



Multilateral trade rules governing environmental and health requirements: relevant WTO disciplines

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A. WTO Bodies and Agreements

Environmental and health requirements applied to horticultural products (vegetables, fruit, flowers and ornamental plants) from developing countries

- **Relevant WTO bodies include:**
 - Committee on Trade and Environment (CTE)
 - Committees on Sanitary and Phytosanitary Measures (SPS Committee) and Technical Barriers to Trade (TBT Committee)
 - Others? Committee on Trade and Development; Agriculture Committee; Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council; Dispute Settlement Body
- **Relevant WTO Agreements include:**
 - 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**)
 - Other? Agreement on Agriculture; Agreement on Subsidies and Countervailing Measures; Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- **Scope: Application of TBT and SPS Agreements** depends on environmental or health 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

- mandatory regulations (required by governments)
- voluntary standards (recommended by governments, private sector, public interest organisations)
- conformity assessment procedures: procedures to determine whether products comply with specifications in regulations or standards

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(2) Objective of requirement

Environmental and health measures which aim to:

- protect the environment (animals, plants and territory) or human health 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) or human health
 - **in general (but not from pest, disease or food-borne risks)**could be '**technical**' requirements subject to **TBT Agreement**.

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B. WTO Rules

Right of WTO Members to take SPS measures and ability to establish TBT requirements is subject to SPS/TBT/GATT rules which govern the:

- (1) **content** of technical and SPS environmental and health requirements, and
- (2) **procedures** by which environmental and health requirements are created and implemented.

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

- (3) WTO commitments to extend '**special and differentiated treatment**' (S&DT) to developing countries.

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(1) Content of environmental and health requirements

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

- (i) non-discriminatory
- (ii) proportionate to their aims,
- (iii) taking account of risk
- (iv) 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 and health 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 and health 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 (i) created and (ii) implemented in accordance with rules on:

- transparency
- fairness
- technical assistance
- equivalence and mutual recognition

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(i) Creation of environmental and health requirements

- Transparency
 - publication
 - notification and consultation
 - Note WTO Environmental Database and Central Registry of Notifications
- Fairness
 - allow time to comply
- Technical Assistance
 - to establish own requirements

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(ii) Implementation of environmental requirements

- Transparency
 - publication
- Fair procedures
 - timely
 - siting of assessment facilities
 - subject to review
- Information and enquiry points
- Technical assistance
 - to facilitate compliance
- Equivalence of requirements and mutual recognition of conformity assessment procedures

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(3) Special and differentiated treatment

special and differentiated treatment (S&DT) to developing country WTO Members, especially least developed countries

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

S&DT commitments in TBT and SPS Agreements found:

- throughout
 - technical assistance
- in dedicated articles
 - 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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C. Environmental and health requirements and the 'Doha Development Round'

Doha Ministerial Declaration (DMD) (mandate for current round of WTO negotiations and discussions) on:

- (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 and health 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 the elimination or reduction of trade restrictions and distortions to 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: good regulatory practice and transparency

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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 DMD paragraph 44

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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D. WTO opportunities for horticultural products from Bangladesh?

(1) Ensure that environmental and health requirements applied to horticultural products from developing countries give effect to WTO rules on:

- S&DT
- Transparency
- Fairness
- Technical assistance
- Equivalence and mutual recognition

(2) Address inadequate rules and implementation through DMD discussions and negotiations

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