**THE TREATMENT OF AGRICULTURE IN THE GATT**

Rules designed to permit agricultural policies used by major producers...

The differences between the approach to agriculture and the approach to trade in manufactures in the GATT are fundamental in understanding the special role of agriculture in the GATT. For this, it is important to appreciate the agricultural policy environment in major trading countries in that period. The United States (US), the main agricultural exporter at the time the GATT was introduced, had its Agricultural Adjustment Act of 1933 fully operational by 1947. This Act permitted authorities to resort to tariffs and quantitative import controls and export subsidies where required in order to stabilize domestic producer prices. The European Community (EC) did not exist then and its Common Agricultural Policy (CAP) did not come into full force until the early 1960s. A majority of other countries that have become major traders now were either recovering from war or were newly independent. Some, however, did play an effective role in the debate and negotiations, e.g. Australia.

Domestic political and social pressures were also important factors behind some contracting parties seeking exemptions for agriculture. In richer countries, agriculture was in decline as industry expanded rapidly. The resulting difficulties in maintaining farm incomes and populations emerged as a politically sensitive issue. Agriculture was seen as a unique sector of the economy that, for various reasons including national food security, could not be treated like other sectors.

...led to major exemptions for agriculture

According to one commentator, given this environment, not only did agriculture receive "special treatment" in the GATT, but this treatment appeared to have tailored to the US farm programmes then in existence.

There are some - but not many - places where exceptions were made for agriculture from the GATT rules. But that was enough to keep agriculture out of the general rules. The two places where the contrast is most striking are on subsidies and quantitative restrictions.

**4.3.1 Subsidies in the GATT**

Agriculture not included in general prohibition on export subsidies...

The original GATT had only a section that required the contracting parties to report "any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into its territory, to other parties". Thus, originally there was no prohibition on subsidies, domestic or export. This became what is now Article XVI:1. Later, the prohibition against export subsidies on other than primary products[3](http://www.fao.org/3/x7352e/x7352e04.htm#comm3) was added as Article XVI:4.

It was only in 1955 when Article XVI was extended. Its Article XVI:2 recognized that export subsidies may have harmful effects. This is followed by the famous Article XVI:3 that says,

...provided they were not used to increase market share...

"contracting parties should seek to avoid the use of export subsidies on the export of primary products. If, however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of the primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period, and any such special factors which may have affected or may be affecting such trade in the product".

When Article XVI:4 that prohibits export subsides for other, non-primary products was made a part of the GATT, the special treatment of agriculture was complete.

...but rule open to many interpretations

Attempts were made subsequently to clarify the Article XVI provisions. For example, the Tokyo Round (completed in 1979) made efforts to define such terms as "equitable share of world export trade" and "representative base period". However, this and other attempts failed to make any significant progress.

**4.3.2 Quantitative import restrictions**

The GATT rule in this area was the second major source of exemption of agriculture from the general rules. Four GATT rules deal with quantitative restrictions:

* Article XI prohibits the use of quotas (with certain exceptions);
* Article XII provides for an exception to Article XI for balance of payments reasons;
* Article XIII outlines rules on quotas (on imports and exports); and
* Article XIV provides exceptions to Article III under certain balance of payments situations.

Two of these four Articles justified quantitative restrictions on the basis of balance of payments (BoP) difficulties. But these were basically irrelevant for the richer countries as they could not have resorted to the BOP exceptions. Several developing countries resorted to this exception, but it is unlikely that the impact on world markets in terms of trade distortions was significant in view of the small share of these countries in world trade. As a result, it was Article XI and Article XIII which were the main sources of exceptions. The agricultural exceptions under Article XI:2 are:

* export restrictions can be used to prevent or relieve critical shortages of foodstuffs or other products essential to the exporting countries;
* import and export restrictions can be used to bring about "the application of standards or regulations for the classification, grading, or marketing of commodities in international trade"; and

Import quotas permitted in some cases...

