



**WTO disciplines relevant to environmental requirements for horticultural products:  
the role of the SPS and TBT Agreements in facilitating market access  
for developing country horticultural products**  
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on Key Trade and Environment Issues

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- C. WTO Disciplines
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- D. WTO Negotiations: Doha Development Round
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## A. Environmental requirements

horticultural products

- vegetables, cereals, seeds and nuts
- fruit
- flowers and ornamental trees and plants

**subject to:**

- mandatory laws, regulations, measures
  - required by governments (e.g. max. residue levels)
- voluntary standards
  - recommended by governments, private sector and public interest organisations (e.g. EUREPGAP)
- administrative procedures to determine compliance with mandatory and voluntary requirements

- **aimed at protecting the environment**

- **relating to product:**

- (1) content
- (2) process

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## (1) Content

Environmental requirements might require products to have specific characteristics  
*for example*

- *their contents are not harmful to the environment (pesticide residues) or are beneficial to the environment (recycled)*
- *they have recyclable or degradable packaging*
- *that environment-related information is contained on the products' labels.*

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## (2) Process

Environmental requirements might require that products be produced, used or disposed of in a manner that avoids or limits any negative impact on the environment

*for example*

- *limitations on harmful emissions during production*
- *manufacturers to take back and recycle used products*
- *documentation procedures that help to trace and monitor environmental risks.*

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## B. WTO Agreements

- Relevant WTO Agreements
  - Agreement on the Application of Sanitary and Phytosanitary Measures (**SPS Agreement**)
  - Agreement on Technical Barriers to Trade (**TBT Agreement**).
  - General Agreement on Tariffs and Trade (**GATT**).
- Scope of TBT and SPS Agreements depends on requirement's
  - (1) nature
  - (2) objective

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## (1) Nature of requirement

- SPS measures
  - laws, regulations, requirements, procedures
    - including control, inspection and approval procedures
- Technical requirements
  - regulations (mandatory)
  - technical standards (voluntary)
  - conformity assessment procedures

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## (2) Objective of requirement

Environmental measures which aim to:

- **protect the environment (animals, plants and territory) from pest, disease or food-borne risks** could be '**sanitary or phytosanitary**' (SPS) measures subject to SPS Agreement.
- **protect the environment (animal, plants and the environment) in general** could be '**technical**' environmental requirements subject to TBT Agreement.

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## C. WTO Disciplines

TBT, SPS and GATT govern the

- **content** of technical and SPS environmental requirements, and
- **procedures** by which they are created and implemented.

WTO rules governing content and procedures for environmental requirements are qualified by

- WTO commitments to extend '**special and differentiated treatment**' to developing countries.

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## (1) Content of environmental requirements

Environmental requirements covered by the TBT or SPS Agreements and the GATT must be

- non-discriminatory
- proportionate to their aims, taking account of risk
- harmonised with international standards where they exist and when appropriate

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## (i) Non-discrimination

- TBT and GATT: Cannot discriminate directly or indirectly against imported 'like products' on the basis of their country of origin.
  - *Members must not treat foreign products 'less favourably' than 'like' domestic products (known as 'National Treatment') or other 'like' foreign products (known as 'Most-Favoured Nation Treatment').*
- SPS: Cannot discriminate between Members' territories where there are identical or similar conditions.

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## 'Like product'

- products being in a 'competitive relationship'
- 'like products' criteria include:
  - end-uses in a given market;
  - consumers' tastes and habits;
  - the product's properties, nature and quality;
  - tariff classification.
- Health risks have also been found to be relevant in distinguishing between products.

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## (ii) 'Proportionality'

Environmental requirements must not be

- 'more restrictive' of trade
- than is 'necessary'
- to fulfil their objective of environmental protection.

*ie the extent to which an environmental requirement restricts trade must be 'proportionate' to its environmental aims.*

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## (iii) Risk and science

- TBT: proportionality assessment must take account of the 'risks' non-fulfillment of the objective would create
- SPS: based on scientific principles (risk assessment) and not maintained 'without sufficient scientific evidence'
  - except where 'relevant scientific evidence is insufficient'
  - then permitted to adopt 'provisional measures'

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## (iv) Harmonisation

WTO Members

- must base their environmental requirements on international standards where they exist
- except where, for example, international standards would be an ineffective or inappropriate means of fulfilling the objective of the environmental requirement.

Meaning of 'international standard'

- SPS: Codex Alimentarius Commission (food) International Office of Epizootics (animal health) and International Plant Protection Convention (plant) and 'other' recognised by SPS Committee
- TBT? ISO and others? MEAs?

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## (2) Procedures for environmental requirements

Environmental requirements covered by the TBT or SPS Agreements and the GATT must be created and implemented

- in a transparent and fair manner
- with technical assistance provided to other WTO Members on request
- with a view to recognising as equivalent the environmental requirements of other WTO Members.

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## (i) Creation of environmental requirements

- Transparency
  - Publication
  - Notification and consultation: Environmental Database and CRN
- Timing
- Technical Assistance

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## (ii) Implementation of environmental requirements

- Fair procedures: timely and subject to review
- Information and enquiry points
- Technical assistance
- Equivalence and mutual recognition

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### **(3) Special and differentiated treatment**

special and differentiated treatment (S&DT) to developing country WTO Members

- content
  - eg timeframes for implementation
- procedures by which environmental requirements are created and implemented
  - eg technical assistance

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### **S&DT commitments**

- TBT and SPS Agreements
  - throughout
    - technical assistance
  - dedicated provisions
    - creation and implementation of environmental requirements to take account of the special needs of developing country Members.
    - facilitate developing country participation in international standardising bodies.

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### **D. Environmental requirements and the ‘Doha Development Round’**

Doha Ministerial Declaration (DMD)

- (1) environmental requirements and market access
- (2) special and differentiated treatment, with specific attention to technical assistance and capacity building.

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### **(1) Environmental requirements and market access**

Committee on Trade and Environment:

- DMD Paragraph 32(i): the effect of environmental measures on market access, especially for DCs/LDCs, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development
- DMD Paragraph 32(iii) labelling requirements for environmental purposes

WTO Committee on Technical Barriers to Trade (TBT Committee)

WTO Committee on Sanitary and Phytosanitary Measures (SPS Committee)

- Members' notifications of national measures
- TBT Third Triennial Review of the Operation and Implementation of the TBT Agreement

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### **(2) Special and differentiated treatment, with specific attention to technical assistance and capacity building**

WTO's Committee on Trade and Development

- Review of S&DT

Committee on Trade and Environment

- DMD Paragraph 33: technical assistance and capacity building

TBT Committee

- Third Triennial Review: TBT related technical assistance and capacity building

SPS Committee

- S&DT

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