT).²⁷

AIMS OF SPS

The SPS agreement establishes guidelines that member states are required to adhere to when formulating and implementing sanitary and phytosanitary measures. These measures are designed to safeguard humans, animals, and plants from threats posed by pests, additives, contaminants, toxins, or diseases.²⁸ The rules outlined in the SPS agreement aim to advance its fundamental goals, ensuring that no member is hindered in their ability to adopt or enforce protective measures for human, animal, or plant life, while also striving to reduce the detrimental effects of domestic SPS regulations on international trade. Furthermore, the SPS agreement advocates for member nations to align their measures with established international standards.²⁹

KEY PROVISIONS OF THE AGREEMENT

Annexure A of the SPS Agreement offers a comprehensive definition of the term 'sanitary or

²⁵ CORINNA, *supra* note 23, at 28

²⁶ CHRIS DOWNES, *THE IMPACT OF WTO SPS LAW ON EU FOOD REGULATIONS* 4 (Springer 2014)

²⁷ *Id* at 5

²⁸ DR. ISHITA, *supra* note 4, at 439

²⁹ TRACEY, *supra* note 11, at 3

phytosanitary measure.' This definition encompasses any actions taken to safeguard human, plant, and animal health from diseases, toxins, pollutants, pathogenic organisms, and similar hazards.³⁰ The SPS Agreement affirms the essential right of WTO members to adopt steps to preserve human, animal, or plant life.³¹ It also reiterates the GATT agreement's commitment not to discriminate arbitrarily or unjustifiably amongst members, as well as the prohibition on implementing measures that constitute a disguised limitation on international trade.³² Also measures need to be based on scientific principles and sufficient scientific evidence.³³ Here the adequacy of scientific evidence/ principles shall be judged on case to case basis.³⁴ Also the members are encouraged to base their measures on international standards.³⁵ Members' commitment to transparency is ensured by requiring them to report any new measures under consideration and ensuring the disclosure of all current measures through publication.³⁶ Besides all this the agreement allows special treatment to developing country members to uplift them.³⁷ This provision of providing special treatment to developing nations is in line with the fundamental principle of GATT i.e. most favoured nation treatment. The principle asserts that if one party in a contract proposes to reduce its tariff in order to enhance market access for foreign exporters from another nation, that reduced tariff and the corresponding market access must also be provided to all other countries without discrimination. Nonetheless, this treatment may become less consistent due to allowable exceptions to this rule. The exceptions addressed by this principle particularly pertain to developing countries.³⁸

INTERNATIONAL STANDARDS

Nations mandate that both locally manufactured and imported products comply with regulations and may also need to meet specific standards. The establishment of standards and regulations can facilitate economic growth and enhance trade.³⁹ It is well understood that the Sanitary and Phytosanitary (SPS) Agreement advocates for the use of international standards as foundational elements for national regulations. This agreement acknowledges the guidelines

³⁰ WORLD TRADE ORGANISATION, https://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm (last visited May 17, 2025)

³¹ SPS Agreement 1995, art. 2.1

³² SPS Agreement 1995, art. 2.3

³³ SPS Agreement 1995, art. 2.2

³⁴ CHRIS, *supra* note 27, at 8

³⁵ SPS Agreement 1995, art. 3.1

³⁶ SPS Agreement 1995, art. 7

³⁷ SPS Agreement 1995, art. 10

³⁸ DR. ISHITA, *supra* note 4, at 61

³⁹ MARIANNA, *supra* note 25, at 27

set forth by the Codex Alimentarius Commission regarding food safety, those articulated by the International Organization of Epizootics concerning animal health, and the standards developed by the International Plant Protection Convention for the safeguarding of plants.⁴⁰

The Codex Alimentarius, a comprehensive compilation of global food standards established by the Codex Alimentarius Commission, encompasses regulations for a wide array of primary food categories, including processed, semi-processed, and raw foods.⁴¹ As of now, the Codex Alimentarius comprises a total of 4,821 standards.⁴² The International Plant Protection Convention (IPPC) is tasked with the establishment of phytosanitary standards and the alignment of phytosanitary protocols that influence international trade.⁴³ To date, the IPPC has finalized 8 standards, while 14 others are currently under various stages of development. The International office of Epizootics (OIE) aims to unify health requirements related to international trade in animals and animal products, as well as to implement global standards pertaining to animal health.⁴⁴