* import restrictions can be applied on any agricultural or fishery product imported in any form necessary to the enforcement of governmental measures that operate to:  
  - restrict the production or marketing of the like domestic product or of a domestic product that is a close substitute;   
  - remove a temporary surplus of a like domestic product by making the surplus available to groups of domestic consumers free or at reduced prices;   
  - restrict the quantities produced of any animal product that is directly dependent wholly or mainly on the imported product.

...and Section 22 waiver...

According to Hathaway, these provisions were largely written to fit the US agricultural programme. Despite this, the US soon found that it could not live with the provisions. In 1951, the US Congress stated that "no trade agreement could be applied in a manner inconsistent with this section" (Section 22 of the Agricultural Adjustment Act). Finally in 1955, the US insisted upon and received what is now known as the famous waiver, under the threat that it might otherwise be forced to leave the GATT[4](http://www.fao.org/3/x7352e/x7352e04.htm#comm4). This "temporary" waiver was in force for almost 40 years and was used to restrict imports of sugar, peanuts and dairy products until the UR.

The waiver was an exception to exceptions. Whereas Article XI permitted all contracting parties to take trade restrictive actions so long as there were policies in place that "restrict" the production or marketing of the domestic product, this waiver allowed the US to apply import restrictions without regard to such rules. This waiver, which thus discriminated against countries other than the US, has been a major source of continuing resentment by others and was used as an argument that the US was not serious about trade liberalization.

...also reasons why agriculture was not part of GATT

These two exceptions together were enough to keep agriculture "effectively" out of the GATT. They basically licensed countries to: subsidize their farmers to the extent they wished; provide border protection as desired; and export the surplus thus generated with export subsidies. It was not a coincidence that these were precisely the three areas addressed by the UR Agreement on Agriculture (AoA).

**4.4 WORLD AGRICULTURE IN "DISARRAY"**

The term "disarray" was coined by Prof. D. Gale Johnson of the University of Chicago in a book published in 1973 to describe the distortions in world agricultural markets[5](http://www.fao.org/3/x7352e/x7352e04.htm#comm5). The principal source of these distortions was the various exemptions given to agriculture by the GATT, notably the latitude to restrict trade and provide producer subsidies which in turn generated huge surpluses that had to be disposed off in the world market with export subsidies. For obvious reasons, the distortions were most widespread in mainly the temperate-zone food products that are produced and exported by richer countries. Most developing countries could not afford to do so.

A number of characteristics of the world agricultural markets seen in the 1970s and 1980s are used to describe the "disarray" in world markets:

* The high level of domestic support to producers - about 60 percent of the value of production in OECD countries in 1986-88 - paid by taxpayers and consumers as a result of both domestic support and border protection led to increasing amounts of surplus production which could be disposed off in world markets only with export subsidies.
* Where domestic prices were not linked to world prices, the responses to changing international prices in both supply and demand that might have helped to dampen world price fluctuations were absent. As a result, world market prices became more unstable. Examples of such "insulation" policies included the variable import levies of the EU, where duties varied inversely with movements in world market prices in order to maintain a fixed internal price. In some major import markets, state trading enterprises vary the mark-ups on imports to generate similar effects.
* The large scale use of export subsidies, mainly by the US and the EC, in order to dispose of their surpluses tended to depress world market prices and make them more unstable, as subsidies were essentially political decisions and were unpredictable. This practice generated negative effects for rest of the world producers and exporters of these goods. Indeed, during the second half of 1980s, there was a "subsidies war" between the two major exporters as they fought to maintain their share in world markets.
* For non-subsidizing countries (including most developing countries), agricultural protectionism also imposed implicit taxes on farmers. Artificially low world prices created a downward pressure on domestic prices. The resulting price disincentives often compromised agricultural production, threatened the livelihoods of large sectors of the population mainly living on agriculture, and made many developing countries increasingly dependent upon cheap food imports. These effects were frequently accentuated by domestic agricultural policies, which effectively taxed producers.
* Countries with a comparative advantage in the production and export of tradable agricultural commodities were also unable to produce and export as much as they would have under a more liberal trading regime, and have been deprived of substantial export revenues. At the same time, and with the assistance of substantial levels of government support, many countries with less comparative advantage had been producing at inefficiently high levels.
* International tension and disputes over agricultural trade arose with increasing frequency. The GATT institutions were often used in an attempt to resolve these disputes, but not with much success as rules were made ineffective due to the various exemptions. In fact, 60 percent of all trade disputes submitted to the GATT dispute settlement process between 1980 and 1990 were concerned with agriculture.

