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# Sanitary and Phytosanitary Measures in the context of the TPP Agreement

**Sofía Boza**  
**Faculty of Agricultural Sciences and**  
**Institute of International Studies**  
**University of Chile**  
**sofiaboza@u.uchile.cl**

## *ABSTRACT*

The Trans Pacific Partnership (TPP) is a notorious example of the proliferation of so-called mega trade agreements. Its signatory parties include almost eight hundred million inhabitants and more than a third of the global Gross Domestic Product. In this context, the objective of this research is to analyze the role of sanitary and phytosanitary (SPS) provisions within the TPP regarding international food trade. Three major issues have been addressed: (i) recent trends and the current situation of food production and trade among TPP partners, (ii) TPP signatory countries participating in the WTO-SPS mechanisms (notifications, trade concerns and disputes) and (iii) analysis of the content of the SPS chapter of the TPP, principally considering the WTO-SPS Agreement.

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## **Introduction**

The Trans Pacific Partnership Agreement (TPP) is a notorious example of the proliferation of so-called mega trade agreements. It was signed on February 2016 by 12 Pacific basin countries: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, United States and Viet Nam, which altogether comprise almost eight hundred million inhabitants and 40% of the global GDP. TPP partners have two years after signing to ratify the Agreement. That process has been surrounded by significant controversy in some of the countries who signed the TPP, and it becomes especially uncertain after the recent results of the presidential election of the United States (US).

One of the chapters in the TPP is dedicated to Sanitary and Phytosanitary Measures (SPS). These technical non-tariff measures, which aim to protect food safety, as well as animal and plant health, have been characterized in recent decades by their increased visibility, having different effects on agricultural trade flows. In this sense, for several TPP signing countries the agricultural sector is a sensitive activity for their economies, holding an important place in their trade strategy (e.g., New Zealand). For others, like the US, food safety protection among imports is a major commitment, reflected in the proliferation of SPS.

The objective of this research is to analyze the role of SPS provisions within the TPP regarding international food trade. This working paper is divided into five major sections: (i) recent figures on food production and import/exports among TPP countries, (ii) TPP partners participating in the mechanisms under the WTO-SPS Agreement: notifications, trade concerns and disputes, (iii) description and analysis of the content of the SPS TPP chapter considering the text of the WTO-SPS Agreement, (iv) presentation of the case of the SPS chapter in the Chile-US Free Trade Agreement and (v) final comments.

This working paper represents a relevant contribution to the discussion on the possible implications of TPP in the agricultural sector after enforcement from a largely unexplored perspective. As UNCTAD (2016) mentions, the existing literature on TPP has been focused on its general impact, and very rarely on agriculture.

## Agricultural production and trade among TPP members

The TPP partners are quite diverse regarding size, contribution to GDP and productivity of their agricultural sector. In this sense, the US is the country with a higher value of food production, more than ten times the average of the other TPP members. However, the US has also the lowest participation of agriculture in terms of total employment. This is due to remarkable productivity per worker, which derives from a high technological level.

**Table 1. TPP partners general data on agricultural production (2014)**

	Australia	Brunei	Canada	Chile	Japan	Malaysia	Mexico	New Zealand	Peru	US	Viet Nam
Total population (millions)	23.6	0.4	35.5	17.8	127	30.2	123.8	4.6	30.8	322.6	92.5
Rural population (millions)	2.4	0.1	6.8	1.8	8.8	7.6	26	0.6	6.7	54.4	62
Area harvested (millions ha)	36	0	66	4	12	100	61	1	11	437	49
Area equipped for irrigation (1000 ha)	2550	1	870	1110	2469	380	6500	722	2580	26400	4600
Employment in agriculture (%)	3.3	-	2.4	10.3	3.7	12.6	13.4	6.6	25.8	1.6	47.4
Agricultural value added per worker (constant US\$)	52701	83868	-	6638	50720	10127	4416	28677	1949	69457	489
Food production value (2004-06 millions \$)	25035	50	27181	8424	17730	14311	35142	10334	9145	215750	27498
Agriculture, value added (% GDP)	3	1	2	3	1	9	3	7	7	1	18

