



VMUN 2018

World Trade Organization

BACKGROUND GUIDE



VANCOUVER MODEL UNITED NATIONS

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Dear Delegates,

My name is Xudi and it is my absolute pleasure to welcome you to Vancouver Model United Nations 2018! Along my wonderful staff Linda Dai and Arshan Bains, I hope you will recognize that the power of diplomacy you garner from Model UN extends far beyond high school years to a changing future. I am currently a senior in Pacific Academy, immersed in the International Baccalaureate program—indeed, I can testify that it is a gruelling program. When I'm not working in the student government or attempting to jazz improvise, I can be found exploring profound philosophies, aesthetic food, and elegant sunsets. While staffing is an excellent experience, I can truly affirm that delegating is just as rewarding—if not more—because you are constantly engaging in intense debate and spurring new passions within yourself.

The World Trade Organization (WTO) is actually quite a complex body. It is the only worldwide organization dealing with trade between countries, thus making it an invaluable forum to discuss in. The organization can perform multiple functions: cutting living costs and raising living standards, settle disputes and trade tensions, and giving the minority a stronger voice. To find the solution to the topics of Intellectual Property Rights (IPRs) and Sanitary and Phytosanitary Measures (SPS), you need to dig to the root of the issues, for there is no simple and straightforward solution. In that respect, resolutions could include aspects such as revamping clauses or creating new agreements. While this might seem a little boring, I can assure you that through this experience, you will find yourself intellectually driven to research more into these topics and gain a better understanding of our world. My staff and I also assure you that we will make your weekend the best one yet.

If you are an individual seeking for a challenge, longing for intricate debate, and wishing for a newly-found, lifelong passion in diplomacy, the WTO awaits you. If you have any questions regarding the committee or conference feel free to contact my fellow Dais members or myself!

Best regards,

Xudi Lin,
WTO Director

Position Paper Policy

What is a Position Paper?

A position paper is a brief overview of a country's stance on the topics being discussed by a particular committee. Though there is no specific format the position paper must follow, it should include a description of your positions your country holds on the issues on the agenda, relevant actions that your country has taken, and potential solutions that your country would support.

At Vancouver Model United Nations, delegates should write a position paper for each of the committee's topics. Each position paper should not exceed one page, and should all be combined into a single document per delegate.

Formatting

Position papers should:

- Include the name of the delegate, his/her country, and the committee
- Be in a standard font (e.g. Times New Roman) with a 12-point font size and 1-inch document margins
- Not include illustrations, diagrams, decorations, national symbols, watermarks, or page borders
- Include citations and a bibliography, in any format, giving due credit to the sources used in research (not included in the 1-page limit)

Due Dates and Submission Procedure

Position papers for this committee are highly recommended. To be eligible for an award, you must submit a position paper. The submission deadline is January 7th, 2018.

Once your position paper is complete, please save the file as your last name, your first name and send it as an attachment in an email, to your committee's email address, with the subject heading as your last name, your first name — Position Paper. Please do not add any other attachments to the email or write anything else in the body.

Both your position papers should be combined into a single PDF or Word document file; position papers submitted in another format will not be accepted.

The email address for this committee is *wto@vmun.com*.

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Intellectual Property Rights

Overview

The end result is often the centre of attention in the lifeline of a product. However, the process is commonly overlooked—the hours spent in creation, the overwhelming opportunity costs, and the effort and creativity. The process of human innovation can be very costly, yet results can be copied with ease. This raises concern; after all, who would want their ideas stolen? Intellectual property rights (IPRs) directly aim to solve this issue. Patents, copyrights, trademarks, and trade secrets are the most common forms of IPRs.

Patents

Patents constitute a major part of IPRs, which are issued typically by a governmental agency such as the Canadian Intellectual Property Office (CIPO).¹ To be eligible for a patent, an innovation must be new in that it does not contain aspects of previous work; in addition, it must be useful in that it will be able to solve a particular problem. A typical patent allows the inventor full selling and distributing rights for a time span – typically 20 years from the date of approval. Specific patents include the utility patent and the design patent.

Copyrights

Copyrights apply to artistic works, such as original works of art, books, photographs, film, and sound recordings. These works differ from patents in that they do not have a novelty or usefulness requirement.² However, there is an element of creativity and originality that is needed for approval.³ The time span of copyrights typically extends beyond the lifetime of the owner by 50 years, and in some cases in the United States and Europe, 70 years.

Trademarks

Trademarks are words, symbols, or devices that differentiate the goods or services of a company from others in the market. There are no requirements such as originality or authority, but there is a need for distinctiveness.⁴ Trademarks do not have a time limit so long as the owner uses them periodically.

Trade Secrets

Trade secrets enable an enterprise to protect its intellectual assets against competition. Intellectual assets include processes, management techniques, methods, devices, and formulae. The general requirement is for efforts to be taken to maintain secrecy; however, a separate discovery without the knowledge of the company is permitted.

How Does it All Fit Within Trade?

IPRs have garnered an increasingly important role in international trade relations. Data from the Organization for Economic Cooperation and Development (OECD) demonstrates that almost two-thirds of the world

¹ <http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home>

² <http://www.bitlaw.com/patent/requirements.html>

³ http://www.geom.uiuc.edu/events/courses/1996/cmwh/Copyright/c_protects.html

⁴ http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/h_wr02360.html

manufacturing trade consists mainly of technological products.⁵ The exchange of technology carries with it the need for protection against copying and imitation.

