

# balance in trade

*Understanding how the  
Sanitary and Phytosanitary (SPS) Agreement  
helps protect New Zealand's people, economy and environment  
while improving trade opportunities*



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# Foreword

New Zealand depends on trade for its prosperity. Fair and consistent rules for international trade benefit New Zealand as well as our trading partners. These countries require assurances that our exports are safe. Similarly, the New Zealand government has to manage the risks that imported goods can pose to the safety of our food and to protecting our productive base and our native plants and animals.

The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) sets in place rules that protect each country's sovereign right to take the measures necessary to protect the life or health of their people, animals, and plants while at the same time facilitating trade. New Zealand, as a member of the World Trade Organization (WTO), has the sovereign right to decide its own level of protection. We also expect our exports to be allowed to compete fairly in foreign markets, while meeting the level of protection required by the importing country. We therefore have an interest in setting international standards that do not restrict trade any more than necessary to protect life and health.

The SPS Agreement complements New Zealand's domestic legislation. It embodies and promotes use of the science-based risk assessment that we have adopted in managing the risks associated with the international movement of goods and people.

I commend this publication to New Zealanders as a clear summary of the international rules for food safety, and protecting human, animal and plant life or health when trading.

Hon Jim Sutton

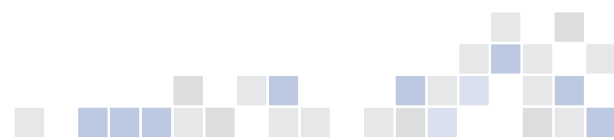
*Minister of Agriculture*

*Minister for Biosecurity*

*Minister of Forestry*

*Minister for Rural Affairs*

*Minister for Trade Negotiations*



# Introduction

## WHY THE SPS AGREEMENT MATTERS

The SPS Agreement is about how to apply sanitary (human and animal health) measures and phytosanitary (plant health) measures. It establishes principles that countries are committed to uphold when trading in animals, plants and their products.

At the heart of the world trading system is the World Trade Organization (WTO). By 2003 the WTO had 148 members, representing the vast majority of the world's trading nations.

An increasing volume of international trade and travel means that all countries, New Zealand included, need to be more vigilant than ever against pests and diseases that threaten the health of their people, animals and plants. Likewise, countries rightly expect the food they import to meet their own standards of safety.

So freedom to trade, and the benefits that result, must be balanced against the need to protect people, animals and plants from unacceptable risks to health and safety.

WTO member countries negotiated the SPS Agreement to help achieve this balance. It does not stop countries from protecting health and safety. Rather, it allows them to determine their own level of protection but requires that any restrictions on trade deemed necessary to achieve that protection be non-discriminatory, transparent and scientifically justified.

### Part 1

looks at the SPS Agreement in detail.

### Part 2

looks at how the SPS Agreement affects New Zealand.

### Part 3

describes some of the future challenges in implementing the SPS Agreement. Finally there is a short glossary of terms and a guide to further sources of information.



***Freedom to trade, and the benefits that result, must be balanced against the need to protect people, animals and plants from unacceptable risks to health and safety.***



## The SPS Agreement is important to:

### our people as citizens

because it allows us to protect human and environmental health

### our people as consumers

because it allows us to ensure that food imports are safe to eat



### our biosecurity

because it makes clear the factors that should be taken into account when sanitary and phytosanitary measures are applied to protect the life or health of our introduced and native animals (land-based and water-based), forests and plants



### our importers

who benefit from the greater certainty over border measures. In turn, **processors and commercial users** of imported food, animal and plant products also benefit

### our food, fibre and forestry producers and exporters

because they generate almost two-thirds of New Zealand's exports of goods, and employ hundreds of thousands of New Zealanders, directly and indirectly



### developing countries

which can use the international framework for SPS arrangements among countries, irrespective of their economic and technical capability.



# Part 1

## WHAT IS THE SPS AGREEMENT?

### A change in philosophy

The WTO and its agreements, including the SPS Agreement, were created and put into force in 1995. The SPS Agreement represented a significant change in philosophy in that trade can now not be prohibited without good reason, such as protecting human, animal and plant life or health. Before the SPS Agreement, countries could – and did – impose barriers to imports on health grounds with the burden being on potential exporters to prove that such barriers were not justified. But the SPS Agreement means that regulators must use scientific evidence, or accord with other provisions in the agreement such as an assessment of risk, to justify any import restrictions they impose.

The SPS Agreement maintains the sovereign right of any government to determine the level of health protection it deems appropriate, but it also aims to stop abuse of this right and the proliferation of unnecessary barriers to international trade. This is consistent with the overall trade-enhancing thrust of the WTO system.

### What the Agreement covers

The SPS Agreement covers all SPS measures that affect – or have the potential to affect – trade between WTO members. It establishes principles that members must follow when they set measures for protecting the life or health of their people, animals or plants when importing animals, plants and their products. SPS measures apply to products moved between countries.

The SPS Agreement does **not** cover:

- measures for the welfare of animals
- measures for protecting the physical environment (e.g. water and air quality)
- non-health/non-safety-related consumer interests (e.g. labelling for consumer choice and packaging of food).

These are addressed by other WTO agreements e.g. the Agreement on Technical Barriers to Trade (TBT – see box opposite).

