Recent Trends in the Scientific Basis of Sanitary and Phytosanitary Trade Rules and Their Potential Impact on Investment


1 INTERNATIONAL

The ratification of the 1924 Agreement creating the OIE reflects a desire clearly expressed by the Secretary General of the League of Nations that year. He invited various governments to designate veterinary experts "to examine the health guarantees that could be provided by cattle-exporting countries, the facilities that importing countries could accord on the basis of these guarantees and, in general, to determine the most effective means of enabling statutory veterinary measures to be applied, taking into account the economic interests of exporting countries and without prejudicing the interests of countries wishing to protect themselves against animal diseases".

..."the Economic Committee of the League of Nations thus proposed to facilitate international trade in animals and animal products to try and reverse the often highly overt tendency of numerous countries to use sanitary arguments purely for the purpose of economic protection" (emphasis added) (OIE, 2000).

As illustrated by this quote from the official website of the World Organization for Animal Health (OIE),2 the problem of countries using trade barriers supposedly justified on scientific criteria for nefarious purposes long predates the establishment of the current international institutional architecture in the post-Second World War period. While this institutional architecture has certainly been added to and evolved over the intervening sixty-odd years, its structure has remained largely intact (Kerr, 2000). The major rule-making body for the governance of international trade, the World Trade Organization (WTO), evolved out of the General Agreement on Tariffs and Trade (GATT) which came into being in 1947. The current WTO is an organization that has been temporarily ceded, by international standards, a considerable degree of sovereignty by its Member States. In particular, it has a binding disputes settlement mechanism and the power to approve the imposition of economic sanctions on those countries that fail to comply with the WTO obligations that they have previously agreed. Over time, other

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2 The World Organization for Animal Health is the new name for the long standing institution – the Office International des Epizooties or OIE. When the institution was renamed in 2003 it kept its historic and well known acronym.
international organizations have been given the right to govern aspects of international trade but have not been given a binding disputes settlement mechanism or the power to approve economic sanctions.

The GATT and subsequently the WTO have, over time, had considerable success in reducing tariffs and other traditional trade barriers. This has had two effects: (1) it has led to exporting firms finding their market access blocked by domestic regulations in potential importing countries that were put in place behind formerly high tariffs; and (2) governments seeking alternative ways of extending protection from foreign competition in the wake of having agreed to limit the imposition of new tariffs and the reduction of existing tariffs. Many of the domestic regulations that inhibit trade are justified on health, sanitary and phytosanitary grounds which have a scientific basis – but were not crafted with the minimization of trade effects in mind. As they were developed largely independently, they are not harmonized among countries, leading to incompatibilities that can inhibit trade. Purposeful misuse of health, sanitary and phytosanitary measures to restrict trade is hard to prove and thus has an attraction for policy makers wishing to extend protection to economic vested interests when they have agreed internationally to close off more traditional means of extending protection.

The GATT rules pertaining to health, sanitary and phytosanitary measures were relatively weak. They were, however, in keeping with the GATT’s original institutional structure which made it relatively easy to garner waivers from GATT disciplines – which were extensively granted for trade in agricultural products – and where dispute settlement judgments required a consensus that included the accused. This made it easy for countries to grant protection for biologically-based products such as those arising from agriculture and to maintain trade barriers in the face of complaints from trading partners. As a result, there was little need for countries to make use of health, sanitary and phytosanitary barriers for protectionist purposes – it was simply easier to use tariffs. The waivers granted for agriculture, however, led to a retention of high barriers to market access for agricultural products and high degrees of subsidization in the sector – significant distortions that began to spill over into other sectors and poison international relations between major trading partners (Gaisford and Kerr, 2001).

Moving agriculture under general GATT disciplines was agreed when the agenda for the Uruguay Round was set in 1986 – notice this was prior to the commercialization of any genetically modified (GM) crop. Further, the consensus-based disputes system was viewed as unworkable for the rising number of GATT Member States and a binding dispute settlement system was made part of the Uruguay Round agenda. Of course, garnering protection for vested interests in agriculture has been one of the most effective trade lobbies – this is evident broadly in both developed and developing countries. The negotiators during the Uruguay Round were very cognizant of the effectiveness of agricultural lobbies in obtaining protection and, hence, worried about the effect of bringing agriculture under GATT disciplines – thus closing off the ability to grant