

International harmonization in the SPS Agreement, an overview

Rolando Alcala
Agriculture and Commodities Division, WTO

Geneva, 2 November 2021

International harmonization in the SPS Agreement, an overview



Outline

- ① Harmonization in the SPS Agreement
- ② Monitoring the process of international harmonization in the SPS Committee
- ③ Transparency and international harmonization
- ④ Q & A



Harmonization in the SPS Agreement



Objective?

Preamble

...further the use of harmonized SPS measures between Members, on the basis of international standards, guidelines and recommendations developed by the relevant international organizations ...

Harmonization in the SPS Agreement Annex A.2



What is harmonization?

Annex A.2 – Definition

The establishment, recognition and application of common sanitary and phytosanitary measures by different Members



Harmonization in the SPS Agreement

Annex A.3



Which international standards?

Standard-setting organizations

food safety



animal health
and zoonoses



plant health



Codex = Joint FAO/WHO Codex Alimentarius Commission
OIE = World Organisation for Animal Health
IPPC = International Plant Protection Convention (FAO)

Harmonization in the SPS Agreement

Article 3



What does it say?

Article 3.1: To **harmonize** SPS measures... Members **shall base** their SPS measures on international standards, guidelines and recommendations, except as otherwise provided for in this Agreement, and in particular in paragraph 3

Article 3.2: Measures that **conform to** international standards **shall be deemed to be necessary** to protect human, animal or plant life or health, and **presumed to be consistent** with the relevant provisions of this Agreement....



Harmonization in the SPS Agreement

Article 3



Alternatives to harmonization?

Article 3.3

- if there is a **scientific justification**
- as a consequence of an appropriate level of protection, in conformity with Article 5 (risk assessment)