**4.5 AGRICULTURAL NEGOTIATIONS IN THE URUGUAY ROUND**

At the risk of oversimplification of a large number of issues that were discussed and negotiated for eight years (1986-93), what follows summarizes the main highlights of the negotiations on agriculture under three headings: the Punta del Este Declaration that started the Uruguay Round; the major actors and interests in agricultural negotiations; and key events leading to the Dunkel Draft of 1991 and the Final Act of December 1993.

**4.5.1 The Punta del Este Declaration launching the Uruguay Round**

Agreement to include domestic agricultural policies in remit of the Round

The UR was launched in 1986 by the Punta del Este Ministerial Declaration, in which the negotiating objectives of the Round were laid out. Box 2 reproduces relevant sections of the Declaration. An important element of it was an explicit recognition of the effects that domestic agricultural policies have on trade. It was agreed that the Round would concentrate not only on the issue of border protection and export subsidies, but also on a broad range of domestic agricultural policy issues.

**4.5.2 The major actors and interests in agricultural negotiations**

Diverging views on the desired outcome

Again at the risk of oversimplification, the interests and positions in agricultural negotiations may be summarized with respect to the following countries or country groups: the US, the EC, the Cairns Group, Japan and the Republic of Korea, food-importing developing countries, and other developing countries.

* The US was enthusiastic about promoting greater liberalization in agricultural trade, and was keen to reduce the protection and support granted to EC producers under the CAP.
* The EC was much less amenable to far reaching liberalization, but was keen to reach a workable compromise that could be enshrined in the GATT, in order to minimise future trade friction between itself and the US. The EC had a strong opposition to across-the-board reforms, and wanted instead to negotiate concessions on a commodity by commodity basis.
* The Cairns Group of countries as net exporters of agricultural commodities generally shared a common interest on greater liberalization in farm trade; it argued strongly for a reduction in protectionism and support measures in developed countries.

**Understanding the GATT agreement on the application of sanitary and phytosanitary measures**

On 15 December 1993, 117 countries concluded a seven-year effort to negotiate improved rules and conditions for world trade under the auspices of the General Agreement on Tariffs and Trade (GATT). The round of multilateral trade negotiations, which had opened in Punta del Este, Uruguay, in September 1986, was considerably more ambitious in its scope than any of the previous seven rounds of GATT multilateral negotiations. The Final Act of the Uruguay Round of negotiations, which was formally adopted in Marrakesh, Morocco on 15 April 1994 and will come into effect in 1995, establishes a new World Trade Organization (WTO). The WTO will oversee the implementation of more than 20 trade agreements which cover a vast range of trade issues, from agriculture to trade in services and trade-related intellectual property rights. The results of the Uruguay Round will provide expanded trade opportunities for both goods and services, as well as strengthened trade rules and disciplines.

An aspect of the Uruguay Round of negotiations that has received considerable public attention has been the negotiation of the Agreement on the Application of Sanitary and Phytosanitary Measures (the "SPS Agreement"). This agreement concerns food safety actions taken by governments, as well as animal and plant health protection. The SPS Agreement builds on the achievements of the Codex Alimentarius Commission, a subsidiary body of FAO and the World Health Organization (WHO), in developing international standards to ensure the safety of food. For plant protection, it will make use of the international standards, guidelines and recommendations which may be developed under the auspices of FAO's International Plant Protection Convention.