The Trade-Related Aspects of the Intellectual Property Rights Agreement (TRIPS) has moved to include the internationalization of IPRs, which was incorporated into one of the core agreements of WTO.⁶ TRIPS has changed the nature of IPRs within the global market: it merged previous national IPR laws, strengthened agreements, and served as an incentive to participate in WTO.

While TRIPS has benefitted international trade, many critics regard it with skepticism, especially with the recent debate with permitting developing countries to access patented drugs to treat epidemics like HIV.⁷

Timeline

567 — The first-known case of copyright infringement in the English world takes place in regards to an Irish monk who copied the book of Psalms without permission.⁸

1421 — The first patent is granted in the Republic of Florence, for a new technique used with hoisting gear.

1790 — A machine to rove and spin cotton, invented by William Pollard, is the first invention to be granted a patent.

July 1793 — France passes its first copyright law.

1891 — The International Copyright Act of 1891 is the first United States congressional act to extend limited protection to foreign copyright holders.⁹

July 1930 — A patent dispute between the United States and Germany over sound-on-film technology is resolved at a Paris conference

July 1967 — The World Intellectual Property Organization (WIPO) is established.¹⁰ The establishing Convention has 184 Contracting Parties.

April 1972 — India's Patents Act of 1970 is adopted. It allows process patents only in regards to drugs, medicine, food, and chemicals.¹¹

1979 — The Sony Corporation is brought to court by the Walt Disney Company for copyright infringement.

1998 — The Digital Millennium Copyright Act (DMCA) criminalizes unauthorized dissemination of copyrighted technology, film, and audio.

December 2001 — The Microsoft Corporation claims that more than 45,000 copies of pirated material have been distributed in the Asia-Pacific region, many of which were Microsoft products.

⁵ <http://stats.oecd.org/>

⁶ https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

⁷ <http://pubs.acs.org/subscribe/archive/mdd/v04/i06/html/06rules.html>

⁸ <http://www.infoese.ca/History%20of%20Intellectual%20Property%20Rights.html>

⁹ <http://copyright.laws.com/international-copyright/international-copyright-act-1891/1891-act>

¹⁰ <http://www.wipo.int/about-wipo/en/history.html>

¹¹ <http://www.mondaq.com/india/x/54494/Patent/Patent+Law+in+India>

September 2006 — A court in Belgium has Google remove all French and German language newspaper reports from search results due to copyright issues.¹²

October 2007 — Over 1,000 police officers block street vendors from selling knock-off products in Mexico City.¹³

Historical Analysis

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)

TRIPS was accepted as part of an eight-round multilateral trade negotiation from 1986 to 1994.¹⁴ Under the General Agreement on Tariffs and Trade (GATT), it was known as the Uruguay Round. The Uruguay Round introduced IPRs to the world of trade for the first time, establishing them into comprehensive trade frameworks worldwide.

The agreement was incorporated into the WTO for several reasons. Issues regarding international trade could not be solved without special attention to protecting intellectual property rights. As Western developed countries such as the United States faced increasing competition on an international scale against Newly Industrializing Countries (NICs), property action was needed to set new rules and disciplines.¹⁵ Especially with technology rising to the forefront of human innovation and the value of ideas increasing, IPRs required negotiations.

In the United States, business representatives from the medical, pharmaceutical, chemical, and technological industry pursued IPRs vigorously. Free-riding was a major issue for US corporations in the 1980s, especially with competition from Japanese firms. The efforts from the business sector of the US eventually led Congress to amend 'Section 301' on provisions of the US Trade and Tariff Act in 1984.¹⁶ The amendment included the risk of trade sanctions against any nation failing to protect IPRs. In the years after the amendment, bilateral trade negotiations improved for the US. Overall, the TRIPS negotiations gathered nations with different economic levels under a forum to discuss an array of IP policies.

Contents of TRIPS

TRIPS is quite extensive in that it covers all aspects of IPRs, whether that be copyright, trademark, geographical indication, appellation of origin, industrial design, or patent. The broad scope of TRIPS' legislation is bolstered by its core values. *National treatment* calls for "non-discrimination between foreigners and a country's nationals."¹⁷ This has been a significant factor in fixing the previous discrimination in IP policies. *Most-favoured-nation treatment* calls for equal treatment between trading partners; essentially, a favor offered to a nation must be offered to all others under the agreement.

The aspects of TRIPS that differentiate it from existing IPR legislation are its standards and enforcement. Key elements of protection are defined, namely "the subject-matter to be protected, the rights to be conferred and

¹² <http://www.infoese.ca/History%20of%20Intellectual%20Property%20Rights.html>

¹³ <http://www.refworld.org/docid/55deccc74.html>

¹⁴ <http://wtocentre.iift.ac.in/FAQ/english/TRIPS.pdf>

¹⁵ Ibid.

