

CONVERGENCE AND ASYMMETRY IN SANITARY AND PHYTOSANITARY MEASURES IN THE REGION'S TRADE AGREEMENTS

Sanitary and phytosanitary matters have acquired greater significance in the region's trade, as reflected in the significant number of complaints brought before the various dispute settlement mechanisms pertaining to the regional integration schemes. This may be attributed to the importance of the Latin American countries in world agricultural trade and to different phytosanitary and zoosanitary standards required by each.

Given the multiplication of bilateral and plurilateral agreements in Latin America and the Caribbean, convergence on the sanitary standards required under such accords is crucial for the trade integration of a region that is an agro-exporter par excellence. Convergence is essential to facilitate market access and expedite trade flows. This bulletin assesses convergence of standards in the bilateral and plurilateral trade agreements signed by the countries of the region, the treatment afforded to the principles contained in the World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and the progress the region has made relative to that Agreement.

The trade agreements operating in the region are discussed in *Latin America and the Caribbean in the World Economy, 2005-2006*, September 2006.

I. SANITARY AND PHYTOSANITARY MEASURES

IN TRADE AGREEMENTS

In previous decades, regional integration in Latin America and the Caribbean was driven by the creation of schemes integrating different groups of countries (e.g., the Andean Community, MERCOSUR). Now a new modality has emerged, in which bilateral agreements are prevailing. The multiplication of intraregional and extraregional agreements leaves scope for a mixture of different provisions on standards. Asymmetry in the content of agreements complicates market access for non-signatory countries. Moreover, the signature of a trade agreement will not increase trade flows between the parties to it unless the commitments undertaken are clearly set out, binding and thoroughgoing, especially in relation to such a sensitive issue as agricultural trade.

In the last few years, it has become more common for bilateral^[1] and plurilateral agreements to incorporate provisions regulating sanitary and phytosanitary matters. Some countries, such as Chile and Mexico, tend to include more detailed provisions in the agreements they sign. Agreements show greatest convergence around three basic objectives: prevention, trade facilitation and cooperation. These basic objectives are expressed in measures that seek to: (i) prevent the introduction and spread of pests and disease in the territory of signatory countries without creating unnecessary barriers to trade; (ii) facilitate trade in animals, fruit and vegetables and agricultural products and by-products without creating zoosanitary or phytosanitary risks for the countries; and (iii) improve plant and animal health in the signatory countries through mutual technical cooperation. There follows an assessment of each of the specific aspects covered under sanitary matters.

II. "WTO-PLUS" ADENDA?

The regulation of sanitary and phytosanitary matters in bilateral and plurilateral agreements is helping to bridge the gap between multilateral and national standards. Such agreements help to strengthen basic aspects of the SPS Agreement at the regional level. This is a highly positive factor to have come out of the integration processes in the region. The texts of some of the agreements signed show that the key aspects present in most are: transparency, harmonization, equivalency, risk assessment and determination of sufficient levels of sanitary and phytosanitary protection, recognition of areas that are free of pests and disease or have a low prevalence of them (regionalization) and technical cooperation (see table 1).

Table 1

SANITARY AND PHYTOSANITARY ASPECTS COVERED IN SELECTED REGIONAL TRADE AGREEMENTS

| Agreement | Harmonization | Equivalency | Regionalization | Mutual recognition ^b | Technical cooperation ^c |
|----------------|---------------|-------------|-----------------|---------------------------------|------------------------------------|
| Chile-Ecuador | Yes | Yes | Yes | No | Yes |
| Chile-Peru | Yes | Yes | Yes | No | Institutional |
| Chile-Bolivia | Yes | Yes | Yes | No | Institutional |
| Chile-Colombia | Yes | Yes | Yes | No | Institutional |
| Chile-Mexico | Yes | Yes | Yes | No | Institutional |
| Chile-CACM | Yes | Yes | Yes | No | Institutional |