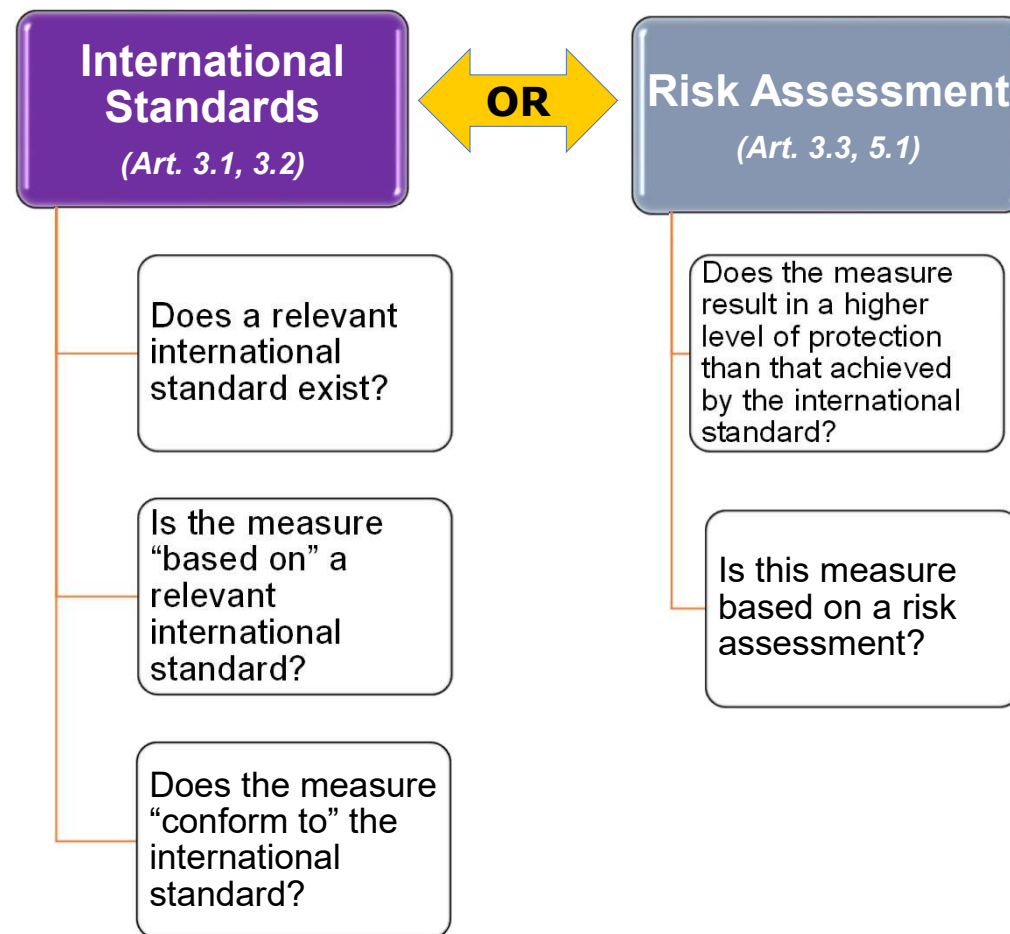


Harmonization in the SPS Agreement

Article 3



How to comply?



Harmonization in the SPS Agreement

Disputes – selected take-aways



- “Based on” international standards – Measure adopts some but not necessarily all elements
- “Based on” – founded , built upon, supported by the relevant international standard; can not contradict the international standard
- Presumption of consistency – “conform to” ≠ “based on”
- If an SPS measure incorporates all the elements of the international standard, it “conforms to”
- Right to be stricter than international standards if measure justified with risk assessment
- No particular distinction between "standards", "guidelines" and "recommendations"
- Amendments to standards – latest science

Monitoring the process of international harmonization in the SPS Committee



Article 3.5

Refers to 12.1 and 12.4

...develop a procedure to monitor the process of international harmonization

...coordinate efforts in this regard with the relevant international organization



Article 12.1

[SPS Committee]...shall carry out the functions necessary to implement the provisions of this Agreement and the furtherance of its objectives, in particular with respect to harmonization



Article 12.4

...develop a procedure to monitor the process of international harmonization and the use of international standards, guidelines or recommendations



...establish a list of international standards, guidelines or recommendations relating to SPS measures which the Committee determines to have a major trade impact

Monitoring the process of international harmonization in the SPS Committee



G/SPS/11/Rev.1 – Revision of the Procedure to Monitor The Process of International Harmonization



- Oct. 1997 – Initially adopted by SPS Committee, provisional
- Nov. 2004 – Revised
- June 2006 - Extended indefinitely; reviewed under the periodic review of the SPS Agreement



SPS Monitoring Procedure *(G/SPS/11/Rev.1)*

How does it work?



Art.
12.4

- Aim of **encouraging** Members to use international standards
- **Identifying** where there is a major impact on trade resulting from the non-use of standards
- Help to understand **when** an international standard, guideline or recommendation is needed by:
 - Identifying the required international standard
 - Information from Members on their use or non-use

SPS Monitoring Procedure *(G/SPS/11/Rev.1)*

How should it work?



Para. 4

Scope of Monitoring limited to Standards, Guidelines and Recommendations developed by Codex, OIE, IPPC (par. 4)



Para. 6

Members should submit concrete examples of problems with a significant trade impact related to the use or non-use of international standards. Describe, whether it is the result of:

- (a) non-use of an existing standard; or**
- (b) absence or inappropriateness of existing standard**



Para. 8

A list of standards, guidelines or recommendations which have a major impact on international trade shall be established and reviewed at each meeting of the Committee

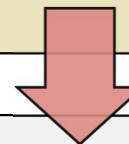
SPS Monitoring Procedure *(G/SPS/11/Rev.1)*

How should it work?



Para. 9

The Committee may invite Codex, OIE, IPPC to provide further information in writing or through presentations on any standard under consideration, incl. with regard to any changes or ongoing revisions.



Para. 10

The Secretariat should prepare an annual report to the Committee on the list of standards, the major trade impacts identified on use, non-use, or absence of international standard. The Committee will transmit the report to the ISSBs. Members to take this into account, through their participation, in establishing those organizations' work priorities.

SPS Monitoring Procedure *(G/SPS/11/Rev.1)*



How did it work?