¹⁶ <http://scholarship.law.cornell.edu/cgi/viewcontent.cgi?article=1171&context=cilj>

¹⁷ https://www.wto.org/english/tratop_e/trips_e/trips_notif3_arts1-3_3-1_e.htm

permissible exception to those rights, and the minimum duration of protection.”¹⁸ Another aspect focuses on enforcement in recommending “civil and administrative procedures and remedies, provisional measures, [and] special requirements related to border measures and criminal procedures.”¹⁹

TRIPS includes new ideas built upon those in past conventions. Case in point, computer programs are protected by copyrights with respect to the Berne Convention.²⁰ From the convention, TRIPS included a provision on the rights of authors and producers to control the commercialization of their products. As well, trade secrets are prioritized by the agreement: test data submitted to governments regarding medical or agricultural chemicals are protected against unfair commercial use. Not only did TRIPS include plans to improve IPRs, but it also brought forth a new suggestion for WTO member states: developed countries receive a 1 year transition period to put its laws and policies in place, developing countries are given 5 years, and least-developed countries (LDCs) are given 11 years. From its date of birth in 1995, TRIPS was expected to bring all parties into compliance by January 2006—and it did, successfully.

Past UN/International Involvement

Before the construction of TRIPS, all international treaties and conventions were administered by WIPO.

The 1883 *Paris Convention for the Protection of Industrial Property* was the first step to ensuring the protection of intellectual works. It developed the idea of national treatment, which currently is a major component of TRIPS. The right of priority enables applicants to request IPRs in individual countries. This was not only feasible but justifiable as previously, an applicant was required to file all applications for IPRs at the same time.²¹ The right of priority was supported by the idea that patents in Contracting States can be independent of each other: an inventor’s patent may be applicable in one state but not another if they did not file a patent there.

The *Berne Convention for the Protection of Literary and Artistic Works* of 1886 contained principles focusing on national treatment, non-conditional treatment, and protection independent of protection in the country of origin.²² The convention also discussed certain exceptions, in which protected works do not require the authorization of the owner to be disseminated. This can be commonly seen with applications such as Wikipedia.

The *Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* of 1961 ensures security for performances and broadcasts in the sense of authorizing reproduction. The main idea is that in the performance industry, performers, producers, and broadcasters may either prohibit or authorize the use of their work in other circumstances.

Current Situation

Public Health

WTO member states discussed the importance of Public Health in relation to TRIPS during the Doha World Trade Organization Ministerial Conference in November 2001.²³ The request of the African Group to discuss

¹⁸ https://www.wto.org/english/tratop_e/trips_e/intel2_e.htm

¹⁹ Ibid.

²⁰ <http://www.wipo.int/treaties/en/ip/berne/>

²¹ http://www.wipo.int/treaties/en/ip/paris/summary_paris.html

²² http://www.wipo.int/treaties/en/ip/berne/summary_berne.html

²³ https://www.wto.org/english/thewto_e/minist_e/min01_e/min01_e.htm

such a topic was grounded upon the HIV crisis and other spreading epidemics. The question of granting access to necessary medications for the third world has been debated countless times, with no clear solution yet available.

In addition to the social, political, and economic forces ravaging developing countries, medical problems require investments into educating the public, hiring healthcare professionals to deliver proper medicine, and ensuring the correct usage of medicine. The overhead costs of such a venture pose a huge economic burden for the developing world. Simultaneously, developed nations are consistently developing new medications to diseases while filing thousands of patents to protect the ideas. A question is raised: why are ethics ignored with these pharmaceutical companies? A major factor is commercialization. These companies are profit-oriented: they survive on investors and shareholders. The industry has also focused its efforts on the development of drugs in regions that are profitable. In addition, the returns on diseases such as malaria are minimal in comparison.

The legal aspect of the issue has garnered international attention, leading to forums such as the DOHA Declaration on Public Health and TRIPS.²⁴ Some argue that intellectual property laws are necessary to foster innovation and prevent ideas being used for malicious purposes. As well, pharmaceutical companies need the incentive to conduct research into risky areas of medicine, developments in which might one day significantly decrease the impact of diseases. On the contrary, many say that intellectual property policies inflate drug prices and prevent the individual from access to life-saving medicine. The ethical standpoint of the right to medicine is certainly a strong one, while the other side raises important points as well.

Rights and Parallel Imports

Much debate has surfaced over which principle WTO countries should decide to act upon: the “International Exhaustion” principle or the “National Exhaustion” principle. The *International Exhaustion Principle* focuses on the combination of the rights to the product and the property of the invention. Once the product is placed in the ordinary stream of commerce anywhere in the world, the IPR is exhausted.²⁵ *National Exhaustion* is when an owner’s exclusive intellectual property rights expire once the product enters the ordinary stream of commerce within the country where IPRs are protected.²⁶

The primary difference between National and International Exhaustion appears with regards to price control. With National Exhaustion, the IPR owner has the power to control imports and exports to a region. With International Exhaustion, the IPR owner has the power to control the first sales of the product worldwide. This means that with National Exhaustion, price discrimination will occur, yet with a positive effect. Especially with the aforementioned issue of public health, this would improve the welfare of the countries receiving affordable products. However, once again, there is the issue of the willingness of pharmaceutical companies to practice price discrimination.

Geographical Indications

Geographical Indications (GIs) still remain unresolved in TRIPS, and there is no foreseeable agreement on a resolution. GI identifies an invention or product in connection to its place of origin. This enables the region of origin to claim rights to the attributes of a product, which in turn becomes an array of benefits.²⁷ Examples include certain wines attributed to specific regions. Currently, proponents of GI advocate for authenticity and

²⁴ https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm

²⁵ Ibid.

²⁶ Ibid.

²⁷ <http://ejil.org/pdfs/18/2/227.pdf>

culture in the globalizing world. On the other hand, others suggest that a rapidly globalizing world signifies common interests, which favors transparency in communication.