### Key features

- The SPS Agreement covers all sanitary and phytosanitary (SPS) measures – standards, guidelines and recommendations to protect human, animal and plant life or health – that affect international trade between WTO members.
- The SPS Agreement preserves national sovereignty: countries have the right to protect the life or health of their people, animals and plants.
- SPS measures must be necessary and based on scientific principles. They must not be maintained without scientific justification.
- SPS measures must not discriminate unfairly between countries or between imported and domestically produced goods.
- SPS measures are to be based on international standards wherever possible, but WTO members can adopt a measure that is more stringent than an international standard, provided the measure is scientifically justified.
- The SPS Agreement provides guidance on using precaution when making decisions on SPS measures.





Another international agreement, the Biosafety Protocol to the United Nations Convention on Biological Diversity, governs the international movement of living (genetically) modified organisms. This agreement is not WTO related.

SPS measures are requirements that are applied:

- to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-causing organisms in foods or beverages;
- to protect human life or health from risks arising from diseases carried by animals, plants or their products, or from the entry, establishment or spread of pests;
- to protect animal or plant life or health from the entry, establishment or spread of pests, diseases, or organisms that carry or cause disease;
- to prevent or limit other damage to a country from the entry, establishment or spread of pests.

The term 'animal or plant life' includes marine and freshwater fish, bees, forests, and both native and valued introduced fauna and flora.

## Biosafety Protocol – a United Nations agreement

The Cartagena Protocol on Biosafety, concluded in January 2000 under the United Nations Convention on Biological Diversity, aims to protect biological diversity from the potential risks posed by transboundary movement of living modified organisms (LMOs) resulting from modern biotechnology.

The Biosafety Protocol sets out procedures for advance informed agreement for the intentional transboundary movement of LMOs that are likely to have adverse effects on the conservation and sustainable use of biological diversity. The Biosafety Protocol came into force on 11 September 2003. New Zealand has signed the Biosafety Protocol but has not ratified it (at time of publication).



## The TBT Agreement – a WTO agreement

The TBT Agreement covers all technical standards or regulations except where they are SPS measures as defined by the SPS Agreement. While the two Agreements are fundamentally different, they have some important principles in common. These include:

- basic obligations to not discriminate between foreign and local products of the same type
- requirements for notifying proposed measures in advance (transparency)
- creating official points for conveying and receiving information.

The SPS Agreement relates specifically to regulations for protecting human, animal and plant life or health. Under the SPS Agreement, SPS measures must not be arbitrary or cause unjustifiable differences in the level of protection considered appropriate in different situations. The SPS Agreement requires that regulations must be scientifically justified.

In contrast, the TBT Agreement simply states that general technical regulations and standards including packaging, marking and labelling requirements must not create unnecessary barriers to trade and must not be more trade-restrictive than necessary to fulfil a legitimate objective. Legitimate objectives include national security, preventing deceptive practices, and protecting the environment.



## The Appropriate Level of Protection – a key concept

It is impossible for any country, even a geographically remote island nation like New Zealand, to isolate itself from all risks of imported pests or diseases. Achieving zero risk is impossible: tourism would have to be banned completely, as would all imports of goods. Even then, zero risk could not be assured. For instance, organisms could enter through smuggling or by natural means such as wind-borne movement.

Trade increases some of these risks. For New Zealand, which depends on both imports and exports, the risks must be appropriately managed. Recognising that zero risk is unattainable, the SPS Agreement instead enshrines the right of each country to determine the level of protection that it considers appropriate. While this appropriate level of protection (ALOP) will be a judgement, the SPS Agreement stipulates that *the measures applied to achieve it must be firmly based on scientific evaluation*.

Before the SPS Agreement, governments could respond to pressure from domestic producers, for example, by setting a high level of protection against the entry of a commodity that would compete with domestic products. At the same time, they could set a lower level of protection against similar risks of other imported commodities that they considered economically beneficial, such as commodities not produced locally, or new genetic material. But the SPS Agreement means that governments can no longer apply discriminatory measures. There must be consistency between the levels of protection considered appropriate in like situations. This allows trade to flow more predictably.

Although the term ‘appropriate level of protection’ is relatively new (i.e. since the inception of the SPS Agreement in 1995), the concept is not. Governments and regulatory authorities in New Zealand have for many years been making decisions on which risks to accept, and on the level and targeting of actions aimed at mitigating risk. These decisions have, in effect, been about New Zealand’s ALOP. They are made in consultation with interested parties such as consumers, environmental organisations and industry, and take into account, through the political process, the views of all stakeholders. In general, New Zealand governments have adopted a cautious approach with respect to determining the ALOP.

The ALOP reflects judgements of the community as well as science-based evidence. This means it can change over time. It takes into account the benefits of trade, including people’s access to imported goods, as well as the consequences of incursions of pests or diseases on industry, biodiversity and society. The ALOP can be stated in qualitative or quantitative terms.

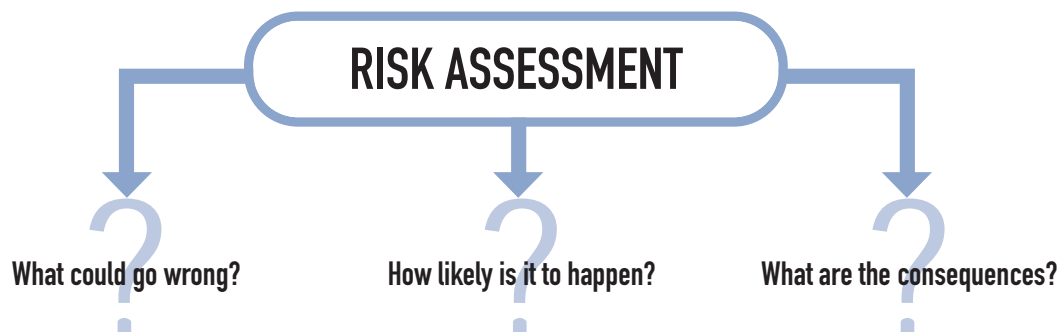
## Risk assessment – a scientific basis for SPS measures

WTO members are obliged to ensure that their SPS measures are based on scientific evidence. If they are not using international standards this entails a risk assessment. Risk assessment is a scientific procedure. It helps regulators assemble and analyse data in an objective, transparent and consistent way, so that decisions about managing risks can be made on a sound technical basis.



