



# 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 an assurance 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, our productive base and to our native plants and animals.

The World Trade Organization (WTO) 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 its people, animals, and plants while at the same time facilitating trade. It embodies and promotes the use of science-based risk assessments in managing the risks associated with the international movement of goods.

New Zealand, as a member of the WTO, has the sovereign right to decide its own level of health 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 a strong interest in the setting of international standards so that they protect life and health but do not unnecessarily restrict trade.

We 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.

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# INTRODUCTION

## – WHY THE SPS AGREEMENT MATTERS

**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 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.”

At the heart of the world trading system is the World Trade Organization (WTO). By 2008 the WTO had 153 members, representing most of the world's trading nations.

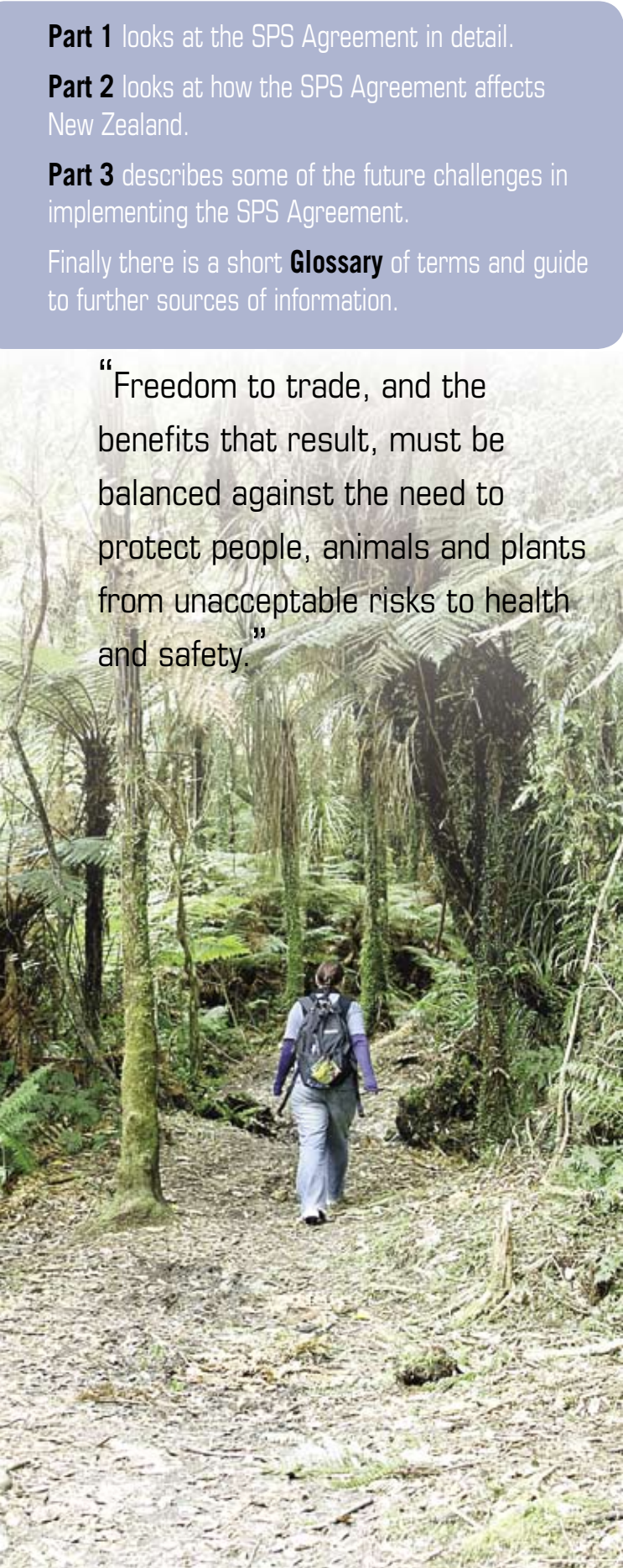
Tariffs and quotas have for many years been the biggest barriers to trade. These are continually being reduced through negotiations in the WTO.

Measures to protect against the spread of diseases and pests by traded goods may also be barriers to trade. The SPS Agreement is about how to apply sanitary (human and animal health) measures and phytosanitary (plant health) measures in a way that does not unnecessarily restrict trade.

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 establishes principles that countries are committed to uphold when trading in animals, plants and their products. The SPS Agreement 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 needed to achieve that protection be non-discriminatory, transparent and scientifically justified.



