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Sanitary and Phytosanitary Measures

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.

EXECUTIVE SUMMARY

TPP’s chapter on Sanitary and Phytosanitary (SPS) measures gives American farmers and ranchers a fair chance to feed the region’s people; ensures

that America’s food supply remains among the safest in the world; and helps all TPP partners—including developing country TPP Parties—better protect the health and safety of their food through modern, science-based food safety regulation. This involves ensuring that our partners use science and risk analysis as a foundation for SPS measures, which mirrors U.S. food and agricultural safety policy. As examples, they must use appropriate import check and restriction policies focused on direct threats to health and safety, avoid duplicative or unnecessary testing requirements where food already meets accepted international standards, and use transparent procedures for developing regulations—including opportunities for public comment. Nothing in this chapter in any way lessens or compromises our right and ability to protect U.S. consumers or U.S. agriculture, or to enforce our food safety rules. On the contrary, it will help TPP partners better ensure the health and safety of their food.

CHAPTER OVERVIEW

The SPS chapter designs new rules that will ensure that science-based SPS measures are developed and implemented in a transparent, predictable, and non-discriminatory manner, while at the same time preserving the ability of U.S. and other TPP regulatory agencies to take necessary steps to ensure food safety, and protect plant and animal health.

Science and Risk Analysis

Mirroring U.S. regulatory procedures, the SPS chapter in TPP establishes rules for identifying and managing SPS risks, while preserving the ability to maintain regulations that are not more trade restrictive than necessary and consistent with World Trade Organization (WTO) principles. For example, TPP:

- Provides that SPS measures are based on science and that SPS measures either conform to the relevant international standards, or are based on documented, objective, scientific evidence;
- Requires that each risk assessment conducted is appropriate to the circumstances of the risk and that the risk management measure is no more trade restrictive than required to achieve the country’s appropriate level of protection;
- Ensures that SPS measures do not arbitrarily or unjustifiably discrim-

inate between Parties where identical or similar conditions prevail between one TPP Party and that of other Parties; and

- Encourages Parties to use risk communication techniques to share information and explain measures to consumers and other stakeholders.

Transparency

Because not all countries have a transparent process for the public to comment on proposed regulations, the SPS chapter includes commitments to ensure that the public can comment on proposed measures and that producers understand the requirements they must meet in each country. The approach is similar to the U.S. rulemaking process.

Import Checks

The SPS chapter commits TPP Parties to ensure that import checks for SPS requirements are based on the actual potential risk posed by the import. In addition, the chapter requires Parties to inform importers or exporters within seven days if a shipment is being prohibited or restricted entry for a reason related to food safety or animal or plant health.

Emergency Measures

The SPS Chapter enables TPP Parties to take the emergency measures they deem necessary to protect food safety, and human, animal, and plant health. To discourage the use of such measures just as a means to block market access, it requires Parties to disclose the scientific basis for them.

Certification

Most Parties maintain certification requirements for import into their market. The SPS chapter ensures that SPS certificates only require information related to SPS issues.

Equivalency and Regionalization

TPP's SPS chapter will improve the communications and information exchange between governments when a TPP country is considering equivalency or regionalization requests, and in doing so, will improve the predictability and the scientific basis for other countries' decisions.

Food Safety Audits

The SPS chapter promotes the use of audits to assess the adequacy of another country's food safety regulatory system, consistent with the U.S. approach. In addition, the chapter establishes a process of communication between Parties regarding the requirements, processes, and procedures for conducting audits.

Cooperative Technical Consultations (CTC)

To help encourage the early and expeditious resolution of SPS matters, the SPS chapter establishes a consultative mechanism under which relevant agencies will work to find science-based solutions to SPS issues that emerge between TPP countries.

Dispute Settlement

Where the CTC mechanism does not resolve a matter, Parties may use the agreement's dispute settlement mechanism to enforce most of the SPS commitments. However, to ensure that Parties have sufficient time to align their SPS procedures with the TPP requirements, the application of dispute settlement will be phased in for certain provisions. The underlying WTO-based SPS obligations upon which the commitments in this chapter are based also remain subject to WTO dispute settlement.