Any WTO member affected by a decision is usually entitled to see the rationale for the decisions made by another WTO member in developing an SPS measure.

A risk assessment typically answers three questions:



Countries may conduct their own risk assessments to evaluate risks and their possible consequences. When carrying out a risk assessment for SPS measures, a country must take into account a range of factors such as:

- available scientific evidence
- relevant processes and production methods (e.g. for animal or plant products)
- relevant inspection, sampling and testing methods (in both the importing and exporting countries)
- prevalence of specific diseases or pests (in both the importing and exporting countries)
- existence of pest- or disease-free areas (in both the importing and exporting countries)
- relevant ecological and environmental conditions (in both the importing and exporting countries); and
- quarantine or other treatment (in both the importing and exporting countries).



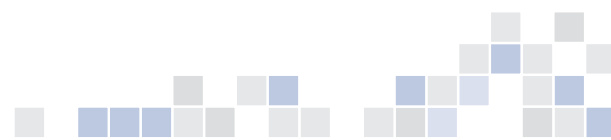
This list is not exhaustive; other relevant factors may be considered.

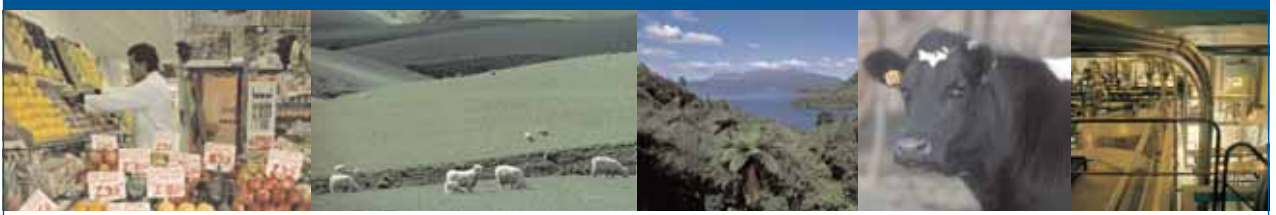
## Quantitative and qualitative risk assessment

In some cases the risk of an adverse event is expressed numerically. This is **quantitative** risk assessment. In other cases the nature and severity of the risk is assessed, but limited numerical analyses are carried out and the risk estimate is not reported in quantitative terms. This is **qualitative** risk assessment.

Risk assessment also evaluates the consequences of an adverse event. This might be measured in terms of the costs of controlling or eradicating a new disease and the economic impact of lost production or sales.

Once the level of risk has been identified, options for managing the risk are evaluated. From those, one or more options are chosen that mitigate risk to the level considered acceptable.





## Risk analysis in New Zealand

Consumers in overseas markets supplied by New Zealand are growing more aware of protecting their health, the life and health of their animals and plants, and the safety of their food. At the same time, consumers are demanding access to new products from new sources. This increases the volume and diversity of trade in primary products. Because the safe movement of animals, plants and their products in and out of New Zealand is so important to our economic well-being, the discipline of risk analysis plays a crucial role in trade.

These are some of the issues that play a part in decisions by New Zealand regulators:

- **Protecting human health** from zoonotic and pest-borne diseases and from venomous species.
- **Maintaining food safety:** Assuring the safety of food produced domestically or imported from other countries is essential for maintaining the confidence of consumers in New Zealand and overseas.
- **Protecting New Zealand's animal and plant health status:** New Zealand's freedom from many of the world's most harmful animals, pests and diseases is an invaluable asset that must be protected.
- **Market access:** In order to preserve and enhance our access to overseas markets, New Zealand must be able to assure other governments that our agricultural products are safe. The mutual acceptance of methods for assessing risk by governments facilitates this assurance.
- **Genetic improvements:** International trade in plant and animal genetic material is necessary if New Zealand is to maintain its competitive position in primary production. Risk analysis is required to ensure new genetic material, such as ova and semen, can be safely imported.
- **Industry efficiency:** Where a high level of regulatory input is needed to achieve the food safety standards of importing countries, such as with meat inspection, risk analysis can expose unjustified requirements and excessive waste – for example, inspection procedures which yield no safety benefit.

## How the SPS Agreement is applied

### Choosing the least trade-restrictive SPS measure

Where there is a choice of SPS measures to reduce risk to an acceptable level, WTO members must choose the one that restricts trade the least. Similar risks associated with trade must be managed consistently, even if the item comes from different countries. Countries must avoid unjustifiable distinctions between levels of SPS protection applied to like situations. This means that they must be able to justify any differences in the way they treat imports from different countries with similar health status.

### Transparency

WTO members are required to notify each other of draft regulations for food safety and protecting animal and plant life or health. These are open for comment and enquiry by other WTO members. This system is one of the key innovations of the SPS Agreement and allows a 'no surprises' approach for WTO members.