GATT Article XX

Article XX of the General Agreement on Tariffs and Trade (GATT) delineates several specific circumstances under which members of the World Trade Organization (WTO) may be exempted from GATT regulations. Among these, paragraphs (b) and (g) hold particular significance for environmental protection. According to these provisions, WTO members are permitted to implement policy measures that may conflict with GATT stipulations, provided that such measures are essential for the safeguarding of human, animal, or plant life or health, as stated in paragraph (b), or pertain to the conservation of depleting natural resources, as outlined in paragraph (g).⁴⁵

The autonomy of World Trade Organization (WTO) members to establish their own environmental goals has been consistently reaffirmed in various contexts. In the Appellate

⁴⁰ DR. ISHITA, *supra* note 4, at 446

⁴¹ CODEX ALIMENTARIUS, <https://www.fao.org/fao-who-codexalimentarius/en/> - :~:text=What is the Codex Alimentarius,more%5D (last visited May 17, 2025)

⁴² DR. ISHITA, *supra* note 4, at 447

⁴³ FOOD AND AGRICULTURE ORGANISATION, <https://www.ippc.int/en/> (last visited May 17, 2025)

⁴⁴ DR. ISHITA, *supra* note 4, at 448

⁴⁵ WORLD TRADE ORGANISATION, https://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm#:~:text=GATT%20Article%20XX%20on%20General,disguised%20restriction%20on%20international%20trade%E2%80%9D (last visited May 17, 2025)

Body's observations during the US – Shrimp case⁴⁶, it was highlighted that imposing market access conditions based on the compliance of exporting members with a policy unilaterally set by the importing member is a prevalent characteristic of measures that align with one or more of the exceptions outlined in Article XX.⁴⁷

Historically, several policies have been deemed to fall within the purview of these specific exceptions:

1. Initiatives aimed at diminishing cigarette consumption, safeguarding dolphin populations, mitigating health risks associated with asbestos, and addressing threats to human, animal, and plant health stemming from the accumulation of waste tires (as per Article XX(b)); and
2. Measures focused on the conservation of species such as tuna, salmon, herring, dolphins, and turtles, as well as the preservation of clean air (as delineated in Article XX(g))⁴⁸

LEADING CASE LAWS

1. US – EU BEEF HORMONE DISPUTE

The contention in this case revolved around the trade of beef hormones, specifically involving six hormones that are permissible for use in the United States but prohibited within European communities. The situation originated from concerns regarding hormonal complications and adverse health effects noted in children, which were suspected to be associated with poultry that had been administered these growth-promoting hormones. As a consequence, the agriculture ministers within the European communities enacted a ban on both the production and importation of meat subjected to these growth-altering hormones. In light of this prohibition, which resulted in a significant decline in exports of such beef products from the United States and Canada, both nations sought the intervention of World Trade Organization (WTO) dispute panels to address the issue.⁴⁹ The panel concluded that the European

⁴⁶ WTO Appellate Body Report, United States – Import Prohibition of Certain Shrimp and Shrimp Products, WT/DS58/AB/R, adopted 6 November 1998.

⁴⁷ DR. ISHITA, *supra* note 4, at 387

⁴⁸ WORLD TRADE ORGANISATION,

https://www.wto.org/english/tratop_e/envir_e/envt_rules_exceptions_e.htm#:~:text=GATT%20Article%20XX%20on%20General,disguised%20restriction%20on%20international%20trade%E2%80%9D (last visited May 17, 2025)

⁴⁹ LEGAL SERVICE INDIA, <https://www.legalserviceindia.com/legal/article-3596-beef-hormone-ec-hormones-case-comment.html#:~:text=Facts:,was%20ultimately%20implemented%20in%201989> (last visited May 17, 2025)

Community's prohibition on the importation of meat and meat products derived from cattle treated with any of the specified six hormones for growth promotion was incompatible with Articles 3.1, 5.1, and 5.5 of the Sanitary and Phytosanitary (SPS) Agreement.⁵⁰

2. CANADA – AUSTRALIA SALMON TRADE DISPUTE

In the late 1990s, a dispute arose between Canada and Australia within the framework of the World Trade Organization (WTO) concerning Australia's prohibition on salmon imports. Canada contended that Australia's quarantine regulations, which limited the importation of fresh salmon, constituted a violation of the WTO's Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement). The WTO adjudicated in favor of Canada, determining that the ban was not in compliance with the SPS Agreement. The panel determined that Australia's actions were not in alignment with the Articles 2.2, 2.3, 5.1, 5.5, and 5.6 outlined in the SPS Agreement. Subsequently, Australia rescinded the ban and amended its quarantine protocols, thereby reaching a resolution to the dispute in 2000.⁵¹