NEW FEATURES

TPP includes new obligations that build on the WTO's 1994 SPS agreement rather than simply reaffirming the commitments of the WTO SPS agreement as previous U.S. Free Trade Agreements (FTAs) have done. TPP includes important new features supporting the roughly \$70 billion in U.S. food and agricultural exports to the TPP partners, while safeguarding the strong food safety regulatory system we already have in the United States:

- New obligations that promote science-based and transparent regulation should lead to improvements in the food safety and animal and plant health regulatory systems of other TPP countries, ensuring that U.S. food safety is maintained, and animal and plant life protected. The provisions requiring documented, objective, scientific evidence better align other countries' regulatory systems with U.S. safety and regulatory

systems, helping to provide a safer food supply and protecting American agriculture, while supporting improved food safety generally.

- TPP commitments promote the use of risk analysis to improve the scientific basis of SPS regulations and the use of risk communication to exchange information and opinions concerning risk and risk-related factors among regulatory authorities, consumers, and other stakeholders.
- TPP promotes transparency by requiring publication of SPS regulations for public comment. Allowing public comment strengthens the ability of regulatory agencies to develop science-based regulations that facilitate trade and helps broaden public understanding of these agencies' work.
- New TPP obligations require all TPP countries to notify importers or exporters of shipments being detained for SPS concerns. This rapid notification will help importers and exporters address concerns, which is particularly important for perishable products.
- TPP commitments permit an importing country to conduct an audit of an exporting country's food safety regulatory system to determine whether the exported food meets the importing country's requirements. This will mean that the U.S. can use systems audits to enhance confidence in the safety of imported food, while minimizing the need for inspections by multiple foreign countries of tens of thousands of U.S. food processing plants.
- TPP provides a new consultative mechanism for seeking quick resolution of measures related to U.S. food and agricultural exports, which will allow regulatory agencies to ensure that these issues are resolved based on safety and science.

IMPACT

Demographic and economic trends suggest that the Asia-Pacific region will be home to 3.2 billion middle-class consumers by 2030. They will be the world's largest buyers of staple grains, fresh fruits and vegetables, dairy products, meats, and other farm products, and the United States is well-placed to provide them with these goods. This requires both access to markets and fair regulations for food safety, and animal and plant health, known technically as sanitary and phytosanitary, or "SPS" measures.

The United States has one of the strongest regulatory systems in the world to ensure safe food for American consumers, as well as to protect

animal and plant health for America's farmers and ranchers. Internationally, however, SPS policies are often weaker. In some countries, SPS barriers are based on political considerations, not science, and are used to replace tariffs as trade barriers protecting domestic producers and prohibiting imports of U.S. food and agricultural exports. In others, antiquated or inefficient regulatory systems have not kept up with the increasing consumer demand for imported products. This reduces opportunities for American producers and also erodes the capacity of governments abroad to focus on genuine threats to human, animal, and plant health. Therefore, as we work to reduce and eliminate tariffs in TPP, we also are seeking to ensure the removal of unwarranted SPS barriers, which are among the most significant challenges faced by U.S. agricultural exporters.

The WTO's SPS Agreement, concluded in 1994 and now in force for 161 economies around the world, is the foundation of modern SPS policy. However, in areas where the WTO rules are less clear, American producers and their foreign customers continue to face challenges, including:

- Duplicative or unnecessary testing requirements;
- Inefficient or non-transparent border measures that lead to delays and spoilage at the port of entry.

To address these issues, the United States has approached TPP's SPS chapter committed to ensuring that TPP governments: (1) fully retain their right to determine the level of protection they deem appropriate and that nothing in the agreement prevents regulatory agencies from doing what they deem necessary to protect food safety, and animal and plant health; (2) that they adopt the scientific standards that focus resources based on risk; and (3) that the assistance programs associated with TPP offer lower-income partners opportunities to build their capacity in this area. Ultimately, TPP's SPS chapter will support the efforts of all TPP countries to meet their responsibility to guarantee the safety of their food—in a manner consistent with science—while at the same time ensuring that nothing in TPP lessens or compromises our ability to ensure the safety of the U.S. food supply.