Before the SPS Agreement, one of the greatest difficulties for exporters was finding out all the requirements of importing countries. An SPS notification takes consultation to an international level and allows potential problems to be identified early. The results of a risk analysis can also be



open to scrutiny. Even in the absence of quantitative data, the risk analysis process assembles available data in an orderly and transparent fashion, providing a basis for informed and accountable decision making. By allowing other members to comment, WTO members ensure that their SPS measures will withstand international scrutiny, while protecting the life or health of their people, animals and plants.

Transparency works in both directions. Whenever a government is proposing a new SPS regulation or modifying an existing one that differs from an international standard and may affect trade, it must notify the WTO secretariat, which then circulates the notification to all other WTO member governments. This process also allows other WTO members to submit comments on these SPS proposals. The systematic communication of information and exchange of experiences among the WTO members provides a more transparent basis for national standards, and in many cases makes harmonisation of SPS measures easier. It also means that many potential conflicts are resolved informally between countries, rather than through formal processes under the SPS Agreement.

### Precaution in risk analysis

In risk analysis, the confidence that can be drawn from predictions depends on the amount and reliability of the information used. There will never be perfect understanding of every situation and the amount of variation that exists. A balance must be sought between trying to acquire complete knowledge and obtaining reasonable estimates on which predictions can be based with a reasonable level of confidence.

Recognising that there are certain situations where it is not possible to complete a robust risk analysis, the SPS Agreement provides guidance on using precaution in managing risks to food safety, or human, animal or plant life or health. When available scientific information identifies a credible threat to food safety or animal or plant life or health, but there is insufficient information to complete a risk analysis, a WTO member may provisionally adopt SPS measures on the basis of available pertinent information, including information from the relevant international organisations as well as from SPS measures applied

by other WTO members. After adopting **provisional** SPS measures, WTO members are required to seek to obtain the additional information necessary for a more objective assessment and to review the SPS measure accordingly within a reasonable period of time.



### Transparency: taken seriously by WTO members

The number of WTO members submitting SPS notifications rose from 30 in 1995 to 100 in 2003, while the number of notified new or amended SPS measures more than tripled over the nine year period.

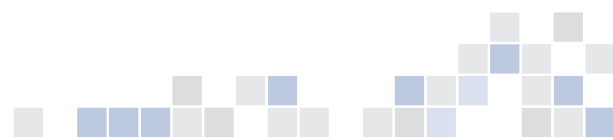


### Communicating SPS information between New Zealand and its WTO partners

**The National Enquiry Point** for SPS matters in New Zealand plays an important role in facilitating compliance with New Zealand's obligations for transparency under the SPS Agreement e.g. passing on information about New Zealand SPS measures and its systems to other WTO members.

**The National Notification Authority** conveys information on notifications of New Zealand's new SPS measures to WTO trading partners through the WTO secretariat in Geneva e.g. deciding whether a notification is necessary, when to notify, and processing and sending the notification. The National Notification Authority also receives notifications from other WTO members on their new SPS measures from the WTO secretariat and passes these on to interested parties in New Zealand.

Both the National Enquiry Point and the National Notification Authority are located in the Ministry of Agriculture and Forestry in New Zealand.



Further, precautionary actions are implicit in most risk analyses. For example:

- A conservative approach to the use of all data (which can include building in safety margins) is commonly used to address uncertainties in risk assessment.
- Risk managers commonly ensure that their SPS measures resulting from risk estimates err on the side of caution.

Precaution is an integral part of New Zealand's approach to managing risks.

### Regionalisation: ensuring measures are only applied where specifically needed

Differences in climate, pest or disease status, or conditions for food safety mean that it is not always appropriate to impose the same SPS measures on products coming from different countries or areas within a country. So SPS measures may need to be accurately targeted or adapted, depending on the health status of the country of origin or country of destination – or the areas or regions within a country. This is known as 'regionalisation'.

Members are required to apply SPS measures that recognise pest and disease-free regions (or areas with a low prevalence of diseases or pests) whether they are within a country or spanning more than one country. The onus is on the exporting country to provide the scientific evidence to justify a claim to be free of a pest or disease. Regionalisation therefore can benefit producers if a pest or disease occurs only in one part of a country. For example, when a single Mediterranean fruit fly was found in Auckland in 1996, some parts of New Zealand were able to continue exporting fruit because the incursion was confined to a small area in the upper North Island.

### Equivalence: focus on outcomes rather than process

Under the SPS Agreement, standards must specify clearly the outcome being sought and facilitate various means of achieving that outcome. Under the SPS Agreement's provisions on equivalence, WTO members must accept the SPS measures of other WTO members as equivalent even when measures differ from their own. When trading in the same product, so long as they achieve the same level of protection, there is flexibility in how that outcome can be achieved. Equivalence allows exporters to adopt different ways of reaching the required level of protection. Equivalence has the potential to save exporters millions of dollars per year, by allowing them to determine the most cost-effective and efficient way to fulfil the agreed health requirements of the importing country.

### Equivalence in action

New Zealand's meat and seafood industries have traditionally borne heavy costs in meeting the inspection requirements of overseas countries. The technical justification for these has sometimes been doubtful, and the effects have been to increase regulatory and other costs associated with maintaining market access.

Scientific research and risk analysis has enabled a marked reduction in the human resources needed for routine inspection of meat and seafood. This has increased processing options, reduced wastage, and improved the integration of public and animal health activities. The net result has been savings to the food industry, and ultimately consumers, of millions of dollars a year, while maintaining and enhancing standards of food safety.



