

THE WORLD TRADE ORGANIZATION (WTO) AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES AND THE BAHAMAS

Maurice Isaacs

The SPS Agreement is a World Trade Organization (WTO) Agreement on Sanitary and Phytosanitary measures including standards used to protect human, animal or plant life and health.

It has long been understood that no country can produce enough food to feed itself and therefore must trade with other countries to obtain what it needs. In addition, it may produce enough surplus agricultural products that it may trade to other countries. Trade involves risk as each country has its own disease and pest profile and each product has a risk of diseases and pests associated with it that may be imported with it which the importing country may not want.

Historically, trade in agricultural products was limited as importing countries only considered trading with the countries with which it was familiar with their agricultural health and food safety conditions. They simply refused to trade with whom they were unfamiliar and it was the prerogative of the importing country to determine what ever conditions that it wanted to impose, no matter how unreasonable or for whatever reason.

Following the end of World War II, there was an effort to liberalize trade, in 1947 the General Agreement on Tariffs and Trade (GATT) was created. It recognized the importance of protecting countries rights to protect its agriculture but that sometimes those measures were unreasonable and could stifle trade therefore a general exclusion in the Agreement provided that "such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade". It quickly became clear that this wording was too general and the application of this provision was restricting trade therefore at the Uruguay round negotiations. Two Agreements were crafted, one better defining the exemption and which became the first to deal with the liberalization of trade in agricultural products and the other defining how it should not be used. The former being the SPS Agreement and the latter, the Agreement on Technical Barriers to Trade (TBT Agreement)

The purpose of the SPS Agreement is to ensure that the measures established by governments to protect human, animal and plant life and health are consistent with obligations prohibiting unjustified and arbitrary conditions and are free of unnecessary restrictions. To this end a number of concepts have been developed under which the Agreement operates including 'Transparency' which refers to the openness upon which a country conducts trade and countries are required to establish enquiry points and national notification authorities to ensure that other countries know where to direct their SPS related questions and are notified as to proposed or actual new regulations. 'Special and Differential Treatment' which is aimed at assisting developing countries to implement the Agreement by providing special treatment to assist them. 'Regionalization' is the recognition of pest and disease free areas or areas of low prevalence within a country as previously countries were treated on the basis of the whole country with no recognition of areas within the country that could be free or have a low prevalence of a specified disease or pest where it would be safe to export from. . The TBT Agreement seeks to promote trade by reducing standards that unnecessarily restrict trade. It does this by:

- 1) promoting "standard equivalence" between countries through the formal acceptance of the standards of another country that while different, has the same effect, as being equivalent to ones own;
- 2) promoting the use of international standards; and
- 3) Requiring member countries to establish enquiry points and national notification authorities to answer SPS related questions from other countries and to notify them of new or proposed SPS related regulations.

The Agreement makes a lot of use of multilaterally established standards such as those from the International Standard Setting Bodies (ISSBs): the International Organization for Standardization (ISO), World Animal Health Organization (OIE) for animal health, International Plant Protection Convention (IPPC) for plant health and Codex Alimentarius for food safety on the establishment of standards. The process for developing these standards has been seen to be economically and politically skewed towards the needs of developed countries while some developing countries see the standards as more appropriate for developed countries. In addition, developing countries cannot afford attendance at the meeting where these standards are developed and decided on, including the meetings of the governing Committee are held in Geneva Switzerland. Some suggest that the Agreement is dominated by developed countries as they have the scientific resources to establish standards and can afford to attend the meetings where decisions are made. This has led to limited involvement of developing countries that still have to apply the standards in their countries. Some suggest that this amounts to techno-imperialism.

Recognizing this, the WTO in 2002 created the Standards and Trade Development Facility (STDF) to assist developing countries to participate in meetings and implement standards.

The Bahamas is negotiating to gain entry into the WTO and has been given observer status. As an observer, The Bahamas is allowed to attend all WTO activities including the SPS Committee meetings in order to allow it to see how the WTO operates and is provided assistance to develop the capacity necessary to implement its responsibilities under the Agreement so that when it becomes a member it can immediately do so. As an observer country, The Bahamas, along with 32 other countries in South and Central America and the Caribbean, participated in a regional project funded by the STDF called the Initiative of the Americas, from 2002 – 2008. This project allowed 10 persons from The Bahamas working in areas managing SPS nationally such as the Department of Agriculture, Department of Environmental Health Services, Ministry of Health and Customs Department to attend 19 SPS Meetings in Geneva, Switzerland.

A recommendation for participating countries was to establish a coordinating committee to improve communication and collaboration among SPS stakeholders in The Bahamas, including agencies, businesses and the public. An informal national committee composed of a number of stakeholders including government agencies and businesses was established during the project that met prior to the Geneva meetings to discuss the agenda items and following the meetings at which the person attending the meeting provided a report on the meeting. The project ended in 2008, however the meetings have continued as it was recognized that The Bahamas is unprepared to join the WTO or the SPS Agreement and it does not appear that the SPS Agreement is even being considered in the deliberations here in The Bahamas or in its negotiations with the WTO.

Following the end of the project, the Committee is seeking to formally establish itself. In order to do so it has submitted a draft Cabinet Paper through the Department of Agriculture requesting Cabinet to:

- 1) formally recognize it;
- 2) provide a budget for it to operate;
- 3) join the OIE as it has done for the IPPC and Codex already;
- 4) designate focal points for the SPS Agreement, OIE, IPPC and Codex;
- 5) develop secretariats for the focal points to assist with implementation;
- 6) require representation of those secretariats on the national committee and briefings by persons attending SPS related meetings prior to the meetings to develop national positions and following those meeting to assist public education and implementation of the decisions of the meeting.

The Committee is also looking to establish linkages with other efforts and entities so as to establish it and also to include SPS in the national consultations and negotiations with the WTO so that SPS issues are properly considered and adequate preparation, including capacity development is done to allow implementation

It is important that The Bahamas develops the appropriate capacity for the following reasons:

- The Bahamas is already challenged to manage its SPS responsibilities due to inadequate infrastructure (including limited diagnostic capacity and no Bureau of Standards), outdated and weak legislation, inadequate standard setting or review mechanisms. reactionary and obsolete policies and a lack of awareness and appreciation for SPS and SPS related issues among the politicians, policy makers and the general public;
- The additional challenges which will be made on our already weak infrastructure will restrict The Bahamas' ability to implement therefore placing it at a distinct disadvantage economically and health wise;
- Participation in the SPS Agreement and ISSBs may lead to funding and technical opportunities through the STDF or other sources;
- There has been inadequate national dialogue or consultation by the Government agencies coordinating joining the WTO and stakeholders, including the other agencies;
- Failure to prepare will place Bahamian businesses (especially agro-businesses) at a disadvantage and will further restrict economic diversification;
- The challenges are already beginning as we have already signed the Economic Partnership Agreement (EPA) with the European Union which binds The Bahamas to trading with the EU and all of the other countries signing the Agreement, such as Haiti, Jamaica, etc based on the WTO Agreement even though we have not joined the WTO as yet;
- The challenges will get worse as we are committed to joining the WTO and when we do we will find ourselves in a very restrictive environment in which to function which makes little allowance for the unprepared, especially when they have had years and many opportunities to prepare;

- Job opportunities locally will most likely diminish as countries may 'dump' services and goods on us as we have not developed the protective mechanisms which other countries have done to protect their interests;
- We may be further reduced as a nation of importers and consumers with the loss of the few remaining agri-businesses such as the poultry industry, Lucayan Tropical and others due to unfair competition.