Countries like the United States and Canada call for a system of countries deciding to grant GI protection voluntarily. The European Union condones a similar system, but one that enforces the protection of registered products.

Biodiversity, Traditional Knowledge, and Folklore

With the availability of traditional knowledge, many countries have taken the chance to exploit such resources. Pharmaceutical companies have targeted traditional herbal medicines and techniques. Such knowledge, in combination with folklore, has been distributed over the internet at a very low cost. Many advocates have thus called for the protection of cultural diversity. However, the protection of these aspects poses a major challenge for TRIPS. Many forms of traditional knowledge are too old to qualify for an intellectual property right. As well, in terms of traditional medicinal knowledge, the ideas cannot be patented because they are so widespread and there are many drugs with contents derived from such knowledge.

In the international arena, developed countries do not support the establishment of intellectual property rights on traditional knowledge. In these countries, IPRs are seen to be inspirations for further inventions and not reinforcements of existing knowledge. Biodiversity is also seen as a feasible aspect for society to peruse. Intellectual property with a said region of origin of biological material can increase transparency and cooperation as the members involved are able to share benefits.

Possible Solutions and Controversies

In designing a solution to the issue, it is imperative to incorporate several desired features that strengthen systems and frameworks.

As referenced by the World Health Organization, “some of the desired features of any possible solution would include:

- stability of the international legal framework, in order to ensure a long-term solution;
- transparency and predictability of the applicable rules in the exporting and importing countries, so as to provide the required incentives to the private sector to act within the established framework;
- equality of opportunities for countries in need of medicines, even for products not patented in the importing country and for countries which are not WTO Members.”²⁸

Interpretation and Revision of Previously Existing Legislation

An important facet that WTO members should look at is the interpretation of TRIPS. Written words often translate to different interpretations based on different premises, which eventually trickles down to different trade policies.

Sub-paragraph 5(a) of the Doha Declaration on TRIPS and Public Health clarifies this:

²⁸ <http://apps.who.int/medicinedocs/pdf/s2301e/s2301e.pdf>

“5. Accordingly and in the light of paragraph 4 above, while maintaining our commitments in the TRIPS Agreement, we recognize that these flexibilities include:

- a. In applying the customary rules of interpretation of public international law, each provision of the TRIPS Agreement shall be read in the light of the object and purpose of the Agreement as expressed, in particular, in its objectives and principles.”²⁹

Moratorium

A moratorium temporarily suspends all operations. To prevent the situation from worsening, a moratorium on IPRs would grant the WTO enough time to consider formal changes to the TRIPS Agreement. However, while this may seem feasible, it should be acknowledged that this does not provide a direct solution to the issue. There also needs to be established criteria to continue with a moratorium, which requires time and resources that could be dedicated elsewhere.

Legal Frameworks and Enforcement

While changes to the TRIPS Agreement may be made, action is required by WTO members to implement such legal frameworks. Thus, any solution must garner the support of WTO members to amend national laws to facilitate a smooth transition process.

Economic Soundness

All proposed solutions must fall under fair economic circumstances for WTO member states. Case in point, if a solution to transport and distribute medicine to developing countries in need is decided upon, there must be proper economic incentive for pharmaceutical companies to comply with changes. If a developing country has struggling political and economic forces and is recommended to change its trade policies, it will likely not do so, because the transition costs do not prove to be a sound incentive.

Bloc Positions

North American Bloc

Canada has taken concrete steps to solve issues within WTO. For example, in 2003, it implemented legislation to increase the effective distribution of necessary drugs and medicine to countries in need while ensuring commercial purposes are fulfilled.³⁰ In terms of GIs, Canada does not support a system where obligations extend to those not contained in the TRIPS Agreement. However, Canada is looking to develop other ways to enhance protection for products such as wine.

European Union

The European Union has led the call to extend the enhanced level of GI protection for wine and spirits to a broad range of agricultural products. This would mean new additions to TRIPS and the need to obtain a consensus from other WTO members. Currently, Canada, Australia, New Zealand, and the United States are opposed to such an action. These nations believe that the cost and impact to markets outweigh the benefits.

²⁹ https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_trips_e.htm

³⁰ <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/ip-pi/canada.aspx?lang=eng>

Asian Bloc

Ever since the establishment of TRIPS, China has been complying with implementation and resolution of problems related to IPRs. The major reports of a lack of treatment of IPRs have led to an ever-growing concern in the country, especially with its huge market. The lack of protection and enforcement is especially evident with trademarks.

United States of America

Speculation has risen as to the likelihood of President Donald Trump withdrawing the United States from WTO. The US has filed numerous reports against China: the Obama administration alone filed 26 disputes through the Dispute Settlement Body (DSB), mostly against China, and won every one of them.³¹ As well, the United States does not see reducing restrictions around TRIPS and Public Health in the foreseeable future.

African Union

Countries in the African Union are in high demand of a feasible solution to the spreading epidemics. However, in the context of political tension and struggling economies, investment into medical research is simply not realistic in the short term. Thus, these nations favor exceptions or changes to the current TRIPS Agreement to allow for the distribution of necessary drugs and medicine.

Middle East

Nations in the Middle East have seen their membership in the WTO as particularly advantageous. Particular nations in the Middle East have called for an IP protection of Islamic law and culture. This is in direct conflict with developed Western nations such as the United States, who are not in support of developing IP laws that protect existing knowledge.

