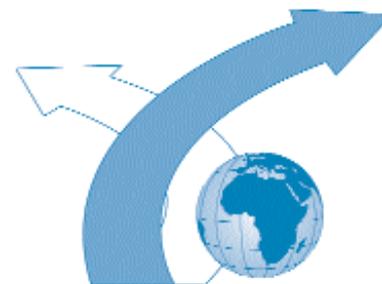


Comparing EU free trade agreements Sanitary and Phytosanitary Standards



Bettina Rudloff and Johannes Simons, Institute of Agricultural Policy, University of Bonn

The aim of this *InBrief* series is to provide a synthesis of various chapters of the ten free trade agreements (FTAs) recently concluded by the European Union with developing countries, as well as other relevant trade agreements when appropriate. Each *InBrief* offers a detailed and schematic overview of a specific set of trade and trade-related provisions in these agreements.

Sanitary and phytosanitary standards (SPS) are receiving increasing attention within the framework of international trade. SPS measures are meant to ensure that imports do not undermine national health and safety. However, restrictions designed to uphold domestic safety standards can be misused as disguised protectionism. This risk has gained importance because tariffs as traditional measures of protection are covered by World Trade Organization (WTO) reduction commitments.¹ Against this background, international agreements on SPS aim to balance the targets of granting nations free choice of their national level of safety protection and facilitating fair market access.

SPS measures are qualitative in character. Their aim is to provide a certain level of food safety or health based on strict scientific reasoning. Therefore, no preferences can be granted in the form of easier or softer requirements for free trade agreement (FTA) partners. This absence of any possible concessions is a feature which sets SPS provisions apart from the quantitative agricultural provisions.

Box 1 Main Provisions of the WTO SPS Agreement

- 1) National choice of protection level (Art. 2)
 - 2) Harmonisation (Art. 3)
 - Domestic standards to be based on recommended international ones
 - Stricter standards to be justified by risk assessment
 - 3) Risk assessment (Art. 5)
 - Recommended criteria to be considered
 - Provisional measures if timely risk assessment is unfeasible (Art. 5.7)
 - 4) Equivalence (Art. 4)
 - Aim of achieving bilateral and multilateral equivalence agreements
 - 5) Regionalised concept (Art. 6)
 - Regional identification of hazards
 - 6) Procedural provisions
 - Control, inspection and approval (Annex C)
 - Notification and enquiry points (Annex B)
 - 7) Technical assistance (Art. 9)
 - 8) Special and differentiated treatment (Art. 10)
 - Phased introduction of measures possible
 - Encouragement and facilitation of the active participation in relevant organisations (see Box 2)
- See www.wto.org/english/tratop_e/sps_e/sps_e.htm

International quasi-binding SPS standards

- 1) Food Safety: Codex Alimentarius Commission (CAC)
- 2) Animal Health: World Organisation for Animal Health (OIE)
- 3) Plant Health: International Plant Protection Convention (IPPC)

Box 2 Technical support for developing countries

Supplementing the WTO SPS Agreement, the comprehensive Standards and Trade Development Facility (STDF) is provided through the World Bank's Development Grant Facility and the Doha Development Trust Fund. The main objective is to help developing countries to meet SPS requirements by extending technical skills and supporting participation in relevant organisations. The Food-Specific Codex Trust Fund was jointly launched by the World Health Organization and the Food and Agriculture Organization of the United Nations (FAO) and coordinated by the STDF. It aims to support developing countries to participate in the process of establishing standards, e.g. by joining the relevant meetings and conferences.

SPS in the WTO

The WTO SPS Agreement adopted in the 1994 Uruguay Round lays down a common basis with respect to SPS measures for all countries that are members of the WTO, independent of whether they are additionally a member of an FTA. This agreement defines SPS measures as 'all types of trade rules aiming at the protection of human, animal and plant life or health'. To prevent an arbitrary interpretation of the protection level, quasi-binding international standards have been introduced. Any deviation towards stricter national standards must be justified by a risk assessment.

