Innovations in Risk Management

The SPS Agreement is all about Risk Management

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The SPS Agreement

20 YEARS!
The SPS Agreement

• Entered into force in 1995
• 20 years of experience implementing
  – Agreed standards
  – Dispute rulings
• How far have we come in 20 years?
What does the SPS Agreement tell us about Risk Management?

FUN FACT: “Risk Management” is mentioned how many times in the SPS Agreement?
Is Risk Management *implied*?

• “Risk assessment”: science based
• “Risk management”: other factors (political, social, etc.)
• Debate whether RM is implied during EC vs US/Can dispute over beef hormones — “risk management” is NOT scientific
However...

Article 2:
Members have the right to take sanitary and phytosanitary measures necessary for the **protection** of human, animal or plant life or health.
Annex A: An SPS Measure is any measure applied:

• ...to **protect** animal or plant life or health within the territory of the Member from risks arising from the **entry, establishment or spread of pests**, diseases, disease-carrying organisms or disease-causing organisms

and

• to **prevent or limit other damage** within the territory of the Member from the **entry, establishment or spread of pests**.
How does the SPS Agreement inform Risk Management?

- Provisions, rights and obligations
- Standards
- Disputes and rulings
What are the options in SPS for managing risk?

1. Harmonize (Article 3)
2. Equivalence (Art. 4)
3. Risk Assessment (Art. 5)
4. Provisional Measures (Art. 5)
But we should keep in mind...

- “Appropriate level of protection” (Art. 5)
- Least trade restrictive (Art. 2)
- Sovereignty (the whole agreement)
Harmonization / Equivalence / Risk Assessment

**Country A**
- **Based on Standard I**

**Country Z**
- Bases requirements on Standard I; Country B, C, D know requirements
- Accepts Country B, C, D, etc products since they conform to Standard I
- Recognizes Measure II from Country Z (which is different from Standard I and different from Country A’s requirements)

**Burden of proof**
- Established
- Applies to Standard setting body (and members)
- Members
- Members
- Members

**Exporting country Z**
- (in cooperation with importing country A)
- One*

**PRAs for pests, commodities, countries or policies**
- Country A
- Variable
Other RM concepts in the SPS

- Provisional measures
  - Emergency measures
- Regionalization
  - Significant for NAPPO countries
What about SPS disputes?

- Beef hormones (**US/Can** vs. EU)
- Fruit varietals (**US** vs. Japan)
- Salmon (**Canada** vs. Australia)
- Apples / fire blight (**US** vs. Japan)
- GMOs (**US** vs. EU)
- Apples / fire blight (**NZ** vs. Australia)
Lessons learned:
- Rational relationship of measures to risk
- Appropriate level of protection
- Consistency of measures
- Least trade restrictive
- Incorporate available evidence
- Harmonized, transparent, and based on risk
Risk Management is not rocket science but…

Can we move towards innovation?

“It’s time we face reality, my friend. … We’re not exactly rocket scientists.”
Opportunities for innovation

• Standards that support alternative measures
• Partnerships
  – Regional organizations
  – Industry
• Using and accepting alternative approaches
Addressing Uncertainty

• Not addressed explicitly
But….

• Provisional measures
• “Scientific and other evidence”
• Decisions on disputes

• Opportunities!