Discussion Questions

1. What policies have your country developed to further IPRs?
2. What is your country's stance on existing problems with the TRIPS Agreement?
3. Which relevant treaties has your country signed?
4. How does the participation of developing countries in multinational treaties affect your country?
5. What IPR violations, if any, has your country committed and what steps has it taken to ameliorate the problem?
6. What will be the economic, social, and political impacts on your country if amendments are made to its IPR policies?
7. What treaties can your country benefit from in the future?

³¹ <https://www.forbes.com/sites/johnbrinkley/2017/02/13/trump-may-withdraw-u-s-from-wto-outside-advisor-says/#71221a2233bb>

Additional Resources

The World Intellectual Property Organization

<http://www.wipo.int/portal/en/>

The World Trade Organization

<https://www.wto.org/>

Trade-related Aspects of Intellectual Property Rights

https://www.wto.org/english/tratop_e/trips_e/trips_e.htm

Integrating Intellectual Property Rights and Development Policy

http://www.iprcommission.org/papers/pdfs/final_report/ciprfullfinal.pdf

The ABC of Copyright

http://www.unesco.org/fileadmin/MULTIMEDIA/HQ/CLT/diversity/pdf/WAPO/ABC_Copyright_en.pdf

Bibliography

- Global services for protecting IP. (n.d.). Retrieved August 13, 2017, from <http://www.wipo.int/portal/en/>
- WORLD TRADE ORGANIZATION. (n.d.). Retrieved August 13, 2017, from <https://www.wto.org/>
- WORLD TRADE ORGANIZATION. (n.d.). Retrieved August 13, 2017, from https://www.wto.org/english/tratop_e/trips_e/trips_e.htm
- Subhan, J. (2006, July). Scrutinized: The TRIPS Agreement and Public Health. Retrieved August 13, 2017, from <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2323529/>
- Canada's Position on Intellectual Property issues at the WTO. (2013, February 28). Retrieved August 13, 2017, from <http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/ip-pi/canada.aspx?lang=eng>
- New, W. (2017, January 10). After 15 Years In WTO, China Still Weak On Many IP Rights Rules, US Says. Retrieved August 13, 2017, from <https://www.ip-watch.org/2017/01/10/15-years-wto-china-still-weak-many-ip-rights-rules-us-says/>
- Brinkley, J. (2017, February 13). Trump May Withdraw U.S. From WTO, Outside Advisor Says. Retrieved August 13, 2017, from <https://www.forbes.com/sites/johnbrinkley/2017/02/13/trump-may-withdraw-u-s-from-wto-outside-advisor-says/#71221a2233bb>
- O. (n.d.). OECD Statistics. Retrieved August 13, 2017, from <http://stats.oecd.org/>
- Office, C. I. (2016, December 16). Canadian Intellectual Property Office - Home. Retrieved August 13, 2017, from <http://www.ic.gc.ca/eic/site/cipointernet-internetopic.nsf/eng/Home>
- BitLaw. (n.d.). Retrieved August 13, 2017, from <http://www.bitlaw.com/patent/requirements.html>
- Notes on Copyright & Related Issues. (n.d.). Retrieved August 13, 2017, from http://www.geom.uiuc.edu/events/courses/1996/cmwh/Copyright/c_protects.html
- Drugs as intellectual property. (n.d.). Retrieved August 13, 2017, from <http://pubs.acs.org/subscribe/archive/mdd/v04/i06/html/06rules.html>
- (n.d.). Retrieved August 13, 2017, from <http://www.infoese.ca/History%20of%20Intellectual%20Property%20Rights.html>
- United Nations High Commissioner for Refugees. (n.d.). Mexico: Organized crime; information on police and state response, including effectiveness; availability of witness protection (2013-July 2015). Retrieved August 13, 2017, from <http://www.refworld.org/docid/55deccc74.html>
- India: Patent Law in India. (n.d.). Retrieved August 13, 2017, from [http://www.mondaq.com/india/x/54494/Patent/Patent Law in India](http://www.mondaq.com/india/x/54494/Patent/Patent+Law+in+India)
- Uncover the International Copyright Act of 1891. (n.d.). Retrieved August 13, 2017, from <http://copyright.laws.com/international-copyright/international-copyright-act-1891/1891-act>

Sanitary and Phytosanitary Trade

Overview

Trade-related aspects of food have always been a major topic of discussion. Indeed, it is imperative that when food is being supplied to a country, it is considered safe by that country's standards. What, then, does one deem to be safe standards? How can one make sure that the strict health and safety regulations around food are not constructed to further domestic producers? These questions fall within the jurisdiction of the World Trade Organization (WTO). It is of utmost importance for the WTO to gather countries around an agreement to ensure that not only are disputes reduced, but the consumers are ultimately protected.

Sanitary and Phytosanitary Measures Agreement (SPS)

An agreement called Sanitary and Phytosanitary Measures Agreement (SPS) sets out the rules. This agreement not only encourages countries to develop their rules and regulations using science, but it also supports countries' use of international standards and guidelines. That way, when disputes do occur, countries have a framework to refer to.³²

Definition

Article 1 of Annex A of the SPS agreement defines sanitary and phytosanitary measures:

“1. Sanitary or phytosanitary measure — Any measure applied:

- (a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms, or disease-causing organisms;
- (b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins, or disease-causing organisms in foods, beverages, or feedstuffs;
- (c) to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants, or products thereof, or from the entry, establishment or spread of pests; or
- (d) to prevent or limit other damage within the territory of the Member from the entry, establishment, or spread of pests.

Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.”³³

³² https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm

³³ https://www.wto.org/english/res_e/booksp_e/analytic_index_e/sps_03_e.htm#annA

Administration

The SPS Agreement is administered and monitored by the Committee on Sanitary and Phytosanitary Measures, in which all WTO members can participate.³⁴ Article 2 of the SPS Agreement grants members the responsibility to implement measures “necessary for the protection of human, animal, or plant life or health, provided that such measures are not inconsistent with the provisions of this Agreement.”³⁵ Members are further obligated to maintain an objective stance when conducting international trade.

Risks and Commodities

The SPS Agreement concedes that “the risks to animal life or health come from the entry, establishment or spread of pests (including weeds), diseases, disease-carrying organisms or disease-causing organisms.”³⁶ In addition, these risks might stem from “additives, contaminants (including pesticide and veterinary drug residues and extraneous matter), toxins or disease-causing organisms in feedstuffs.”³⁷ Imports of food, plants, and animals, whether they are living or a product, are three main risk pathways; however, these risks are not just restricted to food and agricultural commodities.

Implementation Requirements

For the SPS Agreement to function to its fullest potential, several mechanisms need to be set:

- (a) *Access to personnel with appropriate expertise.* It is necessary that WTO members gain access to professionals in the fields such as health and medicine in order to recommend measures that are strong and effective. More specifically, “access to expertise in the detection and diagnosis of animal and plant pests and diseases is needed to support trade in agricultural commodities, including skills in entomology, plant pathology, veterinary pathology, epidemiology, and taxonomy.”³⁸
- (b) *Domestic regulatory framework.* A framework to cover the work, responsibilities, and powers of the members is needed to encourage confidence in SPS mechanisms.
- (c) *Animal and plant health status.* Appropriate SPS measures allow members of the committee of WTO to important reliable items around the world.
- (d) *Inventories and collections.* Inventories and collections of “specimens, reference material on insects and plants, and laboratories equipped with diagnostic facilities, are of great importance.”³⁹ With multiple countries working together, these inventories streamline the processes of trade within many countries and allow greater transparency and communication.

Harmonisation

Under the principle of harmonisation, WTO members are encouraged to work together to follow international standards, guidelines, and recommendations. Within the SPS Agreement are three bodies that set standards: the

³⁴ <http://seafood.oregonstate.edu/.pdf%20Links/The-WTO-Sanitary-and-Phytosanity-SPS-Agreement.pdf>

³⁵ https://www.wto.org/english/res_e/booksp_e/agrmtseries4_sps_e.pdf

³⁶ <http://seafood.oregonstate.edu/.pdf%20Links/The-WTO-Sanitary-and-Phytosanity-SPS-Agreement.pdf>

³⁷ Ibid.

³⁸ Ibid.

³⁹ Ibid.

International Plant Protection Convention (IPPC), the World Organisation for Animal Health (OIE), and the Codex Alimentarius Commission (Codex).

Equivalence

The agreement requires WTO member countries to accept SPS measures of exporting members when importing goods. Similarly, the exporting country must demonstrate to the importing country that its measures achieve the importing country's Appropriate Level Of Protection (ALOP).⁴⁰

Appropriate Level of Protection (ALOP)

The ALOP is the level of protection set by the SPS Agreement for the sustenance of human, animal, or plant life. The difference between the ALOP and the SPS mechanisms are great. The ALOP is a goal that is meant to be attained, whereas the SPS measures are the steps to attain that objective. WTO members are thus encouraged to approach all decisions with an objective mindset.

Risk Assessment

All WTO members are required to conduct a risk assessment to determine the SPS measures necessary to attain a safe ALOP. The SPS Agreement has two definitions of risk assessment: “the evaluation of the likelihood of entry, establishment, or spread of a pest or disease within the territory of an importing WTO member according to the SPS measures which might be applied, and of the associated potential biological and economic consequences” and “the evaluation of the potential for adverse effects on human or animal health arising from the presence of additives, contaminants, toxins or disease-causing organisms in food, beverages or feedstuffs.”⁴¹

Regional Conditions

Regional conditions play a large role in the risk posed to human, animal or plant life. SPS measures should be adjusted to the region from which the product originated and the region to which the product is destined

Transparency

Transparency is extremely important within the WTO community. Members are required to publish SPS regulations and nominate a national enquiry point to deal with SPS-related queries.

Timeline

1948 — The General Agreement on Tariffs and Trade (GATT) was created to provide discipline to national food safety and animal and plant health protection measures.⁴²

1973-1979 — The Tokyo Round of GATT multilateral negotiations begin to tackle non-tariff trade barriers and farm trade.

1979 — The Agreement on Technical Barriers to Trade (TBT Agreement) was formulated not just to regulate SPS measures, but also to cover technical requirements in food safety and animal and plant health measures.

⁴⁰ Ibid.

⁴¹ https://www.wto.org/english/res_e/booksp_e/analytic_index_e/sps_03_e.htm#annA

⁴² <http://www.fao.org/docrep/003/x7354e/x7354e01.htm>

September 1986 — The Punta del Este Declaration was launched, calling for "increased discipline in three areas in the agricultural sector: market access; direct and indirect subsidies; and sanitary and phytosanitary measures."⁴³

December 1988 —At the Mid-Term Review of the Uruguay Round, priorities in the SPS were identified, such as the "international harmonization on the basis of the standards developed by the international organizations" and "development of an effective notification process for national regulations."⁴⁴

November 1990 —The Working Group on Sanitary and Phytosanitary Regulations produced a draft text that reflected the consensus reached by WTO members on SPS measures.