A number of principle provisions make up the core of the WTO SPS Agreement. First, member states are free to choose the **level of protection they deem necessary** and to establish measures to implement the targeted protection level. **Harmonisation** requires national standards to be based on standards developed by accepted and recommended international organisations.² Any stricter protection must be justified by a scientific **risk assessment**. Further, **equivalence** is recommended in the acceptance of different measures that achieve similar protection levels. The exporting country must demonstrate equivalency of measures to the importing country. Bilateral and multilateral agreements (so-called 'equivalence agreements' or in case of mutual acceptance 'mutual recognition agreements') provide the institutional framework for implementation of equivalence. Such agreements establish a basis for the exchange of information on standards, recognition of certification, provisions for retests and appeal, and the return of rejected consignments. Provisional protection measures may be implemented if scientific evidence is insufficient to provide a reliable risk assessment (Art. 5.7).

Other main provisions relate to the **regionalised concept** wherein the definition of risk-free areas should consider regional

circumstances such as diseases of special regional relevance or the existence of control programmes for certain regions.

Finally, procedural provisions address issues of transparency such as the requirement to establish **enquiry and notification points** for information exchange. Developing countries often face capacity constraints in these areas. **Special and differential treatment** provides for the encouragement and facilitation of developing countries' participation in relevant organisations, as well as for longer implementation periods (Box 2).

SPS in EU free trade agreements

As the definition of norms and standards is predetermined by the superior WTO rules, bilateral arrangements mainly focus on procedural issues. In this respect, a common characteristic of all EU FTAs reviewed here is their emphasis on facilitating the application of the WTO SPS provisions. This is done in two main ways:

- fostering consistent application of WTO SPS measures by pursuing a common understanding of the existing WTO provisions; and
- harmonisation, through consistency with WTO standards and mutual recognition provisions.

The FTAs differ in four main respects (Table 1):

- the extent to which they reaffirm WTO rules;
- the emphasis on cooperation on SPS measures;
- the adoption of a general exception clause similar to GATT Art. XX; and
- the specification of technical assistance in SPS issues.

Only very rarely do the agreements contain individual provisions that go beyond WTO SPS commitments (Table 1). These concern a limited number of product-specific supplements, procedural provisions on fixed time schedules or decision procedures, equivalence provisions, and some specifically emphasised objectives.

The explicit confirmation of the WTO commitments regarding SPS measures is not only a formal element. It also increases the flexibility of the parties in case of disagreements. The parties have the opportunity to settle disputes either according to the dispute procedures of the specific FTA³ or according to the WTO dispute settlement procedures.

Box 3 Where to find articles on SPS in EU trade agreements

MED agreements:

Tunisia (1995) – Article 40; Israel (1995) – Article 46 and Protocol 3; Morocco (1996) – Article 40; Jordan (1997) – Article 71; the Palestinian Authority (1997) – Article 44; Algeria (2001) – Article 58; Lebanon (2002) – Article 51.

http://europa.eu.int/comm/external_relations/euromed/med_ass_agreemnts.htm

TDCA (South Africa): Article 61.

http://europa.eu.int/eur-lex/en/archive/1999/1_3119991204en.html

Global Agreement (Mexico): Article 5 of the main agreement and Article 20 of Joint Council Decision 2/2000.

http://www.europa.eu.int/comm/trade/issues/bilateral/countries/mexico/docs/en2_annex_16.pdf

Association Agreement (Chile): Annex IV.

http://europa.eu.int/comm/trade/issues/bilateral/countries/chile/docs/euchlagr_xxiii.pdf

For other agreements, see the Trade Agreements Database and Archive maintained by Dartmouth Tuck Business School: http://mba.tuck.dartmouth.edu/ib/research/trade_agreements.html

The Euro-Mediterranean Association Agreements and the TDCA

The Trade, Development and Cooperation Agreement (TDCA) concluded with South Africa in 1999 and the Association (or MED) Agreements concluded with Israel (1995), Tunisia (1995), Morocco (1996), Jordan (1997), the Palestinian Authority (1997), Algeria (2001) and Lebanon (2002) contain mostly similar and relatively shallow provisions on SPS.

