

How Should WTO Trade Policy Reviews Deal with SPS Policies?

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TPRM

The WTO Secretariat regularly reviews members' trade policies and publishes a report that is discussed at two meetings in Geneva. These trade policy reviews (TPRs) address the institutional framework for trade policy-making, measures affecting imports and exports, and policies in individual sectors. The four countries with the largest share of world trade are to be reviewed every 2 years, the next sixteen every 4 years, and the rest every 6 years.

TPRs deal with SPS regulation in a separate section. However, they do so quite poorly.

- they do not dedicate enough space to SPS issues
- they can be hard to read, especially where they mix up very general and specific information
- they do not permit comparison across countries and time
- and they are uncritical – they abstain not only from expressing an opinion but even from providing data and third-party analysis that could be interpreted as criticism

How could the TPRM do better? First, the description of the main SPS policies and policy changes should be expanded and enhanced. TPRs should put special emphasis on future regulatory intentions. WTO notifications that announce new regulations come shortly before the regulation is passed (if they come at all) and do not leave sufficient time for commenting. Gaining an overview of future regulation through other forms of publicly accessible information is at the very least cumbersome. Different agencies are involved in standard setting, any product is affected by a range of SPS regulation, and most information can be obtained only in the national language. A succinct summary in TPRs can thus make life easier for exporting countries and industries.

Second, TPRs should contain a systematic descriptive analysis of SPS measures. One such indicator could be the share of notified measures that conforms to international standards. This indicator could be easily constructed since notification formulae ask members to identify whether a relevant international standard exists for their measure and whether they conform to it. The Secretariat could also give an overview of the reasons the country under review has provided in its notifications for not observing international standards. Another approach could be to list key SPS standards, such as maximum residue levels, that fulfill three criteria: high trade volumes, strong effects on trade, and unusual trade restrictiveness. This is not a proof of protectionist intentions, but it could help to identify outlier measures that merit the renewed attention of risk analysts and managers.

Third, the WTO Secretariat already compiles lists of the specific trade concerns discussed in the SPS Committee, together with short descriptions of each case. It would be easy to synthesize these lists to give a succinct picture of the most contested measures and the suggestions for improvements submitted by trading partners. Criticism brought forward by interested parties can serve as an indicator of whether and where a country is mismanaging its SPS regulation. This is because exporters will rarely raise an issue where trade restrictions inevitably result from the consistent application of a high appropriate level of protection. What they usually target is poor risk assessment, overly trade-restrictive measures, and levels of protection that are well above the implementing country's average level as well as above international standards.

Fourth, TPRs should offer a clear description of how countries arrive at SPS measures. In particular, TPRs should ask a set of specific questions that facilitate comparison of policy-making processes across countries and with best practices. Such questions should focus on the procedural provisions members take in order to implement the obligations under the SPS agreement. How do they conduct risk assessment, consider trade effects in SPS policy-making, define an appropriate level of protection, recognize pest/disease free areas, and grant special and differential treatment?

Taking scientific risk assessment as an example, specific questions could be:

- How is risk assessment separated from risk management?
- Are the most important risk assessment principles set out in a risk assessment policy?

- How is the independence and qualification of risk assessors ensured?
- What is done to ascertain that the risk assessment process is transparent and participatory?
- Do risk assessment reports explain which choices risk assessors made, the reasons why these choices were made and whether minority opinions disapproved of them?

In sum, TPRs could be an important tool to tackle excessive trade barriers arising from SPS regulation without having to go through dispute settlement. It could harness the power of transparency – triggering international and domestic pressure to remove unjustifiable barriers and to improve decision-making procedures so that inappropriate measures are not being taken in the first place. But this would require to give more authority and resources to the WTO Secretariat. Ideally, SPS TPRs would be published as a separate report (possibly together with other non-tariff barriers). Their full effectiveness would also hinge on a broader change: transforming the TPRM from a diplomatic exercise in Geneva into a transparency instrument that involves the stakeholders in the country under review.