## Explaining and reviewing SPS measures: where measures are challenged



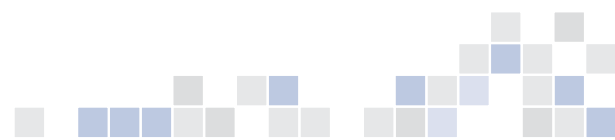
What happens if a WTO member country is not satisfied with an SPS measure imposed on its exports by another WTO member?

WTO members may introduce SPS measures that are more stringent than international standards if there is scientific justification to do so, or if they determine a higher level of protection is appropriate in accordance with the SPS Agreement.

WTO members can challenge a proposed SPS measure if they have reason to believe that the measure could unjustifiably constrain their exports, and the measure is not based on relevant international standards, guidelines or recommendations. The first step is to ask why the measure has been imposed. The explanation should show how the SPS measure is justified using the provisions of the SPS Agreement. In particular, it should show that it is:

- applied only to the extent necessary to protect against identified risks;
- based on scientific principles and evidence;
- not used to discriminate against imported goods in favour of domestically produced ones;
- consistent with the member's appropriate level of protection;
- as least trade-restrictive as possible; and
- generally applied consistently with the SPS Agreement.

If a measure does not meet these criteria, the country applying it may be required to review it and adjust it to make it conform to the SPS Agreement.



## Dispute resolution

If any dispute remains unresolved after attempts to resolve it bilaterally, it can be raised formally in the SPS Committee. The ‘good offices’ provisions enable the chair of the SPS Committee to mediate through *ad hoc* consultations.

If there is still no mutually agreeable solution, the aggrieved WTO member can start formal WTO dispute settlement procedures. First, consultations (formal discussions) take place. If these do not lead to a mutually acceptable solution then, at the request of the aggrieved country, a panel of qualified people is established. If the panel finds that the SPS measure under dispute is inconsistent with the SPS Agreement, it can recommend that the WTO member bring the measure into conformity with the SPS Agreement.

Panel decisions can be appealed on points of law. The appeals are heard by a standing Appellate Body established by the WTO. The decision of the Appellate Body is binding.

The dispute settlement understanding emphasises that *“prompt compliance with [dispute settlement] recommendations or rulings ... is essential to ensure effective resolution of disputes to the benefit of all members”*. There are procedures for retaliation of trade measures or compensation if the WTO member losing its case does not comply with a dispute settlement ruling, but these are last resorts.

Many complaints involving SPS-related matters are formally raised in the SPS Committee. Examples are: procedures for inspecting fresh fruits, regulations for the shelf-life of processed meat products, a ban on the use of growth-enhancing hormones in meat production, and restrictions on methods for processing poultry. Panels established by the WTO Dispute Settlement Body, however, have heard only four issues that have been argued primarily on SPS grounds. These involved the entry of salmon to Australia, hormone-treated beef into the EU, certain varieties of plants into Japan, and apples into Japan. In 2003, several others were proceeding.

## Harmonisation and the ‘three sisters’

‘Harmonisation’ means that countries should base their SPS measures on relevant international standards, guidelines or recommendations made by the appropriate international organisations identified in the SPS Agreement. These are the standard-setting bodies for food safety, animal health and zoonoses (diseases transferred to humans from animals), and

## The WTO’s SPS Committee

The Committee on Sanitary and Phytosanitary Measures (the “SPS Committee”) is made up of representatives of all WTO members; there are also some observer countries and organisations. It has a mandate to *“provide a regular forum for consultations”, and to do anything “necessary to implement the provisions of this Agreement and the furtherance of its objectives”*.

The SPS Committee:

- encourages *ad hoc* consultations or negotiations among members on specific SPS implementation issues
- facilitates training on specific issues, especially for developing countries and new members (e.g. transparency, and risk analysis)
- maintains close contact with the relevant international organisations (e.g. the FAO/WHO Codex Alimentarius Commission (Codex), the Office International des Épizooties (OIE), and the relevant international and regional organisations operating in the framework of the International Plant Protection Convention (IPPC).

The SPS Committee does not set international standards: these are handled by Codex, OIE and IPPC (see ‘Harmonisation and the three sisters’).



plant protection. These three organisations are known colloquially as the 'three sisters', and New Zealand belongs to all of them:

- The FAO/WHO Codex Alimentarius Commission (Codex), responsible for protecting consumer health and facilitating fair practices in food trade. Codex had 169 member countries in 2003.
- The Office International des Épizooties (OIE), covering animal health and zoonoses. The OIE had 164 member countries in 2003.
- the framework of the FAO International Plant Protection Convention (IPPC), covering international and regional organisations, with responsibility for plant health. The IPPC had 120 member countries in 2003.

Harmonisation helps ensure a consistent approach to addressing risks and can reduce costs when members follow standards that have been agreed internationally rather than undertake specific risk assessments. Harmonisation does not restrict a country's ability to select and implement any SPS measures it sees as necessary to protect its human, animal or plant health.

A country is free to deviate from an international standard, guideline or recommendation and introduce an SPS measure that will give a higher level of protection, provided that there is scientific justification, or a risk assessment is undertaken that shows a higher standard is necessary to meet the member's appropriate level of protection.

WTO members are encouraged to play a full part in the standard-setting organisations. In doing so, countries have the opportunity to influence the way standards are set, and help ensure that international standards take account of their circumstances.