All MED agreements emphasise the necessity of **cooperation** on SPS issues. Some agreements explicitly mention the aim of harmonising SPS standards (e.g. Art. 46 for Israel, Art. 51f for Lebanon, Art. 58 for Algeria, Art. 44 for the Palestinian Authority). Technical assistance is provided for in general provisions on agriculture-related assistance (e.g. Art. 46 for Israel, Art. 71 for Jordan, Art. 58 for Algeria). Protocol 3 of the agreement with Israel is dedicated to phytosanitary issues integrating some product-specific exceptions. Thereby, certification is required only for certain defined cut flowers and fruit species. With respect to other plants, permission for import can be granted even if in general the import into one of the partners is prohibited. The granting of such a permission must be based on a pest risk analysis. Hereby, the parties assume conformity with plant protection measures for all other products than the defined cut flowers and fruit species. When new SPS measures are being planned, specific consultations with the partner are required (Protocol 3c).

The TDCA does not differ substantially from the MED agreements. Within the overall objective of promoting 'integrated, harmonious and sustainable rural development in South Africa' (Art. 61), the TDCA mentions cooperation in animal health, plant health and agricultural production techniques. It further states that cooperation will be geared to examining measures to harmonise standards and rules in the SPS field, in conformity with WTO rules.

Except for the agreement with Israel, the MED agreements and the TDCA include very general and shallow provisions on SPS, with an overall emphasis on cooperation.

Table 1 SPS provisions in EU free trade agreements

	MED	TDCA	Mexico	Chile
Confirmation of WTO provisions				
Reaffirmation of WTO SPS Agreement	-	✓	✓	✓
Cooperation on SPS measures	✓	✓	✓	✓
Harmonisation of standards as an explicit target	✓*	✓	✓	✓
Protection of health and life as a general exception similar to GATT Art. XX	✓	✓	✓	✓
Explicit provision of technical assistance on SPS matters	-	-	-	✓
Individual supplements beyond WTO provisions				
Product-specific provisions or amendments	- for Israel (cut flowers)	-	-	-
Procedural specifics**:				
establishment of a joint management committee	-	-	✓	✓
detailed process of equivalence determination	-	-	-	✓
guidelines for conducting verifications, import checks and certification	-	-	-	✓
time schedules and provisions on internal reporting and consultation	-	-	-	✓
operationalising administrative provisions for imports	-	-	-	✓
requirements for information exchange	-	-	-	✓
Provisional approval of certain establishments without prior inspection	-	-	-	✓
Specific objectives	-	-	-	✓ animal welfare
<p>* Only in the agreements with Israel, Algeria, the Palestinian Authority and Lebanon. ** For the MED agreements and the TDCA, these specifics are either currently being negotiated as part of supplemental technical annexes or such provisions have just been adopted. Nevertheless, they are not an explicit part of the FTA itself. This is true only for Mexico and Chile.</p>				

The EU-Mexico Global Agreement

The Economic Partnership, Political Coordination and Cooperation Agreement, also called the 'Global Agreement', between the EU and Mexico was signed in December 1997 and came into force in October 2000. The most important provisions regarding SPS can be found in Article 20 of the supplemental EC/Mexico Joint Council Decision 2/2000 of March 2000.

