

An Analysis of SPS and TBT Measures: A Case Study of Vietnam Agricultural exports

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Abstract

Ever since nations existed, they have exchanged food and other agricultural products. In prior occasions, the trade framework that existed for trade of products was the bargain framework. Gradually this gave an approach to economic trade vendors from the whole way across the nations and trade in agricultural items gave clear economic advantages. The Sanitary and Phytosanitary (SPS) guidelines as measures taken to ensure human, creature or vegetation or wellbeing from dangers related with imported agricultural wares. The Technical Barriers to Trade are regulations and measures overseeing the offer of items into national market which have, as their essential goal, the correction of market wasteful aspects originating from externalities related with production, distribution, and consumption of these items. This paper exploits the contextual analysis on International Sanitary and Phytosanitary measures and Trade Barrier Treaties in Vietnam.

Keywords: Agricultural products, SPS measures, TBT measures

Introduction

The exports of Vietnam have to satisfy the technical policies and SPS measures mentioned by importing countries. Be that as it may, such measures may differ from nation to nation. With a wide range of guidelines and norms makes the lives hard for producers and exporters. In the event that guidelines are set subjectively, they could be excused for protectionism. Numerous potential Vietnamese item trades have been denied by such non-tariff measures. Implementation of SPS and TBT agreements reliably will empower Vietnamese exporters to address issues to global exchange.

Developing countries used their agricultural production as means of earning revenue for their countries. To guarantee sanitation, and to stay away from the introduction of ailments and vermin through trade, nations forced regulations to ensure human and creature wellbeing and plant wellbeing. In contrast to most made items, agricultural yield requires additional consideration. On account of agricultural items, aside with respect to profit and quality consideration at the production, there exist some vital safety measures to be considered when the item is put away and shipped. Nonappearance of such sort of precautionary procedures would effectively affect the nature of the item, bringing about expanded wastage and diminished market esteem. Further, this remains constant for both line and handled food items. In this way it is in the personal responsibility of the makers just as the exporters to guarantee that SPS agreements are satisfied. The GATT, since its inception, emphasized on national food safety, animal and plant health. It was finally the Uruguay Round which gave prominence to areas which were never touched before in any of the rounds – food quality and food safety^[1]. And finally the Agreement on Sanitary and Phytosanitary Measures are become mandatory with the concern of WTO in 1995 the agreement was entered into with the object to ensure provision of safe goods to the consumers of a country and also that ensures the protection measures of human, animal and plant healthiness were not being used as

a cause that protects a domestic producer^[2].

The major issue of the GATT / WTO agreement was to include agricultural trade in its provisions. This is without precedent, given the historic background of the GATT, that agricultural trade has been brought to an international gathering. This inclusion has meant, in particular, a real advancement for the creation of nations that are deeply subject to their homestead for profit-seeking, as well as for people's livelihoods and businesses. It is not that the inclusion of agricultural trade in the WTO system itself is being protested, but the whole range of issues such as appropriations, licensed innovation rights, speculation and new barriers to trade, such as the environment, and labor standards, are becoming controversial when agriculture comes to fruition. Despite the fact that much has been expounded on the advantages of the WTO Agreement for the creation of nations, a large part of the investigation into the graceful response of farming in the developing countries shows that it is likely to be exceptionally inelastic to changes in trade as a result of the implementation of the WTO. It is true that some of the investigations show a negative response, but there are several positive advantages of trade in agriculture due to the provisions of the WTO. These provisions are not likely to be enormous for the creation of nations, as the business sectors in agricultural goods are deeply damaged by the way in which international advertising is controlled by a number of multinational corporations for all purposes in every product area.

Literature review

Rice is the fundamental crop^[1] that plays an important role in the food security and political stability of Vietnam. They consider it as the essential in the daily life of the 91million people. Also, it is the primary source of income for approximately 60million individuals of the nation. Rice production covers the 90% of total cereals. In 2015, they have produced 45. 22million tons of rice. The gradual increment in the rice creation in the course of recent decades has helped Vietnam guarantee food security in the nation as

well as become one of the biggest international rice exporters. Be that as it may, rice send out market share of Vietnam as of recently has some decrement was observed. This is due to the nations rice export is facing a tough competitions from Thailand, India and Cambodia.