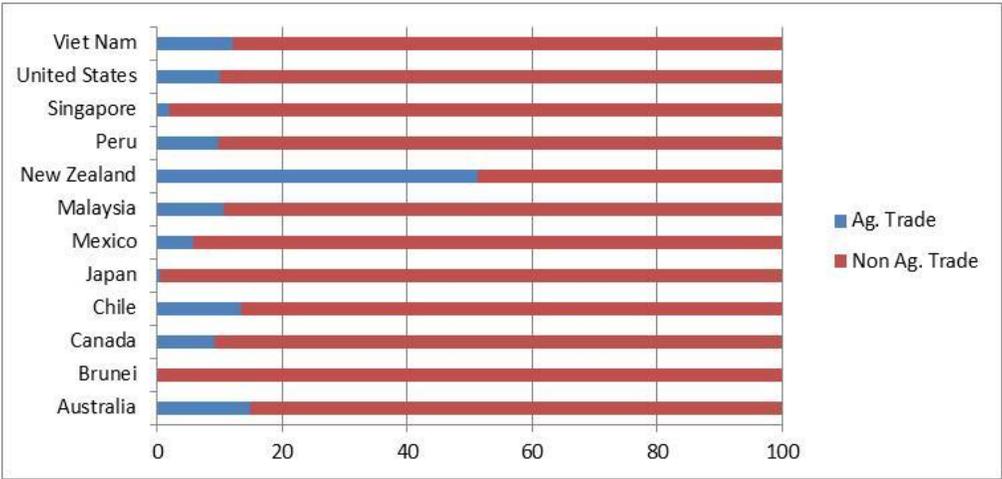
*Source:* Prepared by the author based on FAO (2015)

In contrast, we have partners such as Peru, and above all Viet Nam, where the value added per agricultural worker is notably low. Those are countries in which small-scale family

farming and even the agriculture of subsistence are still very present. The fast economic growth of both economies and the lack of profitability of family farming are motivating land abandonment. In the case of Viet Nam, 56% of rural youth express a desire to migrate to big cities for work opportunities (The Ahn & Minh Chanh, 2015).

The contribution of agricultural products to total trade also differs considerably among TPP partners. In some Asian economies such as Brunei, Japan and Singapore, the participation of the agricultural sector in exports is negligible (less than 2%). However, for New Zealand it represents more than half of total exports. For most TPP partners, such as Australia, Chile, Malaysia, Peru, US and Viet Nam, the contribution of agriculture to exports is ten to fifteen percent. Viet Nam, in spite of the mentioned problems of low agricultural productivity, is nowadays the world's leading coffee exporter.

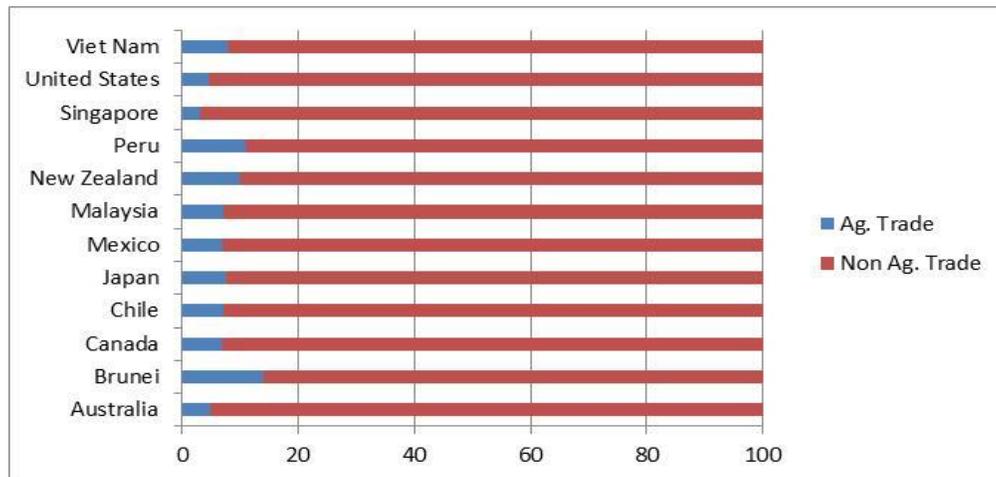
**Figure 1. Contribution of agricultural and non-agricultural products to total exports (% , 2005-2015)**



Source: Prepared by the author based on WITS

With respect to agricultural products contributing to total imports, the differences are not as significant among countries (the difference between minimum and maximum value is 10%). However, if we consider the size of each market, the situation is very different. The value of US worldwide imports of agricultural products in 2015 was 40% of the total TPP agricultural imports. Japan, Canada and Mexico comprised altogether another 35%.