Reaffirming the overall commitment to WTO provisions, the agreement covers SPS legislation and the mutual recognition of conformity assessment (Art. 5j of the main agreement). The general exceptions of the Global Agreement are similar to those within GATT Art. XX (Art 5k of the main agreement and Art. 22 of Decision 2/2000). Decision 2/2000 of the Joint Council emphasises and defines specific procedural rules, of which the Special Committee is of outstanding importance. This committee is made up of two representatives of both trading partners and has a three-fold mandate:

- to provide a forum to identify and address problems that may arise from the application of specific measures, with a view to reaching mutually acceptable solutions;
- to consider the development of specific provisions for the application of regionalisation, or for assessments of equivalence; and
- to consider the development of specific arrangements for information exchange (Art. 20 of Decision 2/2000).

Additionally, the committee may establish contact points for the information exchange.

The Mexico agreement differs from those previously discussed in the procedural aspect of establishing a Special Committee on SPS measures. By creating a committee mandated to consider regional criteria and transparency (by facilitating information exchange), the Global Agreement strengthens bilateral cooperation on SPS issues.

The EU-Chile Association Agreement

The latest FTA concluded by the EU is the one signed with Chile in November 2002. Though this Association Agreement goes beyond trade to cover political dialogue and

cooperation, its trade provisions stand out as the most advanced in EU bilateral agreements to date.

The Association Agreement contains comprehensive annexes, of which Annex IV covers SPS measures applicable to trade in animals and animal products, plants, plant products and other goods, along with animal welfare. Annex V covers trade in wine. Both annexes reaffirm an overall commitment to WTO rules (Annex IV, Art. 42k and Annex V, Art. 26).

The substantive provisions on norms and standards follow those of the WTO. However, several procedural rules make this agreement different and more detailed than the other FTAs (see also Table 1). Technical assistance is specified for SPS-related matters and is included within the provisions on support for the agricultural and rural sectors (Art. 24.2g).

Another aspect that makes the agreement unique compared with the others is the comprehensive provisions on equivalence integrated into Annex IV.⁴ These provisions require strong cooperation between the responsible institutions of both partners.

As in the Global Agreement, a joint committee, called the **Joint Management Committee**, is responsible for monitoring and control of the implementation of the agreement (Art. 16). Flexibility is provided by additional ad hoc groups that deliberate on SPS-related issues. These groups are made up of expert representatives of the parties or external experts.

As for **information exchange**, the agreement details specific information requirements for verification procedures, import checks and relevant scientific opinions (Art. 12). Further, detailed provisions ensure transparency by defining strict time schedules (Art. 8) and deadlines for the submission of required information. The agreement also foresees concrete steps for consultation when a party fails to comply with notification requirements (Art. 8.3).

A safeguard clause reiterates WTO rules on implementing transitional SPS measures when scientific evidence is insufficient (Art. 14).

A comprehensive article in Annex IV covers the **determination and suspension of equivalence** and considers time schedules for the consultation process between the parties (Art. 7). The provisions are supple-

mented by appendices with procedural details on the consultation process, the priority sectors concerned, and conditions for provisional approval of establishments (e.g. slaughter houses or processing establishments) without prior inspection by the importing party (appendices V and VI).

Other appendices of procedural relevance provide guidelines for **conducting verifications**, for **import checks and inspection fees** and for **certification** (appendices VII–IX). Also, the competent authorities are defined with regard to the implementation of the agreement (Appendix II).

Besides these institutional provisions, the scope of SPS objectives is extended by a special focus on **animal welfare** standards, concerning the stunning and slaughter of animals (Art. 2 and 3 and Appendix 1c). This follows the current policy of the World Organisation for Animal Health (OIE) which has recently integrated animal welfare into its strategic priorities. Though no significant standards have yet been established at the international level, development of an international animal welfare standard is nonetheless an aim set out in the Association Agreement with Chile (preamble of Annex IV).

A comprehensive and detailed institutional design characterises the SPS-related provisions in the Chile Association Agreement. The agreement targets strong cooperation between the respective authorities. SPS provisions are more directly operational than those in the other agreements. Being an integral part of the FTA, they provide more legal security for exporters.⁵

Overall conclusions

SPS measures are becoming increasingly important in international trade arrangements. SPS measures aim to balance targets of national health and safety with fair market access. To avoid arbitrary trade barriers, food safety and animal health policies should be based on objective and neutral grounds. To that end, the WTO SPS Agreement and the associated provisions of various international organisations provide a common and reliable basis.