July 1999 – Adoption of 1st Annual Report (G/SPS/13)

Main steps:

- Para. 6** ■ Members identified 9 standards-related issues (1998)
- Para. 8** ■ Secretariat circulated document to gather information from Members on issues identified (G/SPS/W/100, March 1999)
- Para. 10** ■ Responses summarized in 1st Annual Report
- Para. 9** ■ Communication sent to ISSBs asking for their input

Oct. 2000 – 2nd Annual Report, replies from ISSBs (G/SPS/16)

SPS Monitoring Procedure *(G/SPS/11/Rev.1)*

Periodic Reviews of SPS Agreement



- **2nd Review** (G/SPS/36)
 - 12 issues raised (1999-2004)
 - Concerns raised by developing Members about ability to actively participate in the development of international standards
 - Codex, OIE, IPPC to establish trust funds to enhance participation



SPS Monitoring Procedure *(G/SPS/11/Rev.1)*

Periodic Reviews of SPS Agreement



- **3rd and 4th Reviews** (G/SPS/53, G/SPS/62)
 - Procedure under-utilized by Members (2005-2013)
 - July 2012 - Proposal to revise the monitoring procedure:
 - Include in Annual Report issues raised under STCs when related to non-use or absence of international standards
 - Members should ensure full implementation of transparency provisions, including recommendations (G/SPS/7/Rev.3, 2008)
 - Indicate if conformity
 - Notify all regulations even when based on / conform to
- **5th Review** (G/SPS/64 and Add.1, 2014-2019)
 - Summary of issues (new, previous) considered and responses received from ISSBs (current practice)
- Latest Annual Report (23rd) – G/SPS/GEN/1909, May 2021

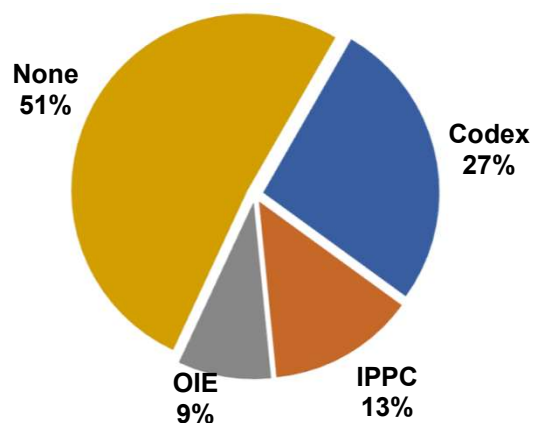
Transparency and international harmonization

SPS notifications referring to an international standard

2008 – 15 Oct. 2021

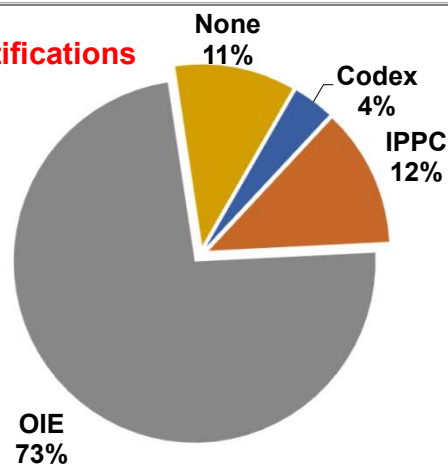


Regular notifications



Conform to
69%

Emergency notifications



Conform to
87%

Recommended Transparency Procedures (G/SPS/7/Rev.4)

5.	Title of the notified document: <input type="text"/> Language: <input type="text"/> Number of pages: <input type="text"/>
6.	Description of content: <input type="text"/>
7.	Objective and rationale: <input type="checkbox"/> food safety, <input type="checkbox"/> animal health, <input type="checkbox"/> plant protection, <input type="checkbox"/> protect humans from animal/plant pest or disease, <input type="checkbox"/> protect territory from other damage from pests. <input type="text"/>
8.	Is there a relevant international standard? If so, identify the standard: <input type="checkbox"/> Codex Alimentarius Commission (e.g. title or serial number of Codex standard or related text) <input type="text"/> <input type="checkbox"/> World Organization for Animal Health (OIE) (e.g. Terrestrial or Aquatic Animal Health Code, chapter number) <input type="text"/> <input type="checkbox"/> International Plant Protection Convention (e.g. ISPM number) <input type="text"/> <input type="checkbox"/> None <input type="text"/>
	Does this proposed regulation conform to the relevant international standard? <input type="checkbox"/> Yes <input type="checkbox"/> No If no, describe, whenever possible, how and why it deviates from the international standard: <input type="text"/>
9.	Other relevant documents and language(s) in which these are available: <input type="text"/>
10.	Proposed date of adoption (dd/mm/yy): <input type="text"/>