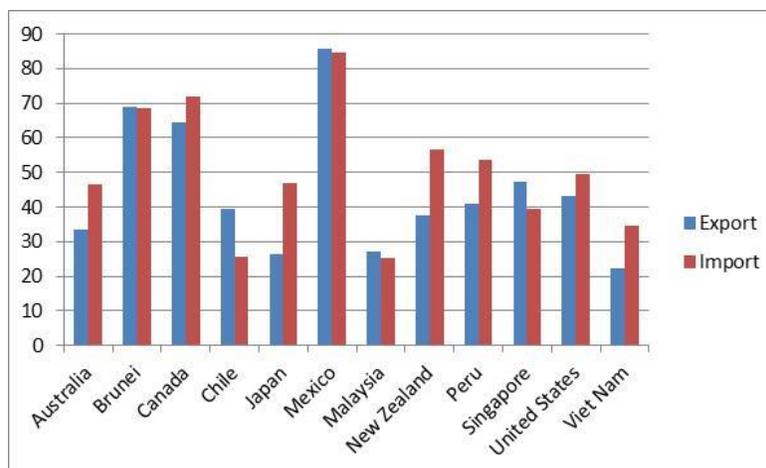
**Figure 2. Contribution of agricultural and non-agricultural products to total imports (% , 2005-2015)**



Source: Prepared by the author based on WITS

At this point, it is interesting to consider how relevant the other TPP partners are as a destination market and supplier of agricultural products for each country. For Mexico, 85% of its agricultural trade (exports and imports) is with other TPP members. For Brunei and Canada, it is between 60-70%. For the majority of TPP partners, exports are close to 40% and imports are about 50%.

**Figure 3. Contribution of other TPP partners to agricultural trade (% , 2015)**

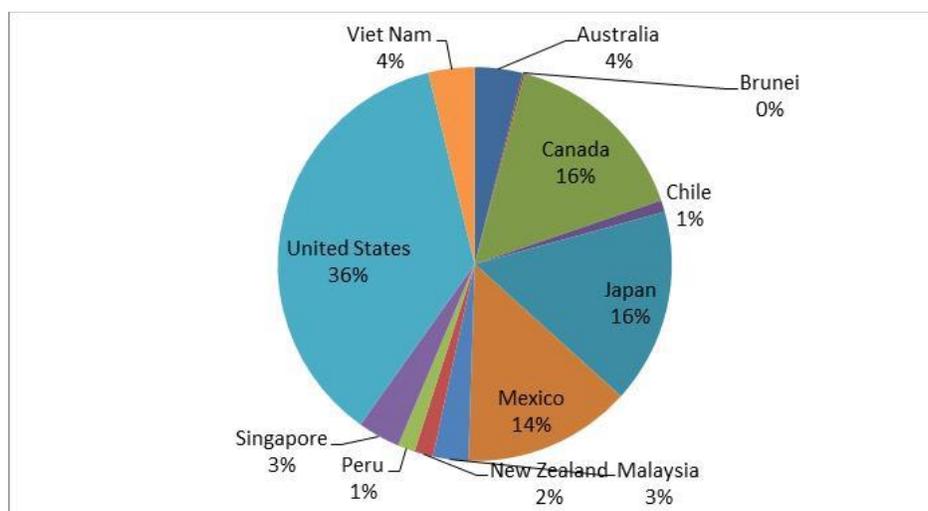


Source: Prepared by the author based on WITS

Finally, with regard to which countries represent the main destination markets for intra TPP agricultural exports, the situation is similar to the mentioned results for worldwide imports.

36% of exports from TPP partners to other TPP members were directed to the US. Other relevant markets were Canada (16%), Japan (16%) and Mexico (14%).