The FTAs recently concluded by the EU do not grant SPS concessions analogous to quantitative tariff reductions. All SPS standard-related provisions in the agreements are bound to the WTO framework. Their

main aim is to mitigate the costs of complying with SPS regulations and provide more security for exporters. In some agreements, exceptional rules go beyond WTO provisions, such as the limited product-specific provisions in the agreement with Israel and the inclusion of animal welfare as an objective in the agreement with Chile. Of all the FTAs, only those with Mexico and Chile contain individual procedural or institutional specifics that have the potential to strengthen mutual cooperation. However, in current and future renegotiations of the other FTAs, the relevance of institutional provisions in the other agreements could be enhanced as well.

Notes

- 1 See the ECDDPM-CTA FTA *InBrief* on agriculture.
- 2 Such as the World Organisation for Animal Health (OIE), the International Plant Protection Convention (IPPC) and the Codex Alimentarius Commission (CAC) for food safety. The latter, for instance, provides comprehensive and detailed guidelines on food hygiene, risk assessment procedures, maximum residue levels of several substances and additives and standards for labelling and packaging.
- 3 See the ECDDPM FTA *InBrief* on dispute settlement.
- 4 Therefore, Annex IV is often referred to as the 'equivalence agreement'.
- 5 For some of the other FTAs, the approach of the EU-Chile Association Agreement to define procedural issues as integral part has recently been initiated to achieve a similar level of procedural security. The administrative details are part of technical arrangements supplementing the respective FTAs. See for instance Decision 1/2003 of the EU-Morocco Association Council, 24 February 2003, setting up subcommittees of the Association Committee (2003/208/EC).

Acronyms

EU	European Union
FAO	Food and Agriculture Organization of the United Nations
FTA	Free trade agreement
GATT	General Agreement on Tariffs and Trade
MED	Euro-Mediterranean Association
OIE	Office International des Epizooties
SPS	Sanitary and Phytosanitary Standards
STDF	Standard and Trade Development Facility
TDCA	Trade Development and Cooperation Agreement
WTO	World Trade Organization

Selected publications and information sources on sanitary and phytosanitary standards

Publications

- Carrex (2003), Study of the consequences of the application of sanitary and phytosanitary (SPS) measures on ACP countries, CTA Study, May, http://agritrade.cta.int/CTA_SPS%20Study_EN.pdf.
- FAO/WHO (2003), Codex Alimentarius - Food Import and Export Inspection and Certification System - Combined Texts, Joint FAO/WHO Food Standards Programme, www.fao.org/DOCREP/005/X4489E/x4489e00.htm#Contents
- O'Connor and Company (2003), The EC traceability and equivalence rules in light of the SPS Agreement: a review of the main legal issues, CTA Study, December, http://agritrade.cta.int/Agritrade_Report_O%27Connor.pdf
- Otsuki, Tsunehiro, John S. Wilson and Mirvat Sewadeh (2001), A Race to the Top? A Case Study of Food Safety Standards and African Exports, World Bank Research Paper No. 2563, http://econ.worldbank.org/files/1424_wps2563.pdf.
- Oyejide, T. Ademola, E. Olawale Ogunkola and S. Abiodun Bankole (2000), Quantifying the Trade Impact of Sanitary and Phytosanitary Standards: What is Known and Issues of Importance for Sub-Saharan Africa, Paper prepared for the World Bank workshop on "Quantifying the Trade Effect of Standards and Regulatory Barriers: Is It Possible?", April 27, 2000, www.worldbank.org/research/trade/conference/oyejide1.pdf