The GATT secretariat has provided this paper to assist in public understanding of the SPS Agreement. It briefly describes the agreement and addresses some of the questions most frequently asked. This background paper is not intended to provide any legal interpretation of the SPS Agreement.

**The agreement**

All countries maintain measures to ensure that food is safe for consumers and to prevent the spread of pests or diseases among animals and plants. These sanitary and phytosanitary measures can take many forms, such as requiring products to come from a disease-free area, inspection of products, specific treatment or processing of products, setting allowable maximum levels of pesticide residues or permitting the use of only certain additives in food. Sanitary (human and animal health) and phytosanitary (plant health) measures are applied to domestically produced food or local animal and plant diseases, as well as to products coming from other countries.

Sanitary and phytosanitary measures, by their very nature, may result in restrictions on trade. All governments accept the fact that some trade restrictions are necessary and appropriate in order to ensure food safety and animal and plant health protection, and this is also reflected in existing GATT rules. But governments are sometimes pressed to go beyond what is needed for health protection and to use sanitary and phytosanitary restrictions as a way of shielding domestic producers from economic competition. Such pressure is likely to increase as the use of other trade barriers is reduced as a result of the Uruguay Round agreements. A sanitary or phytosanitary restriction that is not required for valid health reasons can be a very effective protectionist device and, because of its technical complexity, a particularly deceptive and difficult barrier to challenge.

The Agreement on the Application of Sanitary and Phytosanitary Measures builds on existing GATT rules to check the use of unjustified sanitary and phytosanitary measures for the purpose of trade protection. The basic aim of the SPS Agreement is to maintain the sovereign right of any government to provide the level of health protection it deems appropriate, but to ensure that these sovereign rights are not misused for protectionist purposes and do not result in unnecessary barriers to international trade.

The SPS Agreement will increase the transparency of sanitary and phytosanitary measures. Countries will need to establish SPS measures oh the basis of an appropriate assessment of the actual risks involved and, if requested, to make known what factors they took into consideration, the assessment procedures they used and the level of risk they determined to be acceptable. Although many governments already use risk assessment in their management of food safety and animal and plant health, the SPS Agreement encourages the wider use of systematic risk assessment among all WTO member governments and for all relevant products.

Governments will be required to notify other countries of their sanitary and phytosanitary requirements that restrict trade and to set up inquiry points to respond to requests for more information. They also need to open to scrutiny how they apply their food safety and animal and plant health regulations. The systematic communication of information and exchange of experiences among the WTO member governments will provide a better basis for national standards. Such increased transparency will also protect the interests of consumers as well as trading partners from hidden protectionism through unnecessary technical requirements.

The SPS Agreement, while permitting governments to maintain appropriate sanitary and phytosanitary protection, will reduce possible arbitrariness of decisions and encourage consistent decision-making. It requires that sanitary and phytosanitary measures be necessary for the protection of food safety and animal and plant health. In particular, the agreement clarifies which factors should be taken into account in the assessment of risk. Measures to ensure food safety and to protect the health of animals and plants should be based as far as possible on the analysis and assessment of objective and accurate scientific data.

The SPS Agreement encourages governments to establish national sanitary and phytosanitary measures consistent with international standards, guidelines and recommendations, where these exist. This process is often referred to as "harmonization". GATT itself does not develop such standards nor will WTO, but most of GATT's member governments participate in the development of these standards in other international bodies. Standards are developed by leading scientists in the field and government experts on health protection and are subject to international scrutiny and review.

International standards are often higher than the national requirements of many countries, including developed countries. However, the SPS Agreement explicitly permits governments to choose not to use these international standards. Should their national requirements result in a greater restriction of trade, they may be asked to provide a scientific justification, demonstrating that the relevant international standard would not result in the level of health protection the country considered appropriate.