**Figure 4. Destination markets of intra TPP agricultural exports (2014)**



*Source:* Prepared by the author based on WITS

### **TPP members' participation in WTO SPS mechanisms**

One of the principles of the WTO-SPS Agreement is transparency, which means that countries must undertake: (i) a public announcement of their intention to introduce a measure, (ii) to give notice of the contents of the measure through the WTO Secretariat, (iii) upon request of another member, to provide further details, and (iv) to allow time for comments from other members, to discuss these comments if required and to consider this process in the final proposal. The obligation to inform the WTO Secretariat allows for a record of the SPS measures taken by each member, which permits characterizations and comparisons to be made. From such a study, one can discover that from 1995 to 2015, WTO members gave notice of almost twenty thousand SPS measures. The US was the country that informed the WTO Secretariat of the highest number of measures, followed by Canada. Chile, Japan, Mexico, New Zealand, Peru and Australia have also been active in SPS notifications, although at significantly lower levels. Asian TPP members (with the exception of Japan) had a negligible number of SPS measures.

If WTO members have any concern about the SPS measures taken by other members they have the possibility to present it at the SPS Committee, in the form known as Specific Trade Concern (STC). From 1995 to 2012, 344 STCs were raised at the SPS Committee. The US was the most active country with 80 STCs (Boza & Fernandez, 2016). In contrast, the other TPP partners presented less than ten each (or even none). Their participation has been more frequent in supporting a STC presented by another country.

With regard to WTO disputes which invoke the SPS Agreement, considering the 45 cases initiated from 1995 to 2015, in 11 of them the US was the complainant and in 9 cases Canada. Meanwhile, the US was a respondent in 8 cases and Australia in 6. Other TPP partners had a minor participation and Brunei, Chile, Malaysia, Peru, Singapore and Viet Nam have never been involved (as complainant or respondent) in a SPS dispute.

The table below presents the SPS disputes in which two TPP partners faced.

**Table 2. SPS disputes among TPP partners (1995-2015)**

<b>ID</b>	<b>Respondent, complainant and title</b>	<b>Request of consultations</b>
DS386	United States — Certain Country of Origin Labelling Requirements (Complainant: Mexico)	December 2008
DS384	United States — Certain Country of Origin Labelling (Cool) Requirements (Complainant: Canada)	December 2008
DS367	Australia — Measures Affecting the Importation of Apples from New Zealand (Complainant: New Zealand)	August 2007
DS245	Japan — Measures Affecting the Importation of Apples (Complainant: United States)	March 2002
DS203	Mexico — Measures Affecting Trade in Live Swine (Complainant: United States)	July 2000
DS144	United States — Certain Measures Affecting the Import of Cattle, Swine and Grain from Canada (Complainant: Canada)	September 1998
DS76	Japan — Measures Affecting Agricultural Products (Complainant: United States)	April 1997
DS21	Australia — Measures Affecting the Importation of Salmonids (Complainant: United States)	November 1995
DS18	Australia — Measures Affecting Importation of Salmon (Complainant: Canada)	October 1995

Source: World Trade Organization

## **Analysis of TPP SPS Chapter considering WTO SPS Agreement**

The TPP Agreement declares that one of its objectives is to *reinforce and build on the SPS Agreement* (art.7.2.b). However, from its overture it shows some substantial differences with the WTO-SPS Agreement in regards to its approach to SPS issues. The TPP Agreement stresses further the importance of preserving compatibility between SPS measures and trade. In fact, it establishes within its objectives the protection of human, animal and plant life or health, as the SPS Agreement does, but *while facilitating and expanding trade* (art.7.2.a). The WTO-SPS Agreement merely states that SPS measures must not constitute a *disguised restriction on international trade*.

One of the strategies posed in the TPP Agreement to reduce the potential impacts of SPS in trade is to *strengthen communication, consultation and cooperation between the Parties* (art.7.2.c). For this, as well as for the general supervision of the Parties' implementation of the provisions in the Chapter, the TPP Agreement establishes its own Committee for SPS Measures. The main functions of this Committee are to: i) act as a forum for the Parties on SPS matters, ii) identify and develop cooperation projects on SPS within the Parties and iii) consult matters and positions for the meetings at the WTO Committee on SPS Measures and at the three international standard-setting organizations recognized by the WTO-SPS Agreement (Codex Alimentarius Commission, the World Organization for Animal Health and the International Plant Protection Convention). Considering the last point presented, Suppan (2015) suggests that, despite these consultations being expressed as voluntary, it would be difficult for competent authorities to skip them if the country's representatives want to give an image of cooperation.