INDIA AND SPS AGREEMENT

India takes pride in its role as a founding member of both the General Agreement on Tariffs and Trade (GATT) and the World Trade Organization (WTO). The nation has played a pivotal role in the successful completion of various trade negotiations. Moreover, India remains receptive to engaging in discussions on all matters that could potentially foster its development agenda.⁵² Nevertheless, Indian exporters have faced numerous challenges related to Sanitary and Phytosanitary (SPS) measures, which have emerged as significant barriers to market access, akin to those encountered by other developing nations. Some of the products, the exports of which have faced problems are : marine products, meat products, mango, rice, red chilli powder, tea, milk products. India has experienced considerable export losses intermittently due to its insufficient capacity to meet these SPS requirements effectively. Even in instances where compliance has been achieved, it has necessitated considerable financial

⁵⁰ WORLD TRADE ORGANISATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds26_e.htm#:~:text=On%2026%20January%201996%2C%20the,5.5%20of%20the%20SPS%20Agreement (last visited May 17, 2025)

⁵¹ WORLD TRADE ORGANISATION, https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds18_e.htm#:~:text=On%205%20October%201995%2C%20Canada%20requested%20consultations,from%20Canada%20based%20on%20a%20quarantine%20regulation.&text=The%20panel%20found%20that%20Australia's%20measures%20complained,accruing%20to%20Canada%20under%20the%20SPS%20Agreement (last visited May 17, 2025)

⁵² DR. ISHITA, *supra* note 4, at 460

investment. The most adversely affected by these requirements are smaller enterprises, which often lack the technical resources and financial means necessary to meet SPS standards. Consequently, SPS regulations frequently result in the exclusion of these smaller participants from the market. As a result, addressing these SPS challenges has become critically important for the Indian economy.⁵³

RECOMMENDATIONS

A number of good practices may be adopted to deal with SPS related challenges. Some of these are mentioned below:

IMPROVE TRANSPARENCY

Transparency plays a crucial role in verifying that Sanitary and Phytosanitary (SPS) measures are based on scientific principles and do not impose unwarranted negative effects on international trade. Promoting the online dissemination of SPS regulations, procedures, forms, and fees could serve as a potential solution to address this issue.⁵⁴

REMOVING PROCEDURAL OBSTACLES

Streamlining SPS procedures could potentially serve as a viable solution. Numerous challenges associated with SPS procedures stem from their complexity and duration, burdensome documentation demands, repeated inspections by various agencies, and a lack of predictability.⁵⁵

STRENGTHEN COLLABORATION BETWEEN SPS AND OTHER AGENCIES

Enhanced collaboration among the WTO, WHO, and FAO could address a range of issues effectively. Taking food safety as an example, the SPS agreement is dependent on Codex, which is overseen by the WHO and FAO. Therefore, ensuring the participation of the WHO

⁵³ Kasturi Das, *Coping with SPS challenges in India: WTO and beyond*, JOURNAL OF INTERNATIONAL ECONOMIC LAW 971, 977-996 (2008)

⁵⁴ DR. ISHITA, *supra* note 4, at 454

⁵⁵ WORLD TRADE ORGANISATION, https://www.wto.org/english/news_e/news24_e/sps_26jun24_e.htm (last visited May 17, 2025)

and FAO in SPS meetings will enable them to provide critical guidance.⁵⁶

SPREADING AWARENESS

Additionally, the regular organization of workshops by the WTO at both regional and national levels would contribute significantly to this effort.⁵⁷

CONCLUSION

Globalization has its ups and downs. It's great because it has created new markets and boosted economic growth thanks to international trade. But there are also some downsides, like harm to the environment. Agreements like SPS are going to be super important for the future of trade. As we're seeing more global trade in agricultural and food products, the need to keep people, animals, and plants healthy becomes even more crucial. By tightening up how these agreements are applied and fixing any gaps, we can create a safer and clearer trading system.

⁵⁶ WORLD TRADE ORGANISATION, https://www.wto.org/english/thewto_e/coher_e/wto_codex_e.htm (last visited May 17, 2025)

⁵⁷ DR. ISHITA, *supra* note 4, at 458