Because of differences in climate, existing pests or diseases and food safety conditions, it is not always appropriate to impose the same sanitary and phytosanitary requirements on food or animal or plant products from different countries. Therefore, the SPS Agreement acknowledges that sanitary and phytosanitary measures may sometimes vary depending on the country of origin of the food or animal or plant product concerned. The agreement will, however, check unjustified discrimination in the use of sanitary and phytosanitary measures, whether in favour of domestic producers or among foreign suppliers.

Moreover, in many instances an acceptable level of risk can be achieved in multiple ways. In deciding among alternative measures that provide the same level of food safety or animal and plant health, governments should select those that are not more trade restrictive than required to meet their health objectives, if the measures are technically and economically feasible. This should ensure that the appropriate level of health protection is maintained while providing the greatest quantity and variety of safe foodstuffs for consumers, the highest availability of safe inputs for producers and healthy economic competition.

A special committee will be established within WTO as a forum for the exchange of information among member governments on all aspects related to the implementation of the SPS Agreement. The SPS Committee will review compliance with the agreement, discuss matters that have potential trade impact and maintain close cooperation with the appropriate technical organizations. In trade disputes regarding sanitary or phytosanitary measures, the WTO dispute settlement procedures will be used, and advice from appropriate scientific experts can be sought.

**Questions and answers**

1. *What are sanitary and phytosanitary measures? Will the SPS Agreement affect countries' measures to protect the environment and animal welfare?*

For the purposes of the SPS Agreement, sanitary and phytosanitary measures are defined as any measures applied to protect human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food; or to protect human life from plant- or animal-carried diseases (zoonoses); or to protect animal or plant life from pests, diseases or disease-causing organisms; or to prevent or limit other damage to a country from the entry, establishment or spread of pests. Included are measures taken to protect the health of fish and wild fauna as well as forests and wild flora.

Measures for environmental protection perse or to protect the welfare of animals are not covered by the SPS Agreement. However, this does not mean in any way that such measures are prohibited by GATT, but only that they are not considered as sanitary and phytosanitary measures subject to the rules of the SPS Agreement.

2. *Do GATT rules not already cover a nation's food safety and animal and plant health regulations?*

Yes, since 1948 national food safety and animal and plant health measures that affect trade have been subject to GATT rules. GATT's Article I, the most-favoured nation clause, has always required non-discriminatory treatment of imported products from different foreign suppliers, and Article III has required that such products be treated no less favourably than domestically produced goods with respect to any laws or requirements affecting their sale. These rules apply, for instance, to limits for pesticide residues and food additives as well as to restrictions for animal or plant health purposes.

The current GATT rules also contain an exception (Article XX:b) that permits countries to take measures "necessary to protect human, animal or plant life or health" as long as these do not unjustifiably discriminate between countries where the same conditions prevail and are not a disguised restriction to trade. In other words, where necessary, for purposes of protecting human, animal or plant health, governments may impose more stringent requirements on imported products than on domestic goods. This exception would not change under the SPS Agreement.

In the previous round of GATT negotiations (the Tokyo Round, 1974-79) the Agreement on Technical Barriers to Trade (often called the Standards Code) was negotiated.2 Although this agreement was not developed primarily for the purpose of regulating sanitary and phytosanitary measures, it does cover technical requirements resulting from food safety and animal and plant health measures, including pesticide residue limits, inspection requirements and labelling. Member governments have agreed to use relevant international standards (such as those for food safety developed by the Codex Alimentarius Commission) except when they consider that these standards will not adequately protect health. They have also agreed to notify other governments, through the GATT secretariat, of any technical regulations that are not based on international standards. The Agreement on Technical Barriers to Trade includes provisions for settling trade disputes arising from the application of food safety measures and other technical restrictions.

2 The 1979 Agreement on Technical Barriers to Trade took effect on 1 January 1980. As of 15 December 1993, the following were parties to the agreement: Argentina (not yet ratified), Australia, Austria, Brazil, Canada, Chile, the Czech Republic, Egypt, the European Economic Community and its 12 member countries (Belgium, Denmark, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, the United Kingdom), Finland, Hong Kong, Hungary, India, Indonesia, Israel, Japan, the Republic of Korea, Malaysia, Mexico, Morocco, New Zealand, Norway, Pakistan, the Philippines, Romania, Rwanda, Singapore, Slovakia, Sweden, Switzerland, Thailand, Tunisia, the United States and Yugoslavia.

