

Rapid Response Mechanism

Enhance implementation of risk management and enforcement of Sanitary and Phyto Sanitary Measures and Technical Barriers to Trade

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Food and agriculture imports and exports frequently face actions by SPS and TBT administrative entities that unnecessarily delay or prevent shipments of critically important and perishable agricultural products for food, feed and further processing.

These actions by governments often lack transparency, predictability and timely mitigation.

While industry can petition its own government to utilize the WTO dispute settlement process when one of these actions occurs, the process can be lengthy, places resource constraints on governments, and is seldom seen as practical.

Mechanisms that link commercial and official actions, improve value chain wide communication, and increase the application of sound science are needed to provide for the least trade distortive and improved national actions related to SPS and TBT measures.

Trade agreements offer an opportunity to provide industry with timely, transparent action by governments that can serve to enhance risk management and market efficiencies, reduce trade friction and avoid WTO disputes.

We hope to include in trade agreements a RRM that improves controls related to SPS and TBT so that official actions work for consumers, farmers, ranchers and global commerce.

A RRM fits into the concept of “WTO-plus” obligations that go beyond the WTO SPS Agreement on issues like risk assessment, risk management, transparency, border checks/laboratory testing and facilitating trade through regulatory coherence measures. A RRM would take the dispute from a bilateral one to extend to broader oversight as well as effective engagement of commercial parties.

RRM would not conflict with the WTO SPS and TBT process, but rather it is intended to make the consultation and oversight process work in TPP so industry does not have to wait years for governments to resolve SPS or TBT disputes either bilaterally or in the WTO.

Acting in many ways like a “small claims court”, RRM mechanism is needed to swiftly resolve misapplication of SPS and TBT measures, limit trade friction and improve capacity to manage SPS and TBT risks in the least trade distortive manner.

A RRM for SPS and TBT should provide for two mandatory mechanisms that could provide for shipment acceptance. We ask that trade agreements include measures for both immediate detailed notification and expedited review:

1. A process of **immediate detailed notification to the importer or exporter of record** (shipper or consignee) of risk detection, assessment, and management measures. A notification that details methodology, findings, enabling authority and recourse or compliance measures related to the action taken should be provided by the official body taking within, for example, three days of request by either the importer or exporter of record. Further conveyance of the notification should be at the option of the requesting party. The notification should be recognized as potentially **providing for further review or actions to acceptable to the relevant official body that may support or mitigate the action.**

2. An **expedited review** at the request of the importer or exporter of record. The expedited review would be conducted by **neutral experts previously identified by Parties to the trade agreement.** The review, completed in 15 days, will result in a **non-binding, public recommendation** (business confidential information deleted). There is precedent for this in WTO. The immediate detailed notification (1.above) may be provided as background for the expedited review (2.).

A RRM provides for a specific, practical and reasonable component of what is emphasized and articulated by many agricultural trade stakeholders as a critical need: Full enforceability includes a commitment to **timely and transparent** action to address actions that delay shipments of perishable and needed agricultural products. Further, RRM inclusion in trade agreements forwards the objective: To that end, it is imperative that all elements of the agreement’s SPS provisions, including the WTO-plus components, be fully enforceable.