April 1994 —Ministers from 125 governments from the Uruguay Round met in Morocco to sign the deal concluding the Uruguay Round.⁴⁵

January 1, 1995 — The SPS Agreement entered into force. Less developed country members were allowed to delay implementation for five years.

Case Studies

EC Beef Hormone Dispute⁴⁶

The WTO's first panel report was issued in 1997. It ruled in *EC Measures Concerning Meat and Meat Products (Hormones)* that the restriction of the importation of beef from cattle that were given growth hormones had violated the SPS Agreement.⁴⁷

In 1987, the European Community, a precursor to the European Union, banned imports of animals and meat from animals that were fed growth-promoting hormones. While this was seen as a justifiable action by Europe, the North American countries the United States and Canada objected to this ban – the hormones were proven to be safe for every country that had investigated them. Consequently, the US brought the matter to attention in the Tokyo Round Agreement on Technical Barriers to Trade in March 1987. However, consultations between the US and the European states did not resolve the dispute. Furthermore, the US's request for a technical experts group to research the hormones was rejected.

On January 1989, the United States imposed 100% duties on imports of certain EC-origin goods. Later that year, the US and EC finally reached an agreement that permitted imports of US beef that was hormone-free.

Current Situation

Issues delve into three main aspects of the SPS Agreement: market access, development, the law, and private standards⁴⁸.

⁴³ Ibid.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ <http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1044&context=facpubs>

⁴⁷ https://www.wto.org/english/tratop_e/dispu_e/hormab.pdf

⁴⁸ <https://www.oie.int/doc/ged/D6061.PDF>

Market Access

Members of the WTO have split views on the standards set by the private sector. On one side, members see that standards can help suppliers improve the quality of the products and obtain valuable access to higher-quality markets. On the other side, members see private standards as restrictive: the requirement of a maximum level of pesticide and acceptance of only one food safety outcome limits the market.

Development

The costs for developing private standards and upholding the principles of the SPS Agreement can be daunting for developing countries. With economic structures that require investments into other sectors rather than into trade, developing countries do not have the incentive to uphold the SPS Agreement.

WTO Law

Some member countries believe that the products they import should not be interfered with by other governments. Others believe that the SPS Agreement requires importing countries to uphold the standards set by the agreement. At a larger scale, the interpretation of the WTO laws remains an issue to be solved by countries.

Private Standards

Many WTO members argue that private standards uphold the progress sustained by the SPS Agreement. The agreement strives to maintain the safety of plant or animal food and products within international trade. Moreover, the agreement has checks to prevent it from exploitation: measures can only be taken to the extent of health protection, and no more.

On the contrary, many developing nations concede that private standards are going the wrong direction. Private standards are based on the objectives of maintaining health and protection. However, in many cases, the standards are not derived from empirical, scientific evidence, but instead, are founded upon consumer perception. Thus given the elasticity of consumer perception, private standards likely will affect the markets of many developing countries. Case in point, imagine this scenario: a developing country has been exporting a food product that is suddenly deemed environmentally damaging by a WTO member; as a result, private standards restrict the country from exporting said products.

In addition, many developing nations see the lack of harmonization within the SPS Agreement. In fact, certain distinct private requirements are removed by private companies discreetly. As a result, developing countries are put at a disadvantage with more requirements to fulfill. Moreover, certifications done by private companies must be renewed on a regular basis, with or without reason.

In response, representatives of the private standard sector have acknowledged the problem and attempted to look toward alternate private standard schemes. As well, they are focussing on more transparency with WTO members. However, many countries still agree that there is not sufficient effort to change the current situation. There is no forum for discussing private standards or a dispute settlement mechanism for this issue.

Possible Solutions and Controversies

The SPS Committee has delved into many options for a solution but has yet to decide on one.

Standards on a Case-by-Case Basis

One solution encourages WTO Members to develop standards based on specific instances where private standards seem to be restricting trade. For example, in the case of the EC Beef Hormone Dispute, standards might be developed to ensure the cooperation of both sides of the party. Such a solution might allow a better understanding of specific problems. However, there has not been an idea of perhaps combining specific investigations to glance at the whole problem.

Dispute Mechanism

Once a WTO member believes another is violating the standards set by the SPS Agreement, that member may choose to file a formal dispute settlement process at the WTO. Whereas that dispute mechanism is an effective way to ameliorate short-term disagreements, it has not been found to clarify the issue at large. Many WTO members agree that a way to compile disputes and investigate them in the context of a larger issue is feasible. However, the difficulty of doing so poses a great concern and marks an obstacle to be overcome.

Dialogue

Dialogue is necessary at all levels to ensure that all members have an increased awareness of concerns and objectives on both sides. Whether discussion comes in an informality or formality depends on the discretion of the WTO. However, controversy arises with certain countries modifying private standards so as to gain an advantage. Because these violations occur discreetly, it is up to the WTO to determine which action most suitable to increase transparency in dialogue.

Implementation of Article 13

There have been talks to implement Article 13 of the SPS Agreement, but given the different stances of each WTO member, there has been no progress on this front as of yet.