## The SPS Agreement is important to:



### our people as citizens

because it allows us to protect human and environmental health from damaging pests and diseases.

### 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 our unique natural resources, and plants and animals, from damaging pests and diseases.



### our importers

who benefit from certainty over import requirements. 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

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

# 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 sometimes-dubious health grounds with the burden being on potential exporters to prove that such barriers were not justified. The SPS Agreement now requires that any import restrictions that are imposed must be supported by scientific evidence, and be based on a risk assessment or international standard.

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 SPS 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 (for example, water and air quality);
- measures for protecting the health of animals being transported between countries but not being traded (e.g. companion cats and dogs); and

- non-health/non-safety-related consumer interests (for example, labeling for consumer choice and packaging of food).

These are addressed by other WTO agreements, for example the Agreement on Technical Barriers to Trade (TBT – see box).

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 and spread of pests, diseases or organisms that carry or cause disease; and
- to prevent or limit other damage to a country from the entry, establishment or spread of pests.

## 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.

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

## 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, pests and diseases could enter through smuggling or by natural means such as wind-borne movement, migratory birds, or via ocean currents in the case of marine organisms.

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 posed by other imported commodities that they considered economically beneficial, such as commodities not produced locally, or new or superior varieties of plants or bloodlines of livestock. But the SPS Agreement means that governments may 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.

## 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 of implementing them (transparency); and
- 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 labeling requirements must not create unnecessary barriers to trade and must not restrict trade more than necessary to fulfill a legitimate objective. Legitimate objectives include national security, preventing deceptive practices, and protecting the environment.

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 had, for many years, made decisions on which risks to accept, and on the extent and targeting of actions aimed at mitigating risk. These decisions have, in effect, been about New Zealand’s ALOP. These decisions are made after consulting interested parties such as consumers, environmental organisations and industry, and take into account, through the political process, the views of all stakeholders.

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 industries, biodiversity and society.

## 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 risk assessment. Risk assessment is a scientific discipline (and one component of the wider discipline of risk analysis which includes risk management and risk communication). It

**A risk assessment typically answers three questions:**



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.

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 (for example, 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).

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



## Risk analysis in New Zealand

Consumers in overseas markets supplied by New Zealand are increasingly concerned about protecting their own health, and that 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 insect-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 health and 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 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 for methods of assessing risk by governments facilitates this assurance.

## 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 are assessed, but without quantification 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 to mitigate risk to the level considered acceptable.



## 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 for example, 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, for example, 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.

## How the SPS Agreement is applied

### Choosing 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 commodity 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 proposed new 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 ensures a "no surprises" approach to trade between 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 information sharing to an international level and allows potential problems to be identified early. The results of a risk analysis can also be open to scrutiny. The risk analysis process assembles available data in an orderly and transparent fashion, providing a basis for informed and objective 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 is important to both importing and exporting countries. 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 placed in predictions depends on the amount and reliability of the information used. There will never be perfect understanding of every situation that exists. A balance must be sought between trying to acquire complete knowledge and obtaining reasonable estimates on which predictions can be based with an acceptable degree of confidence.

Recognising that there are certain situations where it is not possible to complete a 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 obtain the additional information necessary for a more objective assessment and to review the SPS measure accordingly within a reasonable period of time.

Precaution is an integral part of New Zealand's approach to assessing and 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 even from different areas within the same 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), where these can be demonstrated. The onus is on the exporting country to provide the scientific evidence to justify a claim to be free from a particular 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, other parts of New Zealand were able to continue exporting fruit because the incursion was confined to a small region in the upper North Island.

A closely related concept recently introduced in the animal health field is “compartmentalisation”. Whereas regionalisation depends on geographic barriers to define the region of superior health status, in “compartmentalisation”, the barriers are common biosecurity practices which separate certain animal populations from those of lesser health status. The first application of compartmentalisation internationally has been

in situations where the health status of modern, commercial poultry industries has been protected through stringent biosecurity programmes from diseases, such as avian influenza, which may be present in back yard poultry and wild bird populations in the same geographic region.

### Equivalence: focus on outcomes rather than process

Under the SPS Agreement's provisions on equivalence, WTO members must accept the SPS measures of other WTO members as equivalent, where this can be objectively demonstrated, 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 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.

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 fulfill the agreed health requirements of the importing country.

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

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

WTO members may introduce SPS measures that are more stringent than international standards if there is scientific justification to do so, and 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 a dispute remains unresolved after attempts to resolve it bilaterally, it can be raised formally in the SPS Committee of the WTO. 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 a last resort.