Increased communication between TPP Parties also relies on transparency provisions. In this sense, a particularity of the TPP Agreement is that it points to the importance not only of sharing information between the Parties, but also with "interested persons", giving to both the *opportunity to comment on their proposed sanitary and phytosanitary measures* (art. 7.13.1). This suggests that the TPP Agreement seeks to facilitate the inclusion of Parties' private sectors in the conception of SPS measures; which would be coherent with the large interest and support that food industry representatives gave to TPP SPS Chapter negotiations in the case of the US (Johnson, 2014). In fact, in the US, a high level of

participation already exists among companies, public opinion and groups of interest in the process of development of the country's SPS measures (USTR, n. d.).

Continuing with this aim of a discussion of SPS measures beyond the institutional level, another addition to the provisions of the WTO-SPS Agreement is that TPP Parties *shall make available to the public, by electronic means in an official journal or on a website, the proposed sanitary or phytosanitary measure (...) the legal basis for the measure, and the written comments or a summary of the written comments that the Party has received* (art. 7.13.5). Electronic publication is also mandatory for the final version of the SPS.

Meanwhile, another particular provision of the transparency within the TPP SPS Chapter is that it enhances the communication between Parties (through their Competent Authorities and Contact Points) beyond the notification of SPS measures. The information that Parties shall exchange is related to: i) detected SPS risks of exports from the other Party's territory, ii) relevant changes on sanitary or phytosanitary situation of the exporting Party (or a part of it) which may affect the existing trade, iii) research progresses possibly impacting SPS regulation and iv) significant changes in Party's food safety and pest and disease management policies, as well as related practices that have the potential to affect trade. All these points seem to look for the TPP Parties to be awarded possible complex forthcoming scenarios related to SPS regulation and procedures of the other Parties, which may allow for adapting and avoiding affecting trade flows.

The TPP Agreement gives much relevance not only to the process through which measures are communicated, but also to their conception. Like the WTO-SPS Agreement, preference is given to adherence to international standards. However, when a Party decides to develop its own SPS measures, different from the international ones, the TPP Agreement establishes that they must be based on *documented and objective scientific evidence* (art.7.9.2). The use of the adjectives "documented and objective" instead of "available," as in the WTO-SPS Agreement, according to Labonté, Schram and Ruckert (2016), means that the precautionary principle (e.g., as in SPS Art-5.7), by which the existence of a possible risk has to be considered, is undermined.

Another particularity in the TPP Agreement in this same issue is that Parties shall give to other Parties, but also interested persons, the possibility to comment on their risk analysis. This is another sign of the aim to facilitate the inclusion of interested groups in SPS measures development. The problem is that, given the technical complexity of risk analysis, it is feasible that only resourceful counterparts and their operators or public interest groups will be able to make informed comments. That can even amplify, for the specific case of the TPP Parties, the current gap in regulatory performance on SPS already existent within WTO developed and developing countries due to their different scientific capabilities. In this sense, as Strether (2015) suggests, the TPP SPS Chapter assumes that every Party (and in this case also their interested groups) have a similar infrastructure “for doing science”, which is not factual whatsoever.

In this same sense, the approach that the TPP SPS Chapter adopts for the cooperation between Parties is quite diverse from the *technical assistance* and *special and differential treatment* provisions of the WTO-SPS Agreement (materialized for example in the Standards and Trade Development Facility). The TPP Agreement focuses on cooperation in terms of facilitating trade and exchanging information, but is not very specific on what comprises technical assistance. In fact, it establishes that the objective of cooperation in SPS is *eliminating unnecessary obstacles to trade between the Parties* (art.7.15.2).

