

### **Introduction**

This is the second in a series of papers reviewing policy issues affecting ethical trade in the forest sector. **Policy Watching Brief 2** outlines some of the recent policy developments relating to Sanitary and Phyto-Sanitary measures (SPS measures) highlighting those issues of particular significance to trade in forest products. SPS measures is a general term for a variety of regulations on trade in food stuffs and feed and other natural products to protect human, animal and plant health in the importing country. It is mostly used in the context of the World Trade Organisation

### **Trade and SPS Measures**

During the Uruguay Round of world trade negotiations, the significance of SPS measures was recognised and a set of rules and committee was established as part of the WTO (the Agreement on Sanitary and Phyto-sanitary measures). The profile of SPS measures has risen in recent years partly as a response to increased consumer vigilance and concern about environment and food safety issues. It is also because liberalisation in the agriculture sector has reduced tariff barriers; some countries are looking to non-tariff measures, such as import regulations, partly to compensate for the loss of trade protection through traditional means. There has been a proliferation of technical measures, especially in the North; the European market is becoming increasingly difficult for developing country exporters to access.

Regulation of trade on the basis of SPS measures requires an appropriate balance between two conflicting objectives: a) protection of public health and the environment: substances regulated by SPS measures are potentially dangerous; and b) free trade: measures should not be so stringent so that they unnecessarily restrict trade. In theory the SPS Agreement should protect against unnecessary regulations, however experience to date indicates that only relatively developed countries have been able to take advantage of its discipline and some SPS measures have an element of 'green protectionism'. However, in many cases SPS measures are established as legitimate controls. Nevertheless, whatever their justification, SPS measures and other technical regulations present significant impediments to trade in many products, including forest products. Difficulties are experienced as a result of poor access to resources to ensure compliance (including information, finance and technical expertise), and also due to production and marketing methods in developing countries.

SPS measures are predominantly 'regulations' rather than standards, i.e. they are specified in national legislation and compliance is

mandatory whereas standards: are voluntary and cannot be the basis for refusing market access. However, notes Zarrilli, 'the distinction between standards and regulations is fading away, since adherence to standards is often a pre-condition for acceptability of products by consumers and/or distributors'. And insurers 'may request compliance with standards to reduce product liability exposure' (1999: 1).

It is compulsory for an exporter to comply with SPS measures that are established and enforced by national governments and regional trading authorities. Governments are the main players and so much of the literature is directed at government departments rather than traders and the private sector. Nevertheless, private sector traders cannot afford to ignore this policy dialogue.

There are different kinds of SPS measures: some are technical specifications, others take the form of import bans, or labelling requirements. In the forest sector, SPS measures impede trade in many non-timber forest products (NTFPs) which are foodstuffs, e.g. mushrooms and nuts or products that may be used in the pharmaceutical industries, e.g., rubber, oils and herbs and other substances used for medicines. However, some technical regulations also affect timber products such as wood panels (where formaldehyde adhesives may be used) and there are regulations on the use of some preservatives and chlorine-based chemicals.

### **Barriers to trade**

SPS measures should apply equally to goods produced domestically or imports, and so are not strictly trade barriers (unless there are particular health risks in the producing country, e.g. foot and mouth disease in cattle). Nevertheless, whether they were explicitly designed to do so or not, many SPS measures create greater problems for importers rather than domestic producers and SPS measures can impede trade through unjustified different requirements in different markets, unnecessary costly or time-consuming tests and duplicative conformity assessment procedures.

### Box 1: Aflatoxins and EU regulations

In January 1997 the EU notified the SPS committee of its intention to set maximum levels for certain contaminants in certain foodstuffs. This included fixing maximum limits for aflatoxin B1 which may occur in nuts, groundnuts, dried fruit, cereals, milk and processed products made from these products. Aflatoxins are frequently found in nuts, including Brazil nuts. Even at low levels aflatoxins are extremely hazardous to human health (carcinogenic).