# Part 2

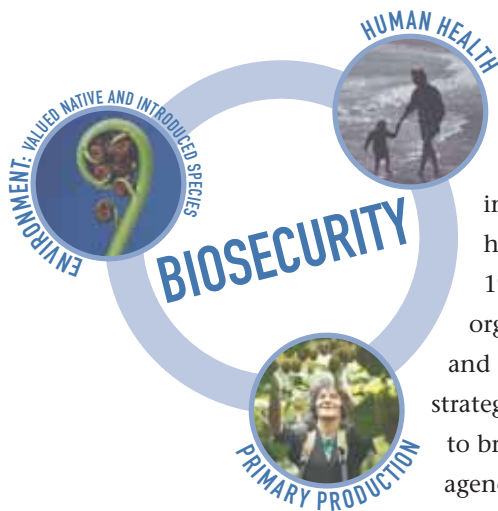
## THE SPS AGREEMENT AND NEW ZEALAND

Ever since the invention of refrigerated shipping late in the 19th century, trade in animal and plant products has underpinned New Zealand's economy. But it is an inescapable fact that trade in animals, plants and their products poses risks of transmitting any pests, diseases and hazards they carry. Protecting the life and health of New Zealanders, and our native and introduced animals and plants is a key goal of the New Zealand government. New Zealand's biosecurity and food safety activities also directly support our export industries, whose continued access to overseas markets depends on their products continuing to meet the standards of importing countries.

### The biosecurity interest: protecting New Zealand's fauna and flora

Biosecurity – or 'biological security' – refers to measures to maintain the health of both introduced species like sheep, pine trees and trout as well as native species like pohutukawa, tuatara, and kiwi. New Zealand has a world-leading biosecurity system that involves strict controls on imported goods and incoming passengers, surveillance and response capabilities to deal with pests, weeds or

diseases that get past the border, and long term actions to control and manage pests that have established here.



In the last ten years, the biosecurity system has evolved from a strong focus on protecting primary production to a broader focus that includes protecting native and valued introduced flora and fauna, and human health. This began when parliament passed the Biosecurity Act 1993, which takes account of the nature and effect of introduced organisms on people, plants and animals, and the New Zealand economy, and continued through the launch of the government's biodiversity strategy in 2000. In 1997 the government established the Biosecurity Council to bring together industry, environmental groups, and the government agencies with agriculture, forestry, fisheries, conservation and human health responsibilities. In 2003, recognising the challenges of coordinating the various

parts of the biosecurity system, the government announced a national biosecurity strategy to improve leadership, consistency and performance across the whole biosecurity programme.

Border controls will remain a critical part of protecting biosecurity as more tourists arrive and more goods are imported, increasing the risk that harmful organisms enter New Zealand and establish themselves here. The SPS Agreement will continue to guide how New Zealand sets standards and makes decisions related to biosecurity. It will be important to maintain the standards of transparency and scientific rigour required by the SPS Agreement to encourage other countries to comply with the rules of the SPS Agreement, but also to demonstrate that New Zealand's strict controls are justified to countries that challenge them.



## The consumer interest: food safety

World food production and consumption practices are rapidly changing. New Zealand needs a food regulatory programme that enhances consumer protection and ensures the continued development of our trade in food and food-related products. The challenges include:

- emerging causes of food-borne disease;
- changing technologies for production and processing;
- increasing complexities within the food chain;
- the ever-increasing volume of international food trade; and
- changing consumer habits and choices.

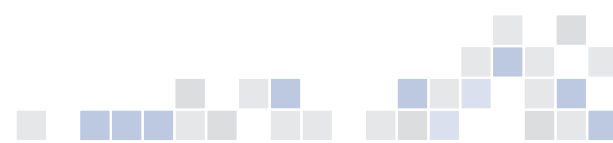
New Zealand has responded to these challenges with a change in approach to regulating primary production. The traditional 'command and control' regime, based on prescriptive requirements, is being replaced by a risk-based approach aimed at ensuring that products are 'fit for purpose'. This means that industries are taking more responsibility for meeting outcomes described in food safety standards through the use of risk-based management plans that are independently audited.



## The economic interest: facilitating exports

As a small country trading in global markets, New Zealand gains much from the WTO trading system because it is transparent and based on objective rules. In the WTO, even the smallest member states have the same rights as the heavyweights of international affairs and trade.

Except for sheepmeat and dairy products, New Zealand is a small player in world trade terms. But in many of our markets farmer and grower lobbies and politicians are opposed to imports from New Zealand, despite good consumer demand. Restrictions that are not genuinely required for biosecurity or food safety reasons can be very effective devices to protect local industries from export competition. They are difficult to challenge because of their complexity and lack of transparency about how a decision has been reached. The SPS Agreement enables New Zealand to challenge attempts by other countries to erect unjustified trade barriers. Prior to the SPS Agreement, SPS measures affecting trade could be imposed with little accountability. But the SPS Agreement means that members are now required to justify scientifically the SPS measures they impose.



The SPS Agreement helps New Zealand exporters to achieve:

### Better market access

The SPS Agreement is making it easier for New Zealanders to sell their primary produce on world markets, because the signatories have undertaken to scientifically justify the SPS measures they impose. The measures imposed must stand up to international scrutiny.

### Lower compliance costs

New Zealand has an excellent reputation for meeting the requirements of importing countries, but this has often come at a high cost. Stringent inspection requirements for meat products imposed in the past by overseas markets are prime examples. Complying with unnecessarily rigid SPS requirements can marginalise an otherwise viable export operation. As unjustified requirements are stripped away, these costs will be reduced. Standards will be increasingly brought into line with international ones, making costly special production runs for individual markets less necessary. The concept of equivalence enables exporters to meet the safety outcomes required by importing countries in cost-effective ways.

