

Where is the SPS agreement going?

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My address today reflects the many years which I spent as a senior executive in the Australian Quarantine and Inspection Service, and in particular my time as head of Australia's Quarantine Service. As such, my responsibilities included the development of all import and export protocols relating to agricultural, fisheries and forestry products.

The WTO and the agreement on the application of sanitary and phytosanitary measures are proving valuable in the context of reducing unjustified technical barriers to trade. However, even so the likelihood is that the incidence of technical barriers to trade will increase in the years ahead.

Sanitary and phytosanitary measures can include:

- Measures (including complete denial of entry) imposed to avoid the introduction of an exotic pest or disease;
- Export certification and inspection requirement;
- Imposition of a specific chemical residue level.

Any of the above can impede or completely deny trade.

These measures can differ greatly from economic barriers to trade. We know with economics that one plus one equals two. But in the world of science judgements about whether a pest or disease can establish itself offers the prospect for eternal argument.

For example, how much more transparent is a tariff or a quota, compared with the assertion that an exotic pest or disease may be introduced as a result of the importation of a food or agricultural product of some sort.

In the case of measures imposed to avoid the introduction of an exotic pest or disease, many scientists are capable of identifying specific pests and diseases which are exotic to their country. Regular or specific purpose surveillance programs will provide a firm basis for this identification. However, specialists in practical risk assessment are few and far between in terms of establishing that the pest or disease if introduced as a result of an importation can actually follow a pathway and establish itself in the importing country. This is one reason why sanitary and phytosanitary measures are likely to remain contentious, complex and difficult to resolve.

Export certification and inspection requirements can add a small amount of cost to a product, or can effectively be a total barrier by making the product uncompetitive. However, these measures generally are more transparent than pest or disease measures and as such somewhat more easily tackled where they are unreasonable. Requirements for pre export in country inspection by the importing country's inspection service, is one example of an export certification measure that adds cost to an export. Any unnecessary chemical or heat treatment of perishable product is another measure that adds to the landed cost, and possibly reduces shelf life as well.

Chemical residue levels can be used as trade barriers either by the outright banning of a specific chemical due to its potential harmful effects, or by the imposition of a maximum residue level that is out of line with internationally accepted norms. Proving the safety of a particular chemical residue level is an onerous task in today's litigious society. Toxicological studies may take many years to complete but even then may not be adequate if an unforeseen reaction with another chemical leads to the emergence of an indirectly related potential problem.

What are the problems?

The WTO SPS Agreement and related appeal system is very young in terms of its ability to sort out sanitary and phytosanitary measures. Nevertheless, there are indications that some progress is being made.

What is clear is that any SPS appeal is going to involve substantial resources being dedicated by the participating countries. These resources, particularly specialist scientists are going to be more easily found in large countries. The pool of scientists in countries such as Australia is fairly small in many disciplines, and as such small countries like Australia are disadvantaged to a degree.

There is little doubt that Canada's appeal against the refusal of Australia to allow the importation of uncooked salmon provided some impetus for AQIS to take the recent decision to allow the entry of this product.

Are we going to see a scenario where contentious access decisions are only made and then grudgingly if the WTO appeal process demands it?

The answer to this question in most democracies is probably yes.

- Living below the dam wall gives one a different perspective of risk to living above the dam wall. If you are a grower whose whole livelihood may be threatened by a sanitary or phytosanitary access decision, you are likely to only be interested in a zero risk approach compared to a consumer who may enjoy perhaps a new variety of cheaper price of an import.
- Lobbying is a very sophisticated industry. It is frighteningly easy to develop a degree of paranoia in relation to potential food safety or

environmental issues that might emerge as a result of access being granted.

- Insufficient public resources are available to assist with meaningful restructuring programs for industries where these are obviously desirable.
- Experts in the necessary risk analysis of sanitary and phytosanitary measures are not common.
- The risk analysis performed will no doubt be complex and beyond the understanding of many people in the wider community.
- Communicating in such a way so as to increase public understanding of the reasons behind allowing a particular product access is difficult and probably beyond the resources Governments are prepared to dedicate to the task.

In Australia the problem is complicated by an unwillingness to use economic measures to alleviate the impact of an importation or allow restructuring to take place in a more rational manner.

The result of the above in Australia is a transference of responsibility and most of the political heat to the Australian Quarantine and Inspection Service (AQIS), an organisation desperately trying to keep to a scientific evaluation of import proposals. There is every chance that unless this is addressed, the reputation of AQIS, which is so very valuable to our exporting agricultural industries, will suffer to the extent that the organisation will be less effective.

As yet though it is too early to be able to say that the appeal process will result in an even and fair response across the whole range of large, small and less developed nations who become involved. What will be interesting is to observe whether the larger countries in the face of an adverse WTO appeal decision allow access with a sensible protocol. Or will it be the smaller and/or less developed countries that comply with decisions, while larger countries effectively ignore judgements? We have already seen the EU reject WTO findings in its battle with the USA over access for meat treated with growth promotant hormones.

What can be done?

- It is likely that some moves will need to be made towards mandatory international norms, particularly where these have been reached by consensus. Concepts such as area freedom and equivalence remain loosely defined
- Re-examine the very basis for Australia's trade policy against the background of the increasing use of sanitary and phytosanitary measures. There is a perception by many in the agricultural community that harmonisation implies all countries sharing the same pests and diseases.
- Recognition in Australia that in championing free trade for very good reasons, does not preclude a degree of short to medium term assistance for genuine restructuring.

- Recognising that the final objective of a fairer world trading environment may be achievable through a series of steps.
- Accepting that mutual recognition does have a place in the debate on world trade. That is in any country farmers have some rights to a reasonable market share.
- There is a place for those seeking access to recognise some of the realities of the market place, for example seeking access on the basis of counter seasonality where this is available as an option.
- Improving the policy connection between organisations such as AQIS and agricultural trade policy.
- Improving and standardising risk analysis work wherever possible. This area is receiving attention in the APEC forum.
- Improving risk communication strategies to the general public so that an understanding of market access technical decisions is better understood.

Australia for its part is frequently criticised for it is over stringent quarantine barriers. We have adopted a conservative approach to risk assessment. However, in setting the appropriate level of risk we should have considered the value of Australia's current good pest and disease status. To my knowledge no such study has ever been done. It does need to be done as full recognition of the true value of a good plant and animal health disease status may well influence the level which should be regarded as acceptable. In a world becoming increasingly concerned at exposure to chemicals and unknowns to an ordinary person such as genetically modified organisms being as "clean and green" as possible is going to translate into export dollars.

The special problems of developing countries

In our region there are many developing countries, some large and with a reasonable scientific capacity, some small and with virtually no scientific capacity. Some of these countries are still trying to move per capita GDP into 4 figures.

The SPS Agreement does have specific provisions for these countries but assistance to these countries is still very limited and as a general rule not well focussed. For example the very practical issue of developing countries gaining some degree of priority in having their access requests evaluated by developed countries is one yet addressed in a meaningful way.

Developing countries will not be able to develop their trade and economies unless appropriate assistance is provided. There appears little point in providing aid in to agricultural development in the face of inadequate animal and plant health infrastructure.

In conclusion there has been an increase in technical barriers to trade in recent years, and emerging issues such as genetically modified foods and the irradiation of foods will provide fertile ground for the emergence of additional sanitary and phytosanitary measures. Another challenge may be

provided by recent High Court decisions, which focus on the duty of care issue.

Despite this the overall challenge may be to ensure that any sanitary and phytosanitary measures imposed are justifiable, and as such our own industries are not unfairly treated.