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 five issues that have been argued primarily on SPS grounds. These involved the entry of salmon to Australia, beef from hormone-treated cattle into the EU, certain varieties of plants into Japan, apples into Japan, and marketing of products of biotechnology in the European Union. In 2007,

a case involving entry of New Zealand apples to Australia was initiated.

## Harmonisation and the standard setting bodies

“Harmonisation” means that countries should base their SPS measures on relevant standards, guidelines or recommendations developed 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 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

## 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 (for example, transparency, and risk analysis); and
- maintains close contact with the relevant international organisations (for example, the FAO/WHO Codex Alimentarius Commission (Codex), the World Organisation for Animal Health (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*).

consumer health and facilitating fair practices in food trade. Codex had 178 members in 2008.

- The World Organisation for Animal Health (OIE), covering animal health and zoonoses. The OIE had 172 members in 2008.
- The framework of the FAO International Plant Protection Convention (IPPC), covering international and regional organisations, responsible for plant health. The IPPC had 170 members in 2008.

Harmonisation helps ensure a consistent approach to addressing risks and can reduce costs when members follow standards that have been agreed internationally rather than having to 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.

## Wider linkages

The SPS Agreement focuses on managing the trade of goods. There are however, other international organisations and agreements that New Zealand is active in that are relevant to the movement of a variety of organisms (including pests) particularly where they affect the environment. For example, the United Nations Convention on Biological Diversity has a work programme that considers the impact of invasive alien species on biodiversity. Similarly, the International Maritime Organization has work programmes to manage the transfer of aquatic invasive species on ships. Another international agreement, the Biosafety Protocol to the United Nations Convention on Biological Diversity, governs the international movement of living (genetically) modified organisms. In each of these cases, there are potential overlaps with the operation of the SPS Agreement. Care is taken to ensure that the work undertaken in these other organisations and agreements supports the operation of the SPS Agreement and that there is consistency between all of these agreements.

### 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 ratified the Biosafety Protocol in 2005.

# THE SPS AGREEMENT AND NEW ZEALAND

# 2

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 trading in animals, plants and their products poses a risk of introducing any pests, diseases or hazards they may sometimes 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 economy, environment and people

Biosecurity – or “biological security” – refers to measures to keep out, remove, or effectively manage the harm that pests or diseases can do to New Zealand's economy, environment or people. New Zealand has a world-leading biosecurity system that does this by:

- preventing harmful organisms from crossing New Zealand's borders and establishing here while, at the same time, ensuring trade and tourism are maintained;
- reducing the harm caused by organisms already established in New Zealand; and
- supporting New Zealanders being informed and involved participants in the biosecurity system.

In the last fifteen 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 (including marine and freshwater biodiversity), and human health. This began when parliament passed the Biosecurity Act 1993, that takes account of the nature and effect of introduced



organisms on people, plants and animals, and the New Zealand economy.

The strategic direction and strategies for biosecurity aim to improve leadership, consistency and performance across the whole biosecurity programme toward a future state whereby:

“New Zealanders, our unique natural resources, our plants and animals are all kept safe and secure from damaging pests and diseases”<sup>1</sup>

Border controls will remain a critical part of maintaining biosecurity as more tourists arrive and more goods are imported, increasing the risk that harmful organisms enter New Zealand and establish themselves here. Climate change may also extend the host range of pests and diseases that need to be managed. The SPS Agreement will continue to guide how New Zealand sets standards and makes decisions related to biosecurity. In particular, it will be important to maintain the standards of transparency and scientific rigour required by the SPS Agreement, and to make decisions as quickly as possible. This will encourage other countries to comply with the rules of the SPS Agreement, and also demonstrate that New Zealand's strict controls are justified to countries that challenge them.

<sup>1</sup> *Tiakina Aotearoa Protect New Zealand – The Biosecurity Strategy for New Zealand* (2003).

## The consumer interest: food safety

World food production and consumption practices are rapidly changing. New Zealand needs a food regulatory programme that is risk-based and that protects consumers of food and related products produced in New Zealand, as well as imports and exports of food 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 less at risk 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, 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 liberalising of world trade without compromising our hard-won status as being free from 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.

### 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, labeling requirements, unjustified quarantine restrictions and other government regulations or red tape.

The SPS Agreement includes mechanisms through which governments may resolve differences over 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.