3. *What is new in the SPS Agreement?*

Because sanitary and phytosanitary measures can so effectively restrict trade, GATT member governments have long been concerned about the need for clearer rules regarding their use. As the outcome of the Uruguay Round will be a lessening of other barriers to trade, governments have become more concerned that sanitary and phytosanitary measures might increasingly be used for protectionist purposes. The SPS Agreement closes this potential loophole. It sets out clearer and more detailed rights and obligations for food safety and animal and plant health measures that affect trade. Countries will be permitted to impose only those measures that are needed to protect health and that are based on scientific principles. A government will be able to challenge another country's food safety or animal and plant health requirements on the grounds that they are not justified by sufficient scientific evidence. The procedures and decisions used by a country in assessing the risk to food safety or animal or plant health will have to be disclosed to other countries upon request. Countries will have to be consistent in their decisions on what is safe food and in responses to animal and plant health concerns.

At the same time, the Agreement on Technical Barriers to Trade has been strengthened. A revision of this agreement is also part of the WTO package and will apply to all WTO members. It will affect all technical regulations not explicitly covered by the SPS Agreement, including most labelling, packaging and product content requirements.

4. *Will the SPS Agreement restrict a government's ability to establish food safety and plant and animal health laws? Will food safety or animal and plant health levels be determined by WTO or some other international institution?*

The SPS Agreement explicitly recognizes the right of governments to take measures to protect human, animal and plant health, as long as these are based on science, are necessary for the protection of health and do not unjustifiably discriminate among foreign sources of supply. Likewise, governments will continue to determine levels of food safety and animal and plant health in their countries. Neither WTO nor any other international body will do this.

The SPS Agreement does, however, encourage governments to harmonize their measures or to base them on the international standards, guidelines and recommendations developed by WTO member governments participating in other international bodies. These organizations include, for food safety, the Codex Alimentarius Commission; for animal health, the International Office of Epizootics; and for plant health, the International Plant Protection Convention. GATT member governments at present participate in the work done by these organizations, which bears on risk assessment and the scientific determination of the effects on human health of pesticides, contaminants or additives in food or the effects of pests and diseases on animal and plant health. The work of these technical organizations is subject to international scrutiny and review.

One problem with international standards is that they often set requirements so stringent that many countries find it difficult to implement them nationally. However, despite the encouragement to use international standards, they will not become a ceiling or floor on national standards. National standards can be higher than international norms without necessarily violating the SPS Agreement. In fact, the SPS Agreement explicitly permits governments to impose more stringent requirements than those based on international standards. However, governments that do not base their national requirements on relevant international standards may, if this difference gives rise to a trade dispute, be required to justify their higher standard.

5. *Would harmonization with international food safety standards mean a towering of health protection, i.e, will there be downward harmonization?*

Harmonization with international food safety standards would mean basing national requirements on the standards developed by the Codex Alimentarius Commission.3 Codex standards are not "lowest common denominator" standards. They are based on the input of leading scientists in the field and national experts on food safety. These are the same national experts who are responsible for the development of national food safety standards. For example, recommendations for pesticide residues and food additives are developed for the Codex Alimentarius Commission by international groups of respected scientists who use conservative, safety-oriented assumptions and who operate without political interference. In many cases, the Codex standards are higher than those of individual countries, including developed countries such as the United States. Nonetheless, as noted above, governments may choose not to use international standards if they do not meet their health protection needs.

3 The Codex Alimentarius Commission also develops standards with respect to food quality. These quality standards are not directly relevant to the SPS Agreement; however, they are relevant to the Agreement on Technical Barriers to Trade.