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|---|-----|-----|-----|-----|---------------|
| CARICOM-Costa Rica | Yes | Yes | Yes | Yes | Yes |
| Colombia-Mexico-Venezuela (Bol. Rep. of) | Yes | Yes | Yes | No | Institutional |
| CAFTA-DR | Yes | Yes | Yes | Yes | Institutional |
| Mexico-Northern Triangle | Yes | Yes | Yes | Yes | Institutional |
| Mexico-Bolivia | Yes | Yes | Yes | No | Institutional |
| Mexico-Nicaragua | Yes | Yes | Yes | No | Institutional |
| Mexico-Uruguay | Yes | Yes | Yes | No | Institutional |
| Mexico-Costa Rica | Yes | Yes | Yes | No | Institutional |
| MEROSUR-Chile ^a | No | No | No | Yes | No |
| MEROSUR-Bolivia ^a | No | No | No | Yes | No |
| MEROSUR-Colombia-Ecuador-Venezuela (Bol. Rep. of) | Yes | Yes | Yes | No | Yes |

Source: prepared by the author on the basis of information from regional agreements.

a These agreements require the parties to observe the SPS Agreement.

b Refers to specific provision for mutual recognition of sanitary and phytosanitary certification procedures.

c The term "institutional" is used when mixed committees or commissions are created for the purpose.

Bilateral and plurilateral trade agreements play an important role in strengthening the principle of transparency, since this is fundamental to enable the countries of the region to gain more rapid access to other markets and to facilitate the process of convergence with sanitary rules. Such agreements set out a series of steps that signatory countries must take to guarantee the transparency of the sanitary and phytosanitary (SPS) measures they put in place: (i) publication of any SPS measures created or altered; (ii) notification of any epidemiologically significant disease or pest found ; (iii) notification of significant changes in relation to disease- and pest-status; and (iv) information on the reasons for any rejection of merchandise from the exporting party. Other agreements cover additional points such as the use of document formats similar to those designed and used by the WTO SPS Committee. The established notification and information centres are those reported to WTO as a channel of communication.

The harmonization/equivalency/regionalization equation is the most sensitive aspect of regional integration processes and is at the heart of trade disputes over sanitary and phytosanitary barriers. First, the countries have dealt with the difference between the concepts of harmonization and equivalency. Harmonization exists only when the rules being compared are identical. Equivalency indicates a similar level of sanitary protection, which may be obtained by means of sanitary measures that vary from one country to another. This is because of the difficulty of enforcing identical rules in countries that have different sanitary situations and different ecosystems (which may or may not be conducive to the spread of a particular disease).

(a) **Harmonization:** With the aim of achieving a greater degree of harmonization, the agreements encourage countries to follow the directives of the competent international organizations.[2] However, although the agreements promote harmonization of rules, they also allow a margin of discretion for each country to establish the SPS measures that it deems most appropriate for protecting its territory against pests or disease, as provided expressly in the SPS Agreement (article 3.3).

In addition, some agreements stipulate that harmonization must be sought on certain specific points. This is seen in agreements signed by Chile,[3] which requires a commitment from the other parties to establish harmonized systems for sampling, diagnosis, inspection and certification of animals, vegetables, their products and by-products and for food safety, i.e., on some of the conformity verification points.

In the long term, the policy adopted by countries such as Chile will lead to harmonization of SPS measures on regulated aspects in the countries with which they have agreements. For example, Peru has its system of sampling, diagnosis, inspection and certification harmonized with Chile 's through the Chile-Peru agreement, which also facilitates access by Peruvian agricultural producers to the markets of Central American countries, which have a similar commitment with Chile through an agreement providing for such harmonization.

(b) **Equivalency:** The agreements take an approach similar to the SPS Agreement in dealing with the principle of equivalency, which is expressed in the form of mutual agreement to recognize the quality of sanitary systems. Mutual recognition is the outcome of a evaluation process in which one or more countries agree that the rules and/or related systems they each use are such that goods traded in one country may be freely traded in any other country that is party to the agreement. Such recognition is one of the main instruments by which agricultural goods gain access to markets within the region. For this reason, the countries should explore the advantages of further specifying the technical and operational aspects required (e.g., by facilitating access of technicians to national certification institutions and encouraging laboratories to engage in exchanges of professionals, and so forth).