# 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 provision of the SPS Agreement commits Members to facilitate providing technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organisations. The FAO, OIE and WHO have considerable programmes to assist developing countries with respect to food safety, and capacity building with respect to the maintenance of animal and plant health. Various countries also have extensive bilateral programmes with other WTO Members in these areas. By December 2007, the WTO Secretariat had undertaken 158 SPS technical assistance and training activities with the main objective being to increase the awareness of participants about Members rights and obligations under the SPS Agreement and the implications of the SPS Agreement for national policy making.

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.

The Standards and Trade Development Facility was established as a joint initiative between the WTO, WHO, World Bank, OIE and FAO in 2002. The Facility is a global programme in building capacity and technical cooperation. One of its strategic aims is to assist developing countries enhance their expertise and capacity to analyse and to implement international SPS standards, which in turn would

improve their human, animal and plant health situation, and their ability to gain and maintain access to markets for their products.

## The pace of change

The SPS Agreement was part of a package of agricultural measures included in the Uruguay Round of multilateral negotiations (see *Glossary* for more detail). 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 while 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 developing nations comply with the requirements of multilateral agreements such as the SPS Agreement.

Despite the apparent slowness, regulatory agencies around the world are increasingly conforming with the SPS Agreement. International agreements giving trading partners improved market access while maintaining acceptable levels of protection in food safety and biosecurity, are becoming increasingly common ([www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/index.php](http://www.mfat.govt.nz/Trade-and-Economic-Relations/Trade-Agreements/index.php) provides more information on how New Zealand implements this in bilateral, regional, and multilateral trade agreements).

# CONTACTS

## Ministry of Agriculture and Forestry

The mission of the New Zealand Ministry of Agriculture and Forestry is to enhance New Zealand's natural advantage. It does this by: encouraging high-performing sectors; developing safe and freer trade; ensuring healthy New Zealanders; and by protecting New Zealand's natural resources for the benefit of future generations.

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Internet: [www.biosecurity.govt.nz/strategy-and-consultation/strategy/international-agreements/sanitary-and-phytosanitary-sps-agreement](http://www.biosecurity.govt.nz/strategy-and-consultation/strategy/international-agreements/sanitary-and-phytosanitary-sps-agreement)

## New Zealand Food Safety Authority

The mandate of the New Zealand Food Safety Authority is to protect consumers by providing an effective food regulatory programme covering food produced and consumed in New Zealand as well as imports and exports of food products.

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

## Ministry of Foreign Affairs and Trade

The Ministry of Foreign Affairs and Trade (MFAT) is the Government's principal adviser

and negotiator on foreign and trade policy issues. The Ministry conducts the New Zealand Government's business with foreign governments and international organisations, including the World Trade Organization.

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

## Websites

World Trade Organization: [www.wto.org](http://www.wto.org)

SPS-related issues in the WTO:  
[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/docs\\_e/legal\\_e/15sps\\_01\\_e.htm](http://www.wto.org/english/docs_e/legal_e/15sps_01_e.htm)

MAF gateway site to information on exports and imports of live animals and germplasm, plants and plant products, and forest products:  
[www.biosecurity.govt.nz](http://www.biosecurity.govt.nz)

World Organisation for Animal Health (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)