6. *Will governments be able to take adequate precautions when determining food safety and animal and plant health requirements, even in cases where there may not be sufficient scientific evidence for a definitive decision on appropriate safety measures? Can unsafe products be banned?*

Three different types of precautions relevant to sanitary and phytosanitary measures are provided for in the SPS Agreement. First, risk assessment and the determination of acceptable levels of risk imply the routine use of safety margins to ensure that adequate precautions are taken to protect health. Second, as each country determines its own level of acceptable risk, it can respond to social and cultural concerns regarding what precautions are necessary. Third, the SPS Agreement clearly permits precautionary measures when a government considers the scientific evidence insufficient to permit a final decision on the safety of a product or process. It also permits that immediate measures betaken in emergency situations.

There are many examples of bans on the production, sale and import of products based on scientific evidence that these products pose an unacceptable risk to human, animal or plant health. The SPS Agreement will not affect a government's ability to ban products in such cases.

7. *Can food safety and animal and plant health requirements be set by local or regional governments? Can there be differences in requirements within a country?*

It is accepted in the SPS Agreement that food safety and animal and plant health regulations do not necessarily have to be set by the highest governmental authority and that they may not be the same throughout a country. Where such regulations are determined by local governments or at state or provincial level and affect international trade, however, they should meet the same requirements that would apply if they were established by the national government. The national government remains responsible for implementation of the SPS Agreement and should support its observance by other levels of government.

8. *Would the SPS Agreement, once ratified by national governments, require countries to give priority to trade over food safety or animal or plant health?*

No, the SPS Agreement allows countries to give food safety and animal and plant health priority over trade, provided there is a demonstrable scientific basis for their food safety requirement. Each country has the right to determine what level of food safety and animal and plant health it considers appropriate, based on an assessment of the risks involved. Once a country has decided on an acceptable level of risk, there are often a number of alternative measures that may be used to achieve the corresponding protection (such as treatment, quarantine or increased inspection). The SPS Agreement requires that in choosing among such alternatives, a government use those measures that are no more trade restrictive than required to achieve its health protection objectives, if these are technically and economically feasible.

9. *Can national food safety and animal and plant health legislation be challenged by other countries? How will disputes be settled in WTO?*

Since GATT negotiations began in 1948, it has been possible for another country to challenge a nation's food safety and plant and animal health laws. The 1979 Agreement on Technical Barriers to Trade also includes procedures for challenging another signatory's technical regulations, including food safety standards and animal and plant health requirements. The SPS Agreement makes more explicit not only the basis for food safety and animal and plant health requirements that affect trade but also the basis for challenges to those requirements. While a nation's ability to establish legislation will not be restricted, a specific food safety or animal or plant health requirement could be challenged by another country on the grounds that there was not sufficient scientific evidence supporting the need for the trade restriction. The SPS Agreement will provide greater certainty for regulators and traders alike, enabling them to avoid potential conflicts.

By accepting the Agreement Establishing the World Trade Organization (informally referred to as the WTO Agreement) contained in the Final Act of the Uruguay Round, governments agree to be bound by the rules of all the multilateral trade agreements attached to it, including the SPS Agreement. In the case of a trade dispute, WTO's dispute settlement procedures will encourage the governments involved to find a bilateral solution. If the governments cannot resolve their dispute, they can choose to follow any of several means of dispute settlement, including good offices, conciliation, mediation and arbitration. Alternatively, a government will be able to request that an impartial panel of trade experts be established to hear all sides of the dispute and to make recommendations.

In a dispute on SPS measures, the dispute settlement panel can seek scientific advice, and to this end it may convene a technical experts group. If the panel concludes that a country is violating its obligations under an agreement attached to the WTO Agreement, normally it will recommend that the country take such action as is necessary to bring its measure into conformity with its obligations. Such actions could, for example, involve procedural changes in the way a measure is applied, modification of the measure or elimination of either the whole measure or simply its discriminatory elements. The panel submits its recommendations for consideration by the WTO Dispute Settlement Body (DSB). Unless the DSB decides by consensus not to adopt the panel's report, or unless one of the parties appeals the decision, the defending party is obliged to implement the panel's recommendations and to report on its actions to this effect. Appeals are limited to issues of law and legal interpretations by the panel.