Limitations on international trade essentially as non-tariff barriers have increased quickly during the 1980s. In ^[2, 3] show that “developing nations and least developed nations challenge the expanding utilization of SPS and TBT’s by developed nations and view this utilization as a hidden type of protectionism. Trade understandings perceive nations’ privileges to set their own principles and guidelines on trade so as to secure people, animals or plant wellbeing or life. Be that as it may, by and by certain nations force stricter than would normally be appropriate condition on bringing in products to seclude local makers from global competitions. Most experimental investigations have distinguished TBT and SPS measures as the barriers normally abused ^[4]. As indicated by ^[5], global guidelines like SPS and TBT agreement address these challenges. They protect the exporters from abuse or discriminatory over- regulation by the importing nation. Manufactures and different administrators need to acquire satisfactory data on the guidelines applying to their items on their export markets.

Merchants, for example, the EU, Japan and US have set up exacting guidelines on technical measures, SPS measures. As indicated by Disdler ^[3], there are contrasts between bringing in nations. They do not utilize the very same measures; they show various thought processes to force SPS and TBTs on tropical items. The creators additionally recommend that exporting creating nations ought to be upheld to consent to SPS and TBT prerequisites with the goal that they can exploit the understandings.

Concerning Vietnam, numerous Vietnamese investigations have indicated that dealers and makers in Vietnam have encountered with such guidelines when exporting. For instance, significant Vietnamese fare items, for example, winged serpent organic product were prohibited as a US import due to excessively severe SPS prerequisites. Most investigations work out the basic reasons including yet not constrained to poor comprehension of the guidelines ^[6, 7], absence of the harmonization among legislative specialists and outdated foundations for creation ^[8] in Vietnam”.

Under WTO sponsorship, SPS and TBT agreements are marked along with numerous different Agriculture Agreements (AOA) ^[11]. In truth, AOA obviously embraces the execution of the SPS agreement by its Article14: "Members agree to give effect to the application of sanitary and phytosanitary measures." In any case, SPS and TBT agreements do not have the same interest from industries and specialists. The main confusion is understanding the distinction between SPS and TBT agreements. They can be differentiated as follows – SPS articles allude to the segment of food and agriculture alone, while TBT measures allude to all items including food. SPS agreement means ensuring human, creature, and vegetation or well-being from bugs and diseases arising from food and agricultural imports. On the other hand, TBT agreement manages item specifications that incorporate size, shape, weight and material bundling prerequisites including naming and care for well-being. SPS measures confirm international principles, rules and recommendations to ensure human, creature or vegetation or well-being. For food items, the international gauges, rules and recommendations allude to the Codex Alimentarius

Commission (CAC) rules. "CAC is a commission established by the Food and Agricultural Organization (FAO). Although the CAC guidelines do not support international law, the WTO 's endorsement of these standards through SPS and TBT agreements made these standards de facto mandatory"^[12]. A significant CAC rule for food handling organizations is to follow the food quality management framework known as Hazard Analysis and Critical Control Points (HACCP) ^[13]. Article 14 of the Agreement on Agriculture expects individuals to impact on sanitary and phytosanitary measures. Things, however, aren't as straightforward as they appear. However, one must remember that a large number of SPS articles favor Western countries. As an extension of Articles 3.1 and 3.2, Article 3.3 states that 'Members may introduce or maintain sanitary or phytosanitary measures resulting in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on relevant international standards, guidelines or recommendations if scientific justification exists' ^[14].

The SPS agreement in Article 5.1 requires measures to be based on an assessment of human, creature, and vegetation or well-being hazard. It doesn't really require the bringing in nation itself to do the hazard assessment. Furthermore, Article 5.2 clarifies that the kind of information will be considered when taking responsibility for hazard assessment. Article 5.3 distinguishes the economic elements to be considered for animal or plant well-being risk analysis. However, Article 5.7 provides for the exclusion of Articles 5.5 and 5.6 by allowing provisional measures to be taken in the event of lack of sufficient scientific evidence relating to specific health measures. Article 5.5 requires that countries apply their health measures consistently in different situations ^[15, 19]. Under Article 9, Member States are responsible for facilitating technological support to other nations, especially economically weak developing nations, and Article 10 deals with whilst imposing any SPS measures they should also take into account the need for longer transition periods for developing nations and less developed nations. Article11 of the Agreement provides that the rules of the Dispute Settlements Agreement shall apply to consultation and dispute settlement under the Agreements. According to Article 12, the agreement establishes the formulation of a committee on SPS measures to accommodate a discussion on healthcare or creature and plant well-being estimates that influence trade and aim to ensure implementation of the agreement ^[20, 25]. "Australia imposed a ban on importing chilled or frozen salmon to protect its domestic salmon population from various diseases. Canada claimed salmon imported for human consumption were unlikely to introduce a number of diseases. The panel held that the import ban violated Article 5.5 as it was not based solely on a risk assessment for ocean-caught pacific salmon, and the panel found no rational relationship between the measure and risk assessment. No risk assessment was performed for other salmons. Australia's measures violated Article 5. 5 and Article 5.6, by imposing more restrictive than necessary measures" ^[26, 30]. SPS agreements encourage Member States to adopt measures that comply with international standards. The international bodies are prepared as follows:

The CAC for food safety ^[31, 34] (as mentioned above).

*International Office Epizootics (animal safety) ^[35], and

*International Plant Protection Convention (plant

protection) [36].

The member countries are allowed to fix standards higher or lower to these international standards. And if the standards are higher than the international standards are not enough to deal with food, animal and plant safety in the country imposing such a standard. While SPS is a legally binding document on the member countries to apply Codex, IPPC or OIE do not have a binding force. There will not be any lawful objection upon the member countries that applies Codex guidelines, standards and recommendations [37, 41]. They are considered to be voluntary in nature.

SpS and TBT barriers for Vietnam exports

According to survey of Ho and *et al.* (2014) [42], of the 314 companies interviewed, 252 are exported, others do not export directly or export without any measures. The EU, US, and Japan are the top three markets where interviewed exporting firms face the most SPS and TBT difficulties. Agricultural products are always at the top of products facing these measures in every survey market. Among 14 plastic exporting companies, EU TBT and SPS regulations obstruct 46.2% of companies, US regulations obstruct 56.2% and Japanese regulations obstruct 38.5%. According to surveyed firms, the frequency with which interviewees faced trade measures increased dramatically after Vietnam joined WTO. Apparently, when tariffs cannot be officially used to protect domestic markets, nations must resort to non-tariff measures like SPS and TBT.

As for micro-level preparation for TBT and SPS measures, the evidence most companies can show is ISO 9000 (60%); the number of other certificates like IEC, FSC, JSA is so modest. Most of surveyed enterprises trying to get ISO 9000 as the trend in Vietnam (60 percent); 22 out of 33 forestry firms have FSC; certificate on sustainable forestry; 6 out of 10 telecommunications firms have ITU and 13 out of 23 electrical appliance firms have IEC; the number of firms with JSA (4 firms) and CEN (10 firms) is so modest. To deal effectively with the measures, many companies set up separate departments to deal with the issues or at least assign staff (e.g., 21.67% of companies interviewed with separate departments on TBT and SPS, 26.67% assign staff). However, most report not having specialized staff or departments. It is understandable, as 98% of Vietnamese companies are small and medium-sized and lack sufficient resources to set up a separate department to resolve TBT and SPS issues. Their solutions are short-term.

Four solutions are simultaneously used to overcome measures. They are technological renovation (21%), quality assurance (25%), training of relevant staff (25%) and strict compliance with the requirements of importing countries. Companies face different kinds of difficulties to overcome measures. The largest in establishing proper administrative procedures (22%). Compliance costs are the next highest obstacle (19%). Additional capital is needed to renovate technology, train staff, research and beyond to meet strict importing country requirements. Inadequate technology is the most common reason for lack of SPS / TBT information. WTO members must publish all trade measures on the website 60 days before the effective date. Language and technology measures, however, prevent Vietnamese firms accessing such information.

Conclusion

From the developed countries' perspective, they may need a

more sympathetic approach to the whole issue. Imposing less stringent standards would not be enough. Giving equal weight to developing countries' voices is equally important. Another issue facing developed countries is the availability of timely and complete information. This would surely reduce the exporting countries' unnecessary hassles. Furthermore, under the disguise of the SPS Agreement, the imposition of trade barriers should be condemned in all circumstances. This would surely hamper global "fair and free" trade growth. As developing countries, if they want to survive in the highly competitive international food trade world, they need to update themselves. To achieve the SPS agreement goals, developing countries need to introduce some domestic reforms. They must focus on training their staff in post-harvest quality management practices and food processing. Another significant reform in this direction is awareness and education for school-level citizens on human, animal, and plant health. Also, transparency in the WTO system is an urgent need for better harmonization. However, the SPS agreement has succeeded in providing a strong platform for trade between nations in agricultural products and helped to some extent to harmonize the standards set by different countries, but what is lacking is that while food laws are dynamic in nature, the SPS has not yet been modified to comply with these dynamic food safety regulations. It should be kept to country's changing needs.