Several submissions have been made to the WTO to object to this regulation including comments from Argentina, India, Malaysia, Thailand, Philippines, Indonesia and most recently Bolivia. Supported by other members, Bolivia argued the EU's proposals for aflatoxin levels departed from the recommendations of Codex Alimentarius and had considerable social and economic impacts in producing countries especially as the EU is the main market for its Brazil nuts. A request was made for the EU to provide the relevant risk assessments on which its proposals were made and but also noted that they were ready to enter into bilateral discussions with the EU in order to find a mutually agreeable solution.

The EU responded with an assessment of the risks involved and justification for leaving some of the new regulations unchanged on the basis that quantitative risk assessments attempted were subject to several limitations and that definitive conclusions could not be drawn. A precautionary approach was therefore proposed. The EU declared in October 1998 that 'For groundnuts, nuts, dried fruit, cereals and processed products thereof intended for direct human consumption or as an ingredient in foodstuffs, maximum limits remain at the level of 4 µg/kg aflatoxin total (B1 +B2 + G1 + G2) and 2 µg/kg, aflatoxin B1' (EU Regulation 1525/98).

There has been little research to date on the effects of regulations and compliance on trade flows, particularly in terms of quantifying these effects. However, an initial survey on the implications of SPS measures for developing countries reports that SPS measures can be more significant in terms of impeding a country's ability to export agricultural and food products than tariffs (Henson and Loader, 2000).

There are a number of ways in which trade may be restricted, particularly in trade

from developing countries:

- a) *The process by which regulations and standards are set and implemented*
  - **level of standard:** SPS measures should be based on international standards or a national standard based a risk assessment;
  - **time** between when a regulation announced and its implementation;
  - **mutual recognition:** control systems for monitoring in developing are not always recognised in the north often on account of different production and marketing in the less developed countries.
- b) *The capability and capacity of exporting countries in the south*
  - **Information:** developing countries tend to lack complete information on the number of measures that affect their exports, the nature of these measures and their application. To ensure compliance information about SPS measures is needed in a timely and accurate fashion.
  - **Scientific and technical knowledge:** Developing countries often lack the relevant scientific knowledge and equipment for testing and verification procedures. There may be a lack of scientific data for specific thresholds and limits.
  - **Resources:** Limited expertise to undertake relevant tests is an associated issue. Exports may be rejected at the border because of microbiological spoilage or contamination, despite examination prior to export.
  - **Ability of many exporters to meet stringent standards:** there are often problems apparent with basic hygiene in the production process, never mind more sophisticated testing for heavy metals or pesticide residues. In many supply chains, efforts to prevent contamination of the product may prove more significant to increase returns from trade than SPS restrictions.
  - **Administrative issues:** To be effective reducing risks requires two separate components good production practices and the identification of hazards and control measures at critical points along the food chain. Separate ministries may have responsibility for these activities raising co-ordination issues.

#### 4. WTO Agreement on SPS measures

The SPS Agreement has the potential to protect Southern producers from unjustified barriers and to establish measures to protect their own citizens from hazardous imports. The United States is a strong defender of the SPS Agreement which is seen as an effective means of settling SPS-related disputes and curbing regulatory protectionism (Roberts, 1998). The agreement is based on 6 principles:

- international standards and harmonisation
- risk assessment
- adaptation to regional conditions and pest-free areas
- equivalence of measures
- transparency and consultation
- dispute settlement.

##### **Risk assessment versus the precautionary principle**

The supremacy of risk assessment procedures has been challenged by environmentalists, lawyers and consumer rights campaigners. Risk Assessment is supposedly an objective test, but some argue that it is weighted in favour of the US system of government. Others note that it is impossible to undertake risk assessment for every case where there is a potential biological or chemical hazard associated with a food stuff.

The European Union has a different system based on precautionary principle. It is used to legitimate action in absence of clear scientific evidence. The precautionary principle adopts a more political approach than risk analysis and does not have the same paper trail as risk assessment.