An important means to facilitate trade is the recognition of equivalence of other Parties' SPS measures. In this sense, the TPP Agreement goes further than the WTO-SPS Agreement (SPS-Art. 4), as it establishes that, beyond the specific measures, *the Parties shall apply equivalence to a group of measures or on a systems-wide basis* (art. 7.8.1). The recognition of equivalence starts with the request of the exporting country, which is followed by an assessment carried out by the importing country. This evaluation has to be based on *available knowledge, information and relevant experience, as well as the regulatory competence of the exporting Party* (art.7.8.5). The last criterion, “regulatory competence,” can be especially challenging, as it is difficult to quantify, and can lead to different interpretations. A measure, group of measures or systems wide basis is considered equivalent when it *achieves the same level of protection as the importing Party's measure; or has the same effect in achieving the objective as the importing Party's measure*

(art.7.8.6). These requirements are more specific than those in the WTO-SPS Agreement, which considers a measure equivalent whether it guarantees an “appropriate” sanitary or phytosanitary protection level for the importer.

In this context, Hejazi, Grant and Peterson (2016) analyzed the situation and effects of homogeneity/heterogeneity of SPS between TPP and TTIP Parties, considering the case of the regulation on maximum residues levels (MRLs) in fruits and vegetables. First, the authors showed that the similarity in MRLs is more intense between TPP Parties than between the US and the European Union, as the latter is the most stringent within the sample. Likewise, they confirm that more similarity between regulations facilitates trade.

An additional way to facilitate trade is “regionalization,” a principle present in the WTO-SPS Agreement and also explicitly recognized in the TPP SPS Chapter. The TPP process declaring pest or disease-free areas, and areas of low pest or disease prevalence is very similar to the one specified for the equivalence assessment. It has to be requested by the exporting country, evaluated by the importing country and maintain a continuous information exchange during the procedure. In this case the TPP Agreement is quite similar to the WTO-SPS Agreement and WTO-SPS Committee guidelines.

As already mentioned, transparency is one of the principles that the TPP SPS Chapter tries to enhance the most. In that sense, another novelty proposed in the Agreement is the realization of audits for the competent authorities and inspection bodies from the other Parties. The objective of those audits is *to determine an exporting Party’s ability to provide required assurances and meet the sanitary and phytosanitary measures of the importing Party* (art.7.10.1). Before the audit starts, both Parties (the auditing and the audited) will discuss the objectives, scopes, requirements to be assessed and procedures. The audit process does not imply a moratorium on the establishment of new SPS measures.

The results of the audit will be known by the audited Party, which can make comments that have to be considered by the auditing Party in the preparation of the final report with the conclusions of the process. Meanwhile, the information generated during the auditing procedures will remain confidential for the general public. The costs of the audit will be borne by the auditing Party, unless both Parties decide otherwise.

The TPP Agreement allows the auditing Party to take decisions or actions considering the results of the audits. However, those decisions have to be based on *objective evidence and data that can be verified, taking into account the auditing Party's knowledge of, relevant experience with, and confidence in, the audited Party* (art.7.10.6). In this sense, it is important to consider that the generation of “objective evidence and data” requires an adequate level of technical capabilities, specialized in SPS issues. On the other hand, as we have already mentioned, the costs of the process are assumed by the auditing Party. It is therefore reasonable to wonder whether this mechanism will be used much more frequently by TPP Parties with the lowest human resource constraints.

Additional interesting innovations in the TPP SPS Chapter are related to the imports' inspection procedures. First, if required, Parties have to exchange complete information about the character, frequency and criteria of their inspections. With respect to frequency, the TPP Agreement establishes that Parties can adjust it considering past experience, as well as “actions or discussions” under the Agreement. Since even in the case of the US, only about 1% of the shipments are physically tested at the border due to resource restrictions (Artecona & Flores, 2009), the programming of inspections is very relevant. Also in the case of the US, exporters have to present an entrance request for their freights to the Food and Drug Administration (FDA). The FDA decides whether to admit the shipment without inspection (*a priori*) or not (Grundke & Moser, 2014). The SPS violations record of the country of origin of the product is one of the criteria that the FDA considers; in fact, the FDA can order the refusal of a shipment even without inspection for that reason, forcing the exporter to prove that the freight in question is safe. One example was the detention in 2007 at the US border of Chinese aquaculture products until shippers demonstrated they were free of unapproved drug residues (Becker, 2010).