“Article 13: Implementation

Members are fully responsible under this Agreement for the observance of all obligations set forth herein. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of this Agreement by other than central government bodies. Members shall take such reasonable measures as may be available to them to ensure that non-governmental entities within their territories, as well as regional bodies in which relevant entities within their territories are members, comply with the relevant provisions of this Agreement. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such regional or non-governmental entities, or local governmental bodies, to act in a manner inconsistent with the provisions of this Agreement. Members shall ensure that they rely on the services of non-governmental entities for implementing sanitary or phytosanitary measures only if these entities comply with the provisions of this Agreement.”⁴⁹

⁴⁹ https://www.wto.org/english/res_e/booksp_e/analytic_index_e/sps_03_e.htm#annA

Bloc Positions

The United States

The Food and Drug Administration, the Environment Protection Agency, and the US Department of Agriculture have all based SPS measures on scientific evidence. This process was to ensure no discrimination or influence from existing policies. The United States is a strict regulator of food but has always stressed the importance of providing sound evidence in the international standard-setting sphere.

European Union

The European Union did not have a mechanism set in place concerning food safety when the SPS was drafted. After careful deliberation, it decided to form the European Food Safety Authority (EFSA). While the committee provided scientific evidence for food safety, it was not responsible for food safety enforcement. The EU opposes strict rules within the SPS Agreement and suggests that WTO members should be able to apply standards when deemed appropriate. This would lead to the infamous 'Hormones' dispute, as discussed above.

Nordic Countries

The Nordic countries played a major role in negotiating terms in the SPS Agreement. They initially emphasized the need to go beyond scientific evidence and analyze all factors of consumer behaviour. However, in 1990 the Nordic countries changed their stance to clarify that "moral or ethical considerations could not be regarded as valid grounds for SPS regulations, and that any such regulations should be based on sound scientific evidence. Where this was not the case, it should, however, be for the exporting country to prove the measure's inconsistency with GATT rules."⁵⁰

Japan

Japan is firm in the belief that exporters must verify their products' safety. It suggests that there are certain exceptions that can be made in certain scenarios, depending on the varying conditions. In short, a case-by-case basis. Japan recognizes that there is a need for harmonisation within SPS measures.

Developing Nations

Developing nations are concerned with the rules of special treatment, especially when given less say on the subject of risk assessment and precaution. Thus, developing nations advocate for the harmonisation of international standards instead of a case-by-case basis. Moreover, there has been little to no discussion on how developing nations might contribute. While many may think developing countries' markets are unlikely to help, they actually do provide insight to discussions in WTO.

Discussion Questions

1. What is your country's stance on SPS measures?
2. What steps have your country taken to regulate private standards?
3. Is your country in favor of private standards or an international standard?

⁵⁰ <https://academic.oup.com/ejil/article/24/2/503/494119/The-Purpose-of-the-WTO-Agreement-on-the>

4. What SPS measures does your country have in place?
5. Does your country possess the necessary resources to maintain SPS measures?
6. What disputes have your country filed or participated in?

Additional Resources

Sanitary and Phytosanitary Information Management System

<http://spsims.wto.org/>

World Trade Organization

https://www.wto.org/english/tratop_e/sps_e/sps_e.htm

Sanitary and Phytosanitary Measures

https://www.wto.org/english/thewto_e/20y_e/sps_brochure20y_e.pdf

Bibliography

- WORLD TRADE ORGANIZATION. (n.d.). Retrieved September 03, 2017, from https://www.wto.org/english/tratop_e/sps_e/sps_e.htm
- WORLD TRADE ORGANIZATION. (n.d.). Retrieved September 03, 2017, from https://www.wto.org/english/res_e/booksp_e/analytic_index_e/sps_03_e.htm#annA
- Rigod, B. (2013, June 05). Purpose of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) | European Journal of International Law | Oxford Academic. Retrieved September 03, 2017, from <https://academic.oup.com/ejil/article/24/2/503/494119/The-Purpose-of-the-WTO-Agreement-on-the>
- Global Footprint Network. (n.d.). Retrieved September 03, 2017, from <http://www.footprintnetwork.org/>
- Sanitary and Phytosanitary Information Management System. (n.d.). Retrieved September 03, 2017, from <http://spsims.wto.org/>
- WORLD TRADE ORGANIZATION. (n.d.). Retrieved September 03, 2017, from https://www.wto.org/english/tratop_e/sps_e/sps_e.htm
- Wolff, C. (n.d.). PRIVATE STANDARDS AND THE WTO COMMITTEE ON SANITARY AND PHYTOSANITARY MEASURES . Retrieved from <https://www.oie.int/doc/ged/D6061.PDF>
- The WTO Sanitary and Phytosanitary (SPS) Agreement. (n.d.). Retrieved September 3, 2017, from <http://seafood.oregonstate.edu/.pdf%20Links/The-WTO-Sanitary-and-Phytosanity-SPS-Agreement.pdf>
- III. Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and Agreement on Technical Barriers to Trade (TBT). (n.d.). Retrieved September 03, 2017, from <http://www.fao.org/docrep/003/x7354e/x7354e01.htm>
- "WORLD TRADE ORGANIZATION." WTO | Understanding the WTO - Standards and Safety. https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm.
- Kennedy, Kevin C. "Resolving International Sanitary and Phytosanitary Disputes in the WTO: Lessons and Future Directions ." 55 Food & Drug L.J. 81 2000 55:81-104. Accessed September 3, 2017. <http://digitalcommons.law.msu.edu/cgi/viewcontent.cgi?article=1044&context=facpubs>.