Here we highlighted SPS and TBT barriers in Vietnam with other countries. The interview was conducted with 300 Hanoi export firms aimed at finding non-tariff barriers. This data is also verified with other literature on similar research works. It was observed that major trade issues are related to SPS and TBT barriers from Japan, the U.S., and the EU. Export firms in Vietnam were found unable to cope with such difficulties. Our investigation, however, also shows that Vietnam ventures decide to stay dynamic in the global commercial center. They used various strategies to beat the measures. Meetings from different nations will help Vietnamese specialists and Vietnamese ventures.

From an institutional level, Vietnam should take an interest in the "three sister" associations mentioned in the SPS Agreement. Vietnam has just set up "Codex Vietnam Committee with 43 individuals speaking to ministries, firms, and associations. Vietnam has launched more than 6000 standards including technical standards and sanitary and phytosanitary measures, among which 1700 standards are said to be meet with international standards like IEC, Codex... Up to March 2011, the United States still complained Vietnam has not yet adopted food safety standards promulgated by international standard-setting organization such as OIE. The paper strongly suggests that Vietnamese authorities follow international standards such as Codex, IPPC, OIE to expand export markets. Furthermore, it is highly recommended that Vietnam develop a formal exporting process to solve SPS/TBT-related problems as Thailand does. The current lack of such a procedure places Vietnamese exporter in the position of self-solving. Only guidelines exist for procedures to deal with SPS/TBT import complaints on SPS Vietnam and TBT Vietnam websites. The paper suggests the first thing Vietnamese authorities should do now is to develop food safety systems and assess conformity. Vietnam has a food safety system, but the assessment does not. The current lack of mechanisms to ensure Vietnamese market access interests can be improved for Vietnamese exporters wherever other

WTO members do not seem to act in accordance with their SPS and TBT compulsions.'