According to the TPP Agreement, if a Party decides to refuse the import of a good from another Party, it has to notify at least *the importer or its agent; the exporter; the manufacturer; or the exporting Party* (art.7.13.6). That notification has to be communicated *no later than seven days after the date of the decision* (art.7.13.7) containing the reasons for the refusal, the legal basis of the action and the situation of the rejected goods. One important thing to notice is that, according to this provision, the Party refusing the shipment

is not obligated to communicate its decision to the Party from which it proceeds, but only to the producer or to the trader. So again, the TPP is encouraging the role of the private sector. In the same sense, it allows the affected party to request a review of the decision, providing any relevant information during the process. That review has received some critiques, considering it to be a mechanism that allows a sort of “State-to-State” or “Business-to-State” dispute (Food and Water Watch, 2015).

The TPP SPS Chapter also establishes parallel mechanisms to those under the WTO SPS Agreement. For example, the Cooperative Technical Consultations (CTC) can be used by a Party whenever there is an SPS matter that can potentially affect its trade and cannot be solved administrative or bilaterally. The CTC process is initiated when the concerned Party presents its request in writing and the responding Party acknowledges receipt. Both Parties have to meet within 30 days and attempt to resolve the matter within 180 days. The documents generated during the CTC remain confidential, unless the Parties agree otherwise. Suppan (2015) suggests that this concealment follows an aim of protecting Confidential Business Information, but neglects that the SPS objective (i.e., protection of public, animal or plant life and health) is of a collective nature.

When Parties are not able to arrive at a solution within the CTC, the concerned Party can use the TPP Dispute Settlement Procedure, one of the most significant novelties of the Agreement. This Dispute Settlement will begin operating progressively: for disputes related to equivalence principle, audits or import checks the procedure will be available one year after the Agreement’s entry into force for the responding Party; for disputes related to science and risk analysis two years later.

However, there are specific provisions on equivalence and risk analysis that the TPP explicitly excludes from the scope of the Dispute Settlement. In the first case, Parties have to recognize the equivalence of an SPS when it *has the same effect in achieving the objective as the importing Party’s measure* (art.7.8.6.b.). The second is the already mentioned article 7.9.2., according to which Parties have to safeguard that their SPS measures follow international standards, guidelines or recommendations or, if not, that they are based on *documented and objective scientific evidence that is rationally related to the measures*. These exceptions within the scope of disputes are not present in the WTO.

The details of how the TPP Dispute Settlement will operate are described in article 28 of the Agreement. One of the most interesting features is that the deadlines for each stage of the dispute process are specified, which are quite constraining. For example, once the Panel has been fully established, it has 150 days to deliver a preliminary report on the case and another additional 30 days to present the final report to the disputing Parties. If these terms were met, not remaining only in a declaration of intentions, they would be much shorter compared to what is common for the WTO Dispute Settlement, which seems to be one of the main motivations for the establishment of the TPP Dispute Settlement. In any case, the TPP allows for the concurrent use of both the WTO and TPP Dispute Settlements.

Finally, indirectly related with future SPS disputes under the TPP, is the inclusion of the “Trade of Products of Modern Biotechnology” at the National Treatment and Market Access for Goods Chapter. This means that any controversy between TPP Parties related to biotech food products, Genetically Modified Organisms (GMO) included, will be primarily approached via the TPP Dispute Settlement considering principles of market access, rather than those of sanitary or phytosanitary protection. This is a completely different scenario facing the US in its WTO dispute against the European Union moratorium on the imports of biotech products initiated in 2003. In that case, the panel decision was exclusively based on the WTO-SPS Agreement (including procedural aspects).

### **SPS in bilateral Agreements: the case of US-Chile FTA**

The Free Trade Agreement (FTA) between Chile and the US was signed in 2003 and enforced on January 2004. Its objectives include: expanding and diversifying trade, facilitating the movement of goods, promoting competition, increasing investment, protecting intellectual property rights and fostering bilateral cooperation.

One of the main aspects of the FTA was the strengthening of the General System of Preferences (GSP), with the aim of facilitating access to Chilean products for the US. These tariff preferences were particularly focused on food products, and allowed Chile to compete with greater equality with other countries that were previously part of the GSP. Another related issue was the specification of the scope of safeguards. Agricultural products to

which the US could apply automatic safeguards were explicitly restricted, and safeguards were not permitted within tariff quotas (CAN, 2003).