In this context, the Chile-MERCOSUR and Bolivia-MERCOSUR agreements provide that: "The Parties also agree to undertake efforts in order to identify the product areas in which the compatibility of inspection, control and conformity evaluation procedures would be possible, and which would permit the mutual recognition of the results of such procedures." The Mexico-Northern Triangle agreement establishes that the parties will seek to validate the respective countries' process of accreditation of professionals and institutions in order to extend mutual recognition of the service-provision capacity of responsible institutions. The CAFTA-DR agreement provides that the parties will make their respective sanitary and phytosanitary measures equivalent by means of bilateral protocols for the mutual recognition of each other's sanitary and phytosanitary systems.

(c) **Regionalization:** The integration agreements examined do not represent a "plus" with respect to the provisions of the SPS Agreement as regards the regionalization principle. As a rule, they provide that signatory countries must recognize the principle on the basis of scientific evidence. As for more substantive issues, i.e., procedures for recognition of disease-free areas, bilateral or plurilateral agreements have yet to establish steps and schedules for such a procedure. Thus, problems of unjustifiable delay and bureaucracy in such recognition have not been solved at the regional level, where the countries continue to opt for more general provisions on the matter.[4]

Technical cooperation is increasingly a feature of agreements signed in the last few years, with a view to strengthening integration on sanitary matters, but it remains very much in the sphere of superficial recommendations. Some of the agreements are extremely generic, recognizing the need to develop joint programmes of technical cooperation and operational coordination, or providing that the parties may request technical consultations. Others, such as the Chile-Ecuador and Ecuador-Peru agreements, cite some of the forms technical assistance may take (sharing of technical information and exchanges of specialized professionals, specific phytosanitary and zoosanitary programmes and

treatments, definition of quarantine methods to expedite trade, etc.).

Aspects of the practical procedures for technical assistance, such as the institutions involved and the establishment of programmes of cooperation/assistance are referred to committees or commissions created for the purpose. Bilateral and plurilateral agreements signed in the region are making progress with the development of an institutional apparatus to provide technical assistance among signatory countries by creating technical task forces or committees responsible for the technical and operational side of sanitary initiatives taken by the parties.

This institutional apparatus is developing unevenly. Some agreements, such as those signed by Mexico and the Central American Common Market (CACM) agreements with the Dominican Republic and Panama, provide for permanent committees. Others establish task forces that meet at determined intervals (Bolivia-Chile, Mexico-Northern Triangle, Chile-Colombia). Regardless of the degree of institutional development, however, bilateral and plurilateral agreements play an important role in integration by promoting more effective discussion forums, given the geographical proximity and the small number of stakeholders, which enables technical assistance to be better focused.

The provisions on risk assessment and determination of proper levels of sanitary and phytosanitary protection are similar to those of the WTO SPS Agreement. Few agreements specify deadlines for the stages of this assessment; an exception is CAFTA-DR, which establishes a maximum of three months.^[5] Importantly, some do stipulate the methodology to be used for risk assessment and determination of proper protection (although this is not representative of most of the agreements): the Mexico-Northern Triangle agreement, for example, provides for the use, in the first instance, of the risk assessment methodology harmonized at the regional level in the framework of the International Regional Organization for Plant and Animal Health (OIRSA) for plant and animal health matters and the Pan American Health Organization (PAHO) in matters of food safety. It also provides that the OIRSA harmonized methodology will be used for the recognition of regionalization. The methodologies harmonized by the competent international organizations^[6] may be used, only in the second instance, in both cases. The CAFTA-DR agreement stipulates the methodology employed by the international organizations in the first instance, as do many other regional agreements.

In this light of the foregoing, it is apparent that although the agreements provide for equivalency and regionalization, the respective provisions generally replicate those of the WTO SPS Agreement.^[7] Substantively speaking, bilateral and plurilateral agreements do not go any further than the respective multilateral provisions. Provisions on technical assistance are still quite general, although there is some strengthening of the institutional apparatus, such that assistance and cooperation projects can be carried out. The greatest progress has been made in the establishment of methodologies to be used in risk assessment and in determining sufficient levels of sanitary and phytosanitary protection. In terms of the "SPS-plus" approach, i.e., the provision of rules that are more advanced in detail and precision (though not in terms of rigour), the trade agreements in place in the region lack the requirements to be considered SPS-Plus Agreements.