Transparency and international harmonization

STCs and international standards

1995 – 15 Oct. 2021 (Total STCs = 525)

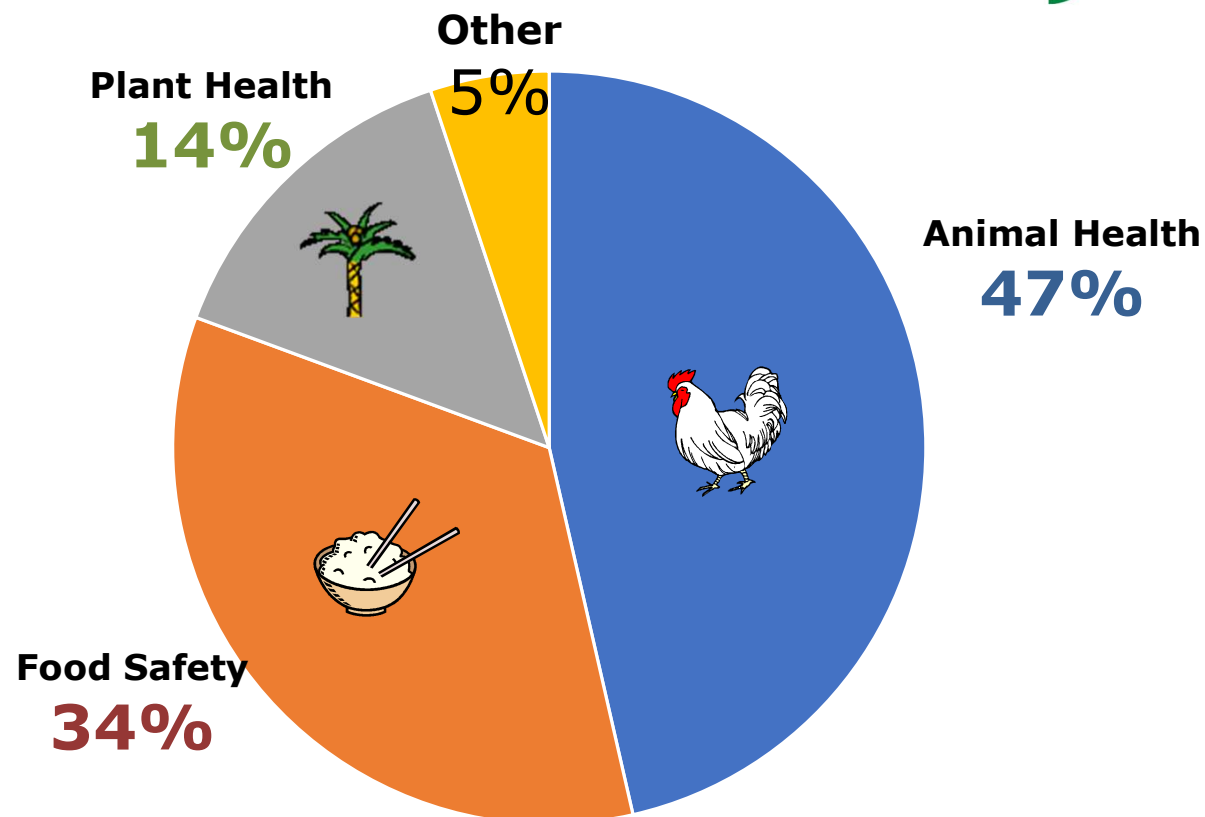


196 STCs

With keyword
"International Standards
/ Harmonization"

37%

(196/525)



Source: SPS Information Management System (<http://spsims.wto.org>)

Transparency and international harmonization

STCs and international standards - Examples



- HPAI-related restrictions on poultry products - request to follow OIE standards, particularly on regionalization
- ...harmonize MRLs with those established by Codex, in accordance with the SPS Agreement
- ...country-wide bans on imports of meat products on grounds of ASF not based on OIE standards or on regionalization principles
- deviation from Codex standards with regard to pesticides



Thank you!

SPS Gateway

<http://www.wto.org/sps>