Although there are many factors to take into account, it seems that the FTA has encouraged agricultural trade between Chile and the US. In 2015, the value of exports of Chilean agricultural products to the US was 3.2 billion dollars. Since being enforced the FTA in 2004, the value of agricultural exports from Chile to the US has exceeded 2 billion dollars every year. Meanwhile, except in 2009, imports from the US experienced significant increases after 2006, before which the rises had been marginal. However, they have always been well below exports, resulting in a significantly positive balance of trade for Chile.

Chile-US FTA content is presented in twenty-four chapters. Of them number six is dedicated to SPS measures. It declares the WTO SPS Agreement as the legal framework to respect and it does not establish any further obligation. As a consequence, the use of the dispute settlement is discarded for any matter under the chapter.

The main novelty of the Chile-US FTA is the creation of a Committee on Sanitary and Phytosanitary Matters composed of both parties. Its purpose is to improve relations between the competent SPS bodies in both countries. The foregoing, acting as a forum to facilitate consultation in: i) enhancing mutual understanding on the regulatory process and the implementation of the SPS Agreement, ii) consulting on the development and application of SPS measures, iii) consulting for participation on the WTO SPS Committee and the international forums on SPS matters, iv) coordinating technical cooperation programs and v) reviewing progress on addressing SPS matters between parties' agencies.

The meetings of the Chile-US FTA Committee on SPS were scheduled to be held at least annually. There shall be representation of relevant agencies responsible for the development, implementation and enforcement of SPS measures. These types of forums are also established in other US FTAs with TPP partners, such as the one with Australia. In that case, two different committees were created, the first one in SPS general matters and the second one in plant and animal health (Rodrigues, 2006).

The cooperation between Chile and the US in SPS matters has been reflected in some specific actions, such as the *in situ* certification of products held by the United States

Department of Agriculture (USDA) along with the Chilean Agricultural Service (SAG). It is expected that this collaboration has had an impact on the stringent perception of US SPS measures by Chilean producers (Engler, Nahuelhual, Cofré, & Barrena, 2012). In fact, Chile has a low rate of import refusals for fruit and vegetable products (its main export) at the US border compared with other Latin American countries (Boza, Rozas, & Rivers, 2016). This “good reputation” derived, *inter alia*, of the mutual understanding, is especially relevant considering the current enforcement of the US Food Safety Modernization Act, which emphasizes preventative actions.

### **Concluding remarks**

The TPP Agreement is a paradigmatic example of a mega trade agreement, given the high proportion of the world economy covered. However, the economic weight and level of development of TPP partners is heterogenic. On the one hand, we have the major economy in the world, the US, as well as other large economies such as Japan, Australia, Canada and Mexico (all within the 15 more important); high income countries but with relatively small economies, such as New Zealand, Chile, Singapore and Brunei; and middle income countries but with high recent growth rates such as Malaysia, Peru and Viet Nam.

If we focus on the agricultural sector, we can also see important differences in both production and trade patterns among TPP partners. One of the most notorious has to do with the level of productivity, which is expected to be largely related to technical capabilities. The other is the relative weight of agriculture in their GDP, work force and trade. For TPP partners, the intra agreement agricultural trade is very significant, although quite concentrated in the US and, secondarily, in Japan, Canada and Mexico.

The SPS-TPP chapter aims at a higher integration between partners. However, all of the above differences can make this achievement difficult. Particularly, dissimilarities in technical capabilities must be taken into account, as essential in the context of SPS. In fact, the relative participation of TPP partners in the SPS mechanisms under the WTO illustrates that. Thus, although the chapter provides of course equal rights for all members, the possibility of properly executing some of them seems very divergent. An important consequence of this is that the position of developed partners overrides that of the rest.

The TPP SPS chapter also encourages the participation of companies in the discussion related to partners' SPS measures. Although this can be very positive because it is these companies that are directly related to compliance with SPS, it might be that those companies in the more developed economies will have higher technical and human capabilities and thus contribute to widening the gap between countries.

Given the above, it is strongly recommended to consider mechanisms for technical assistance in SPS issues among the countries in the TPP, which are not limited to information exchange only, but to a greater extent to equalize capacities.

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