10. *Who was responsible for developing the SPS Agreement?* *Did developing countries participate in the negotiation of the SPS Agreement?*

The decision to start trade negotiations with the ambitious scope of the Uruguay Round was taken after years of public debate, including debate in national governments about their negotiating goals. The decision to negotiate an agreement on the application of sanitary and phytosanitary measures was made when the Uruguay Round was launched in 1986. The SPS negotiations were open to aim 7 governments participating in the Uruguay Round, and many were represented by their food safety or animal and plant health protection officials. The negotiators also drew on the expertise of technical international organizations such as FAO, the Codex Alimentarius Commission and the International Office of Epizootics.

Developing countries participated in unprecedented numbers, and to an unprecedented extent, in all aspects of the Uruguay Round of negotiations. In the negotiations on sanitary and phytosanitary measures, developing countries were active participants, often represented by their national food safety or animal and plant health experts. Both before and during the Uruguay Round, the GATT secretariat provided active technical assistance to help developing countries in their understanding of the issues and their development of effective negotiating positions. The SPS Agreement calls for assistance to developing countries to enable them to strengthen their food safety and animal and plant health protection systems. FAO and other international organizations already operate programmes for developing countries in these areas.

11. *Was there public participation in the Uruguay Round of negotiations? Were private-sector interests or consumer interests excluded? Were multinational corporations and drug companies involved in the negotiations?*

GATT is an intergovernmental organization, and it is governments that participate in GATT trade negotiations; neither private business nor non-governmental organizations participate directly. However, as the scope of the Uruguay Round was unprecedented, so was the public debate. Many governments consulted with both their public and private sectors on various aspects of the negotiations, including those on sanitary and phytosanitary measures. Some established formal channels for public consultation and debate while others invited participation on a more ad hoc basis. The GATT secretariat also had considerable contact with international non-governmental organizations as well as with the public and private sectors of many countries involved in the negotiations.

Now that the Uruguay Round of negotiations has been formally concluded (in April 1994), the results will be subject to national ratification and implementation processes in all member countries.

12. *Who will benefit from the implementation of the SPS* *Agreement? Is the agreement In the interest of developing countries?*

Consumers in all countries will benefit. The SPS Agreement will help ensure the safety of their food while reducing the scope for arbitrary and unjustified decisions in this area. More information will become available to consumers as a result of greater transparency in governmental procedures and in the basis for their food safety, animal and plant health decisions. The elimination of unnecessary trade barriers will allow consumers to benefit from a greater choice of safe foods and from healthy international competition among producers.

Specific sanitary and phytosanitary requirements are most frequently applied on a bilateral basis between trading countries. Developing countries will benefit from the SPS Agreement, which provides an international framework for sanitary and phytosanitary arrangements among countries, irrespective of their political strengths or technological capacities. Without such an agreement, developing countries have both a political and technical disadvantage in challenging unjustified trade restrictions. Furthermore, under the SPS Agreement governments must accept imported products that meet their safety requirements, whether these products are the result of the most modern technology or simpler, less sophisticated methods. Increased technical assistance to help developing countries in the area of food safety and animal and plant health, either bilaterally or through international organizations, is also an element of the SPS Agreement.

Exporters of agricultural products in all countries, developed as well as developing, will benefit from the elimination of unjustified barriers to their products. The SPS Agreement will reduce uncertainty about the conditions for selling to a specific market. Efforts to produce safe food for another market should not be thwarted by regulations imposed for protectionist purposes under the guise of health measures.

Importers of food and other agricultural products will also benefit from the greater certainty regarding border measures. The basis for sanitary and phytosanitary measures that restrict trade will be made clearer by the SPS Agreement, as well as the basis for challenging requirements that may be unjustified. This greater clarity will also benefit the many processors and commercial users of imported food or animal or plant products.