III. CONCLUSIONS

With respect to sanitary matters, the analysis of bilateral and plurilateral agreements signed by the countries of the region supports the following conclusions:

- (1) The agreements signed in the region strengthen observance of the principles of transparency, harmonization, equivalency and regionalization. The effective application of those principles, however, depends on effective action by the countries.
- (2) The establishment of task forces and committees may contribute to reducing sanitary and phytosanitary obstacles that arise between parties, by serving as a forum for expert meetings. In addition, they represent a real channel for assistance and technical cooperation. Bilateral committees have received support and orientation from regional agencies that have played a prominent role in the regional integration process, including the International Regional Organization for Plant and Animal Health (OIRSA), the Inter-American Institute for Cooperation on Agriculture (IICA), the Southern Agricultural Council (CAS) and the Permanent Veterinary Committee of the Southern Cone (CVP). These institutions have played a crucial part in regional integration, through a number of technical assistance initiatives developed to help the countries to standardize their legal, institutional and technical capacities.
- (3) However, these agreements carry no broader or deeper commitments than those included in the SPS Agreement. Hence, they do not represent a "plus" with respect to the multilateral rules. This evidences a lack of interest in establishing set rules and specific deadlines for sanitary procedures—the procedure for recognition of regionalization and equivalency through mutual recognition agreements is an example. More specific provisions have been made on procedures for risk assessment and determination of sufficient level of protection, since it is more common to find deadlines and methodologies for this in the agreements.

In order to achieve greater articulation of SPS measures and thus facilitate access to regional markets, it is necessary to deepen the chapters on sanitary and phytosanitary matters in bilateral agreements or set up complementary rules that clearly and precisely indicate the procedure to be followed to make these principles more effective. As well as rules, the countries need to develop proactive initiatives to facilitate trade.

The countries must therefore promote the inclusion of mutual recognition and make more constant and effective use of committees and task forces to transfer know-how and experience that can help to build up institutional, technological and productive capabilities. Efforts are also being made to standardize the methodology chosen for risk assessment, determination of sufficient level of protection and for the recognition of regionalization, since some countries have adopted the methods employed by the international organizations and others those used by regional organizations. In relation to this last point, it is important that the countries take steps to establish clear and precise stages and schedules for recognition of areas that are disease-free or have low prevalence. This position will add weight to the petitions of the governments of the region for the industrialized countries to establish rules for the recognition procedure.

The strengthening of the region's agricultural trade depends largely on convergence of sanitary and phytosanitary rules, which requires affinity from legal, institutional and technical perspectives. The first of these represents the starting point and provides the solid foundation for the development of all the rest. The respective chapters of the bilateral and plurilateral agreements signed by Latin American and Caribbean countries should therefore be deepened in order to avoid the SPS-Agreement-related complaints that the countries themselves have taken before multilateral forums simply being transferred to the regional forums.

[1] A bilateral agreement is taken to be one signed by two parties having a common identity or legal status, even if one of them is formed by a group of countries, such as the MERCOSUR-Bolivia agreement.

[2] The agreements provide that the countries must observe the rules and directives of the International Plant Protection Convention of the Food and Agriculture Organization (CIPF); the World Organisation for Animal Health (OIE); the provisions of the Codex Alimentarius, and the Agreement on the Application of Sanitary and Phytosanitary Measures.

[3] Chile-Peru FTA; Chile-CACM FTA; Chile-Colombia FTA; cooperation and coordination agreement on forestry and agricultural health between Chile and Ecuador . A cooperation and coordination agreement on agricultural health is also planned between Ecuador and Peru .

[4] Some of the concerns brought before WTO by the countries of the region may be found in documents G/SPS/GEN/611 (Colombia); G/SPS/GEN/608 and G/SPS/GEN/609 (Brazil); G/SPS/GEN/440/Rev.1 and G/SPS/GEN/622 (Mexico); G/SPS/GEN/606 (Argentina); G/SPS/GEN/607 (Peru); and G/SPS/GEN/610 (Chile).

[5] Deadlines are more common in provisions relating to inspection and oversight of establishments and production methods.

[6] International Plant Protection Convention of the Food and Agriculture Organization (CIPF); World Organisation for Animal Health (OIE); the provisions of the Codex Alimentarius.

[7] Some agreements, such as the CARICOM-Costa Rica accord, simply list the respective principles of the SPS Agreement without adding any other information.