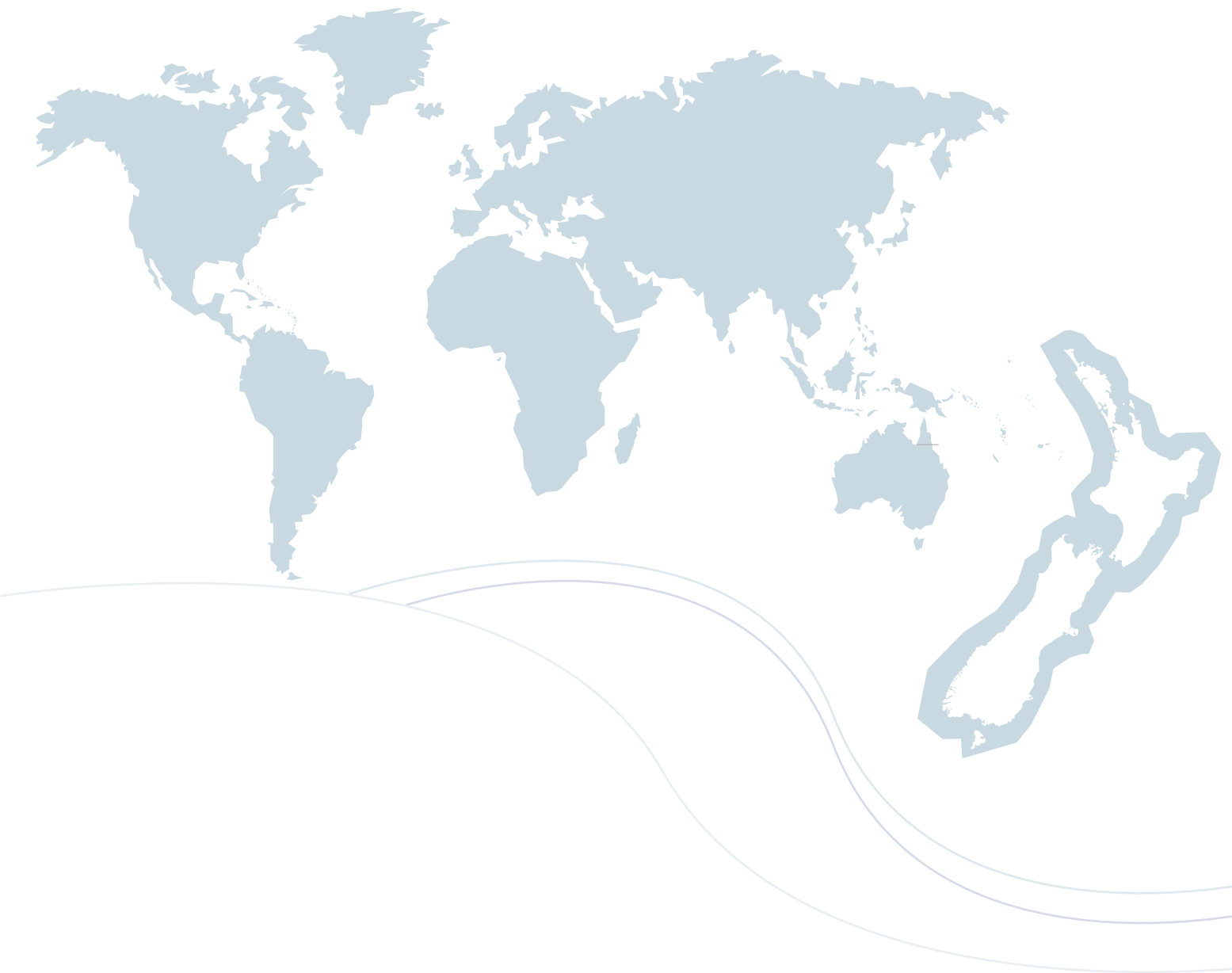
New Zealand Codex Strategy:  
[www.nzfsa.govt.nz/policy-law/codex/publications/nz-objectives-and-strategy/index.htm](http://www.nzfsa.govt.nz/policy-law/codex/publications/nz-objectives-and-strategy/index.htm)

*Tiakina Aotearoa Protect New Zealand – The Biosecurity Strategy:*  
[www.biosecurity.govt.nz/biosec/sys/strategy/biostrategy/biostrategynz](http://www.biosecurity.govt.nz/biosec/sys/strategy/biostrategy/biostrategynz)

# GLOSSARY

<b>Appropriate level of protection (ALOP)</b>	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.
<b>Biosecurity</b>	Protection from the risks posed by organisms to the economy, environment and people's health through exclusion, eradication and control.
<b>Codex Alimentarius Commission (Codex)</b>	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.
<b>Equivalence</b>	The establishment, recognition and application of common sanitary and phytosanitary measures by different Members. 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.
<b>Harmonisation</b>	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.
<b>International Plant Protection Convention (IPPC)</b>	The IPPC is an international treaty to secure action to prevent the spread and introduction of pests of plants and plant products, and to promote appropriate measures for their control.
<b>Measures</b>	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.
<b>Phytosanitary issues</b>	Health issues involving the pest and disease status of plants and plant products.
<b>Sanitary issues</b>	Health issues involving the pest and disease status of animals and animal products, and human health.
<b>"Three sisters"</b>	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 OIE and the international and regional organisations operating under the framework of the International Plant Protection Convention have responsibility for plant health and protection.

<b>Transparency</b>	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.
<b>Uruguay Round</b>	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.
<b>World Organisation for Animal Health (OIE)</b>	The OIE, until 2004 known as the Office International des Epizooties, 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.
<b>World Trade Organization (WTO)</b>	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.
<b>Zoonoses</b>	Diseases that can be transmitted from animals to humans.





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