References

- Bettman JR, Luce MF, Payne JW, Abdullah Ab, Shoichi Ito, Adhana K, *et al.* Vietnam: grain and feed annual. *Omonrice*, 2014, 1960; 463-465.
- Coughlin, Wood. An Introduction to Non - tariff barriers to trade, Federal Reserve Bank of St. Louis, 1989, 32.
- Disdier, Fekadu, Murillo, Wong. Trade Effects of SPS and TBT measures on tropical products, international Center for Trade and Sustainable development, 2008, 12
- Yue C, Beghin JC, Jensen HH. "Tariff Equivalent of Technical Barriers to Trade with Imperfect Substitution and Trade Costs" *American Journal of Agricultural Economics*. 2006; 88(4):947-960.
- Christian Häberli. Market Access in Switzerland and in the European Union for Agricultural Products from Least Developed Countries, NCCR Trade regulation, Working, 2008, 5;1.
- Halloran, Pham. Overcoming TBT to push export to EU, *MUTRAP III*, 2009.
- Nguyen Tu Cuong. Vietnam seafood overcomes SPS barriers of import market, *Vietnam Fisheries Workshop (in Vietnamese)*, 2009.
- Gascoine D, Nguyen Tu Cuong. Overcoming SPS barriers to boost exports to the European Union (in Vietnamese), *Mutrap III*, 2009, 12.
- Sumedha Upadhyay "*The SPS and Harmonisation: A challenge*" (*Amity Law Review*. 2012; 8(2):58.
- Rakesh Mehta, George J. processed food product export from India: An Exploration with the SPS Regime (2003), Joint Research Project of Australia National University, University of Melbourn, Research and Information System (India), Thammasat University.
- Ministry of Commerce, "India and the WTO", also available at <http://commerce.nic.in/wto/oct.htm#back> visited on 12 February, 2020.
- Text available at http://www.wto.org/english/tratop_e/sps_e/sps_agreement_cbt_e/c2s9pl_e.htm#example (visited on February 17, 2020).
- MITSOU Matsusita Thomas J, Schoenbaum, Patros C Mavroidis. "The World Trade Organisation, Law, Practice and Policy". (Oxford University Press, 2006, 511.
- MITSOU Matsusita Thomas J, Schoenbaum, Patros C. Mavroidis "The World Trade Organisation, Law, Practice and Policy" (Oxford University Press, 2006, 511.
- Omphemetse S. Sibanda, sr. "Towards a revised GATT/WTO Special and Differential Treatment Regime for Least Developed and Developing Countries" (SAGE Publication, 2015; 50(1):33.
- Text available at http://www.wto.org/english/tratop_e/sps_e/spsund_e.html (visited on February 17, 2020). *Supra* note 1.
- Codex Alimentarius Commission is a collection of food standard, guidelines and recommendations. It is recognised as a reference organization by the World Trade Organization (WTO) for Animal Health and Animal Products.
- It is a Multilateral Treaty which focuses on International Cooperation in controlling Plants, Plant Products and Plant Health.
- MITSOU Matsusita Thomas J, Schoenbaum and Patros C. Mavroidis "The World Trade Organisation, Law, Practice and Policy", Oxford University Press.
- Ministry of Commerce, "India and the WTO", also available at <http://commerce.nic.in/wto/oct.htm#back> visited on, 2020.
- Omphemetse S. Sibanda sr. "Towards a revised GATT/WTO Special and Differential Treatment Regime for Least Developed and Developing Countries" (SAGE Publication.
- Rakesh Mehta, George J. processed food product export from India: An Exploration with the SPS Regime (), Joint Research Project of Australia National University, University of Melbourn, Research and Information System (India), Thammasat University (Thailand). *Supra* note 19, 2003.
- Annual Report, (1999-2001) Ministry of Food Processing, Government of India.
- It is a Multilateral Treaty which focuses on International Cooperation in controlling Plants, Plant Products and Plant Health.
- FICCI. FICCI study on Implementation of Food Safety and Standards Act: An Industry Perspective, Federation of Indian, Chamber of Commerce and Industry, 2007.
- Preparation for the Ministerial Conference, JOB. 1999; (99):4797-3.
- Appellate Body Report, EC Measures Concerning Meat and Meat Products (Hormones) (EC – Hormones). *Ibid*.
- Planning Commission. Report Of The Working Group On Agricultural Marketing Infrastructure And Policy Required For Internal And External Trade For The XI Five Year Plan 2007, Agriculture Division Planning Commission, Government Of India, 2007.
- FICCI. FICCI study on Implementation of Food Safety and Standards Act: An Industry Perspective, Federation of Indian, Chamber of Commerce and Industry, 2007.
- Export Inspection Council's Certificate Recognized for: B asmati Rice by the EU; Black Pepper by the United States Food & Drug Administration; Fish & Fishery Products by the EU; Fish and Fishery Products by the Australian Quarantine and inspection Service, etc.
- http://wtocentre.iift.ac.in/Papers/SPS_Paper_CWS_August%202009_Revised.pdf (visited on February 18th, 2020).
- Preparation for the 1999 Ministerial Conference, JOB. 1999; (99):4797-3.
- Kasturi Das. "International Protection of India's Geographical Indications with Special Reference to Darjeeling Tea" (*Journal of World Intellectual Property*, Blackwell Publishing Ltd. 2006; 9(5):459- 95.
- Export Inspection Council's Certificate Recognized for: B asmati Rice by the EU; Black Pepper by the United States Food & Drug Administration; Fish & Fishery Products by the EU; Fish and Fishery Products by the Australian Quarantine and inspection Service, etc.

35. FICCI. FICCI study on Implementation of Food Safety and Standards Act: An Industry Perspective, Federation of Indian, Chamber of Commerce and Industry, 2007.
36. Jayanti Bagachi. "World Trade Organisation: An Indian Perspective" (Eastern Law House Private Ltd, 2000.
37. Kasturi Das. "International Protection of India's Geographical Indications with Special Reference to Darjeeling Tea" (Journal of World Intellectual Property, Blackwell Publishing Ltd. 2006; 9(5):459-95.
38. Ngoc Thuy Ho, Ha Ngoc Nguyen, Ngan Kim Vu. Implementation of SPS/TBT agreements- experiences from other countries and lessons for Vietnam. SECO / WTI Academic Cooperation Project, Working Paper Series. 1/2013:7-9.