The WTO calls for SPS measures to be based on **International Standards** or to conduct a risk assessment where there is no agreed international standard or the importing country believes that this is insufficient to meet its policy objective. The WTO recognises certain sets of standards as the basis for SPS measures. Those with most relevance for NTFPs are:

- a) Food safety: guidelines and recommendations established by the Codex Alimentarius Commission, and
- b) Plant protection: Secretariat of the International Plant Protection Convention (IIPC)
- c) Animal health: the recommendations of the

International Office of Epizootics are recognised by the WTO.

WTO Members are encouraged to consult widely in the process of developing standards. This is enshrined in the structures and procedures of the three bodies charged with developing international standards for food safety, plant health and animal health. However, there has been considerable criticism vis a vis the lack of southern participation in such bodies, particularly Codex. Many developing countries argue that their interests are not represented and the Codex standards are too high but at the same time environmentalists argue that the bodies are dominated by commercial interests and as a consequence standards are too low.

##### **Dispute settlement**

Member countries may challenge as unjustified each other's SPS measures on grounds, for example, that a risk assessment has not been undertaken or the measures are not based on relevant international standards. However, in order to challenge Northern measures, a complainant needs information, technology and facilities. Disputes at the WTO have been predominantly between developed countries. Indeed there is a distinct lack of active participation in SPS Agreement by developing countries, with some exceptions e.g. India, Egypt, Philippines and Indonesia

In principle, the SPS Agreement should facilitate South-North trade, but in reality this is dependent on countries' ability to participate effectively in the Agreement. Another issue in the WTO's committees is the extent to which Northern countries have complied with commitments vis a vis technical assistance and the recognition of developing countries' special and differential circumstances as enshrined in the WTO.

##### **Improving the position of developing country producers**

In practice, SPS measures create many problems for developing country exporters. There is a gulf between their international rights and capacity to enforce and utilise these rights. In general developing countries face difficulties as a result of:

- a) the nature of the regulations imposed by importing countries and how they are enforced and
- b) their own capacity to implement the

regulations on their exports.

The international response to these difficulties has been limited and technical assistance offered so far has failed to recognise that many problems related to SPS measures are basic issues related to the level of economic development such as systems for monitoring exports in relation to SPS measures, the level of technical expertise and access to modern testing methods. In the past year there have been some initiatives launched to improve the ability of developing countries to take advantage of trade liberalisation. Where the SPS Agreement is specified, most of the recommendations and challenges are directed at states and potential for improving the SPS agreement and options for technical assistance to increase capacity of developing countries to implement the agreements and to deal with the possible negative trade effects of SPS measures.

### Conclusions

Current and future SPS measures are potentially a constraint to the development of export markets by producers of forest products. Concerns that developing countries have about SPS measures are closely related to the way in which SPS measures are developed and implemented by importing countries. There is a requirement in the SPS Agreement for all Members to take account of the special circumstances of developing countries when developing SPS measures and to permit time-limited exemptions where necessary. However, this is not always adhered to and some countries have not been permitted additional time for compliance or to make transitional arrangements.

It is therefore in the interests of developing countries to push the issue that the SPS Agreement requires consideration of the special and differential needs of developing countries in both the design and implementation of SPS measures. Some steps have been made to increase recognition of this principle, but there is some way to go in term of facilitating increased and more effective participation of

developing countries in the WTO.

However, whether or not SPS regulations are adapted to respond to needs of developing country producers, there are three main areas of action that can be undertaken to improve access to markets that have been hitherto restricted on the basis of stringent SPS measures.

- a) Developing skills and capacity to comply with systems and procedures to comply with standards;
- b) Improving production and marketing systems to limit risk of infestation or infection (e.g. through implementation of HACCP systems and testing facilities); and
- c) Improving access to information on importer standards.

Thus there is a need for technical assistance that is capacity building rather than reactive, i.e. building up the ability of producers to anticipate and adapt to new standards rather than rushing to ensure compliance once standards are set.

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