Information sources

- www.acp-eu-trade.org
- Agritrade: <http://agritrade.cta.int>
- CAC – Codex Alimentarius Commission: www.codexalimentarius.net/standard_list.asp
- IPPC – International Plant Protection Convention: www.ippc.int/IPP/En/default.htm
- OIE – World Organisation for Animal Health: <http://www.oie.int/>
- EU Expanding Exports Helpdesk: advice for developing countries exporting to the EU: <http://export-help.cec.eu.int/>
- EU food and veterinary inspections reports: http://europa.eu.int/comm/food/fs/inspections/index_en.html
- EU guidelines for importing from third countries: http://europa.eu.int/comm/food/fs/inspections/special_topics/guide_third_countries_en.pdf
- FAO International Portal on Food Safety, Animal & Plant Health: www.ipfsaph.org/
- Standards and Trade Development Facility (Technical Assistance): www.standardsfacility.org/

InBrief series on trade for 2004-2005

The *InBrief* series Comparing EU free trade agreements is aimed at trade negotiators, policy makers, officials and experts in gathering a better technical insight into the evolution of EU trade agreements and the approaches adopted by the EU in negotiating these agreements. This might be of particular interest to actors involved with or interested in the current and forthcoming negotiations on trading agreements with the EU, such as the African, Caribbean and Pacific (ACP) countries with Economic Partnership Agreements (EPAs). A complementary and parallel series on EPAs, called *Economic Partnership Agreement InBriefs*, provides insights into the main issues faced by the ACP, and discuss options for the negotiations with the EU.

Topics included in the ECDPM *InBrief* series on trade for 2004-2005 are:

- Agriculture
- Anti-dumping and Safeguards
- Competition Policy and State Aid
- Dispute Settlement
- Fisheries
- Government Procurement
- Investment
- Rules of Origin
- Sanitary and Phytosanitary Standards (SPS)
- Services
- Special and Differential Treatment
- Technical Barriers to Trade (TBT)
- Trade Facilitation
- WTO Compatibility

The *InBriefs* are available online at www.acp-eu-trade.org www.ecdpm.org and <http://agritrade.cta.int/>

This *InBrief* on sanitary and phytosanitary standards (SPS) is an initiative by the European Centre for Development Policy Management (ECDPM) and the Technical Centre for Agricultural and Rural Cooperation (CTA), under the editorial supervision of Sanoussi Bilal (sb@ecdpm.org), Stefan Szepesi (ECDPM) and Vincent Fautrel (fautrel@cta.int).



partageons les connaissances au profit des communautés rurales
sharing knowledge, improving rural livelihoods

CTA Postal address
Postbus 380
NL-6700 Wageningen
The Netherlands

CTA visiting address
Agro Business Park 2
Wageningen
The Netherlands

Tel +31 (0)317 46 71 00
E-mail cta@cta.int

Fax +31 (0)317 46 00 67

Website www.cta.int

'InBrief' provides summarised background information on the main policy debates and activities in ACP-EC cooperation. These complementary summaries are drawn from consultative processes in which the European Centre for Development Policy Management (ECDPM) engages with numerous state and non-state actors in the ACP and EU countries. The Centre is a non-partisan organisation that seeks to facilitate international cooperation between the ACP and the EC. Information may be reproduced as long as the source is quoted.

The ECDPM acknowledges the support it receives for the *'InBrief'* from the Department for International Development in the United Kingdom, the Ministries of Foreign Affairs in Sweden, Finland and the Netherlands, the Directorate-General for Development Cooperation in Belgium, the Swiss Agency for Development and Cooperation and the Instituto Português de Apoio ao Desenvolvimento in Portugal.

European Centre for Development Policy Management
Onze Lieve Vrouweplein 21
NL-6211 HE Maastricht
The Netherlands

Tel +31 (0)43 350 29 00 Fax +31 (0)43 350 29 02
info@ecdpm.org www.ecdpm.org

ISSN 1571-7542