### New markets

The SPS Agreement opens up markets previously closed to New Zealand exporters, as governments bring their trade practices into line with the rules of the SPS Agreement.

### Certainty

The SPS Agreement provides export industries with the confidence to plan ahead. New measures are signalled in advance, and their reasons explained. WTO members can no longer justify imposing arbitrary and unexpected import restrictions with the potential to cripple an export industry.

## On balance . . .

The SPS Agreement means that New Zealand is now freer from the danger of other countries unilaterally imposing barriers against our exports disguised as SPS rules. In the absence of a multilateral agreement like the SPS Agreement, the global trading system would fragment. New Zealand would need to devote more resources to negotiating a large number of bilateral trade agreements with individual countries. This would place an enormous strain on resources and impose significant costs on exporters and the government.

The SPS Agreement has already brought benefits to New Zealand. The existence of a formal rules-based agreement together with an emphasis on using science to establish and challenge trade conditions has meant that there is now much more transparency about the intent of SPS measures.

At the same time, being party to the SPS Agreement has not affected our ability to protect our native and introduced fauna and flora. By signing up to the SPS Agreement (and the TBT Agreement) New Zealand is able to welcome the freeing up of world trade without compromising our hard-won status as being free of the world's most serious pests and diseases. The SPS Agreement supports our export trade in primary products and our pursuit of the highest levels of food safety.

# Part 3

## CHALLENGES FOR THE FUTURE

While there have been successes and benefits from the SPS Agreement, there are also challenges for the future. These challenges will focus attention on the SPS Agreement, its role and coverage, and its effectiveness for WTO members.

### Developing countries and least-developed countries

One criticism of the WTO is that it has not met the needs of the developing countries and the least developed countries, and that these countries have been unable to reap the benefits of the multilateral trading system.

The SPS Agreement's provisions on equivalence, discussed in Part 1, require countries to allow trade if the SPS measures of other members meet the appropriate level of protection of the importing member, even if the measures differ from their own. However, the implementation of this principle has raised concerns for developing countries who have reported that in several instances importing countries are looking for 'sameness', instead of equivalence.

The SPS Agreement contains specific wording designed to help developing countries both to comply with their obligations and to benefit from its provisions. Workshops have been held in conjunction with the regular meetings of the SPS Committee to improve understanding of various parts of the SPS Agreement, including transparency and risk analysis.

The FAO in particular has been active in 'capacity building'. The SPS Agreement (along with the TBT Agreement) resulted in a significant increase in requests for FAO technical assistance. There is a growing interest from developing countries in strengthening national food control systems, reformulating national food regulations to align them with international standards, and establishing import/export food inspection and certification programmes to ensure compliance with SPS and TBT requirements.

At the WTO Ministerial Conference in Qatar, in November 2001, the WTO, FAO, OIE, World Bank and WHO issued a joint statement committing themselves to help developing countries participate more fully in setting international SPS standards.

### The pace of change

The SPS Agreement was part of a package of agricultural measures included in the Uruguay Round. Other reforms from that Round of trade talks included the gradual stripping away of export subsidies and domestic price support policies by WTO members – something New Zealand had already largely done by the late 1980s. Even when the ink was still drying on the Uruguay Round negotiations, it was expected that the full benefit of the trade reforms would take up to a decade to flow through to the New Zealand farm gate.

For New Zealand farmers and growers, opening up international market access cannot come soon enough. The slow pace of change is frustrating, but not unexpected. In some countries overnight exposure to the full blast of international competition could have negative social and economic



consequences for domestic producers. Within the WTO, the more developed nations are helping emerging nations comply with the requirements of multilateral agreements like the SPS agreement.

Despite the apparent slowness, regulatory agencies around the world are beginning to move into line with the SPS Agreement. International agreements giving trading partners improved market access while maintaining key safety outcomes are becoming increasingly common.

### **Further assistance – a two-way process**

If you are an exporter you might encounter unfair trade restrictions in the international marketplace. The problem may not just be customs duties, but barriers at or behind the border, such as discriminatory product standards, labelling requirements, unjustified quarantine restrictions and other government regulations or red tape.

The SPS Agreement includes mechanisms for governments to resolve differences over such barriers to trade. MFAT, MAF and NZFSA negotiate with foreign government trade officials, questioning and challenging such barriers. The main aim is to keep doors open before resorting to formal dispute settlement procedures. Any New Zealand exporter encountering sanitary or phytosanitary restrictions that appear unjustified should discuss them with MFAT, MAF or NZFSA so that they can work to remove any unjustified measures.



## CONTACTS

### Ministry of Agriculture and Forestry

The New Zealand Ministry of Agriculture and Forestry exists to advance the agriculture, horticulture and forestry industries for the benefit of all New Zealanders.

For further information or assistance contact:

**SPS National Enquiry Point**

PO Box 2526

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Tel: +64 4 474 4100

Fax: +64 4 470 2730

Email: [sps@maf.govt.nz](mailto:sps@maf.govt.nz)

Internet: [www.maf.govt.nz/biosecurity/sps](http://www.maf.govt.nz/biosecurity/sps)

### New Zealand Food Safety Authority

The New Zealand Food Safety Authority:

- protects and promotes public health and safety
- facilitates access to markets for New Zealand food and food related products

For further information or assistance contact:

**New Zealand Food Safety Authority**

PO Box 2835

Wellington

NEW ZEALAND

Tel: +64 4 463 2500

Fax: +64 4 463 2501

Internet: [www.nzfsa.govt.nz](http://www.nzfsa.govt.nz)

### Ministry of Foreign Affairs and Trade

The Ministry of Foreign Affairs and Trade is the government's principal adviser on external economic and trade policy. The Ministry conducts the New Zealand government's business with foreign governments and international organisations, including the World Trade Organization.

For further information or assistance contact:

**Ministry of Foreign Affairs and Trade**

Private Bag 18-901

Wellington

New Zealand

Tel: +64 4 494 8500

Fax: +64 4 494 8518

Internet: [www.mfat.govt.nz](http://www.mfat.govt.nz)

### Websites

World Trade Organization:

[www.wto.org](http://www.wto.org)

SPS-related issues:

[www.wto.org/english/tratop\\_e/sps\\_e/sps\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/sps_e.htm)

Full text of the SPS Agreement:

[www.wto.org/english/tratop\\_e/sps\\_e/spsagr\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/spsagr_e.htm)

MAF gateway sites to information on exports and imports of live animals and germplasm, plants and plant products, and forest products:

[www.maf.govt.nz/biosecurity/exports/](http://www.maf.govt.nz/biosecurity/exports/)

[www.maf.govt.nz/biosecurity/imports/](http://www.maf.govt.nz/biosecurity/imports/)

Office International des Épizooties (OIE):

[www.oie.int/](http://www.oie.int/)

International Plant Protection Convention (IPPC):

[www.ippc.int/](http://www.ippc.int/)

Codex Alimentarius Commission:

[www.codexalimentarius.net/](http://www.codexalimentarius.net/)

New Zealand Codex Strategy:

[www.nzfsa.govt.nz/policy-law/codex/strategy/index.htm](http://www.nzfsa.govt.nz/policy-law/codex/strategy/index.htm)

Biosecurity Council:

[www.maf.govt.nz/Biocouncil/](http://www.maf.govt.nz/Biocouncil/)

New Zealand's Biodiversity Strategy:

[www.doc.govt.nz/Conservation/The-New-Zealand-Biodiversity-Strategy/](http://www.doc.govt.nz/Conservation/The-New-Zealand-Biodiversity-Strategy/)



## GLOSSARY

### Appropriate level of protection (ALOP)

The level of protection deemed appropriate by the WTO member establishing a sanitary or phytosanitary measure to protect human, animal or plant life or health within its territory.

### Biodiversity

Biodiversity is short for 'biological diversity' which means the variability among living organisms from all sources including, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

### Biosecurity

The Biosecurity Council has defined 'biosecurity' as the "protection from the risks posed by organisms to the economy, environment and people's health through exclusion, eradication and control."

### Codex Alimentarius Commission (Codex)

Codex is the internationally recognised standards setting body for food safety. Its full name is the Joint FAO/WHO Codex Alimentarius Commission. "Codex alimentarius" is Latin for food code. Codex standards, recommendations and guidelines are recognised as international standards for the purposes of trade.

### Doha development round

The November 2001 declaration of the World Trade Organization's Fourth Ministerial Conference in Doha, Qatar, provides the mandate for negotiations on a range of subjects, and other work including issues concerning implementation of the present agreements. The negotiations include those on agriculture and services, which began in early 2000.

### Equivalence

Equivalence relates to the situation where SPS measures which are not identical but are recognised as having the same health outcome and are accepted as 'equivalent' by another WTO member.

### Harmonisation

WTO members should base their SPS measures on relevant international standards guidelines or recommendations where these exist. For instance harmonisation with international food safety standards means basing national requirements on standards developed by Codex.

### International Plant Protection Convention (IPPC)

The IPPC is the international treaty relating to plant health. The current version of the Convention dates back to 1979 but a more recent revision of the text (1997) is in the process of being accepted by contracting parties.



## Measures

Measures include all relevant laws, decrees, regulations, requirements and procedures and are usually based, where possible, on international standards under the SPS Agreement. They are also commonly referred to as standards.

## Office International des Épizooties (OIE)

The OIE, also known as the World Organisation for Animal Health, was established in 1924. It deals with animal health and zoonoses (human diseases that are caught from animals), and sets sanitary standards for the international trade of animals or animal products.

## Phytosanitary issues

Health issues involving the pest and disease status of plants and plant products.

## Sanitary issues

Health issues involving the pest and disease status of animals and animal products, and human health.

## ‘Three sisters’

A colloquial term for the three international standard-setting bodies for food safety, animal health and zoonoses and plant protection, whose guidance is recognised under the SPS Agreement. The Joint FAO/WHO Codex Alimentarius Commission is responsible for food safety. Animal health and zoonoses are covered by the Office International des Épizooties and the international and regional organisations operating under the framework of the International Plant Protection Convention have responsibility for plant health and protection.

## Transparency

The extent to which agreements and government regulations affecting trade are open, clear and measurable. Transparency under the SPS Agreement has three main components – notifications, official enquiries and the publication of regulations.

## Uruguay Round

The eighth round of GATT multilateral trade negotiations, which began in Punta del Este, Uruguay, in 1986, and was concluded in April 1994 at Marrakesh, Morocco.

## World Trade Organization (WTO)

The international organisation established by the Uruguay Round to oversee and provide a single administrative and legal umbrella for all of the Round’s Agreements.

## Zoonoses

Diseases that can be transmitted from animals to humans.

