

The World Trade Institute

Bern, Switzerland

Food Safety and International Trade

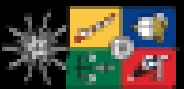
SEMINARIO “MEDIDAS
SANITARIAS Y FITOSANITARIAS
EN EL CONTEXTO DEL
COMERCIO INTERNACIONAL”

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movil

UNIVERSIDAD DE CHILE



9.04.2013

WTI = Education + Research

- **Education** (faculty of 50, mainly lawyers, economists and pol.sc.)

- *Master in International Law and Economics* (“MILE”, 400 graduates in 13 years)

- Doctoral School

- Post-Doc Programme

- À la carte training

u^b courses

- **Research** (around 50 researchers, in-house and in other universities)

- Main topics: “Trade and” governance, investment, regionalism, human rights, climate change, food safety, food security, migration, litigation, impact assessment)

- Events and publications

Seguridad e Inocuidad Alimentarias son Enemigos

- ✓ Food safety policies seek to minimise health risks.
- ✓ There is no « zero risk » - but even minimising it means price increases at the expense of (poor) consumers and (often) developing country exporters
- ✓ New trade barriers favour established and global players at the expense of SME and new market entrants
- Food safety may reduce food security.

Is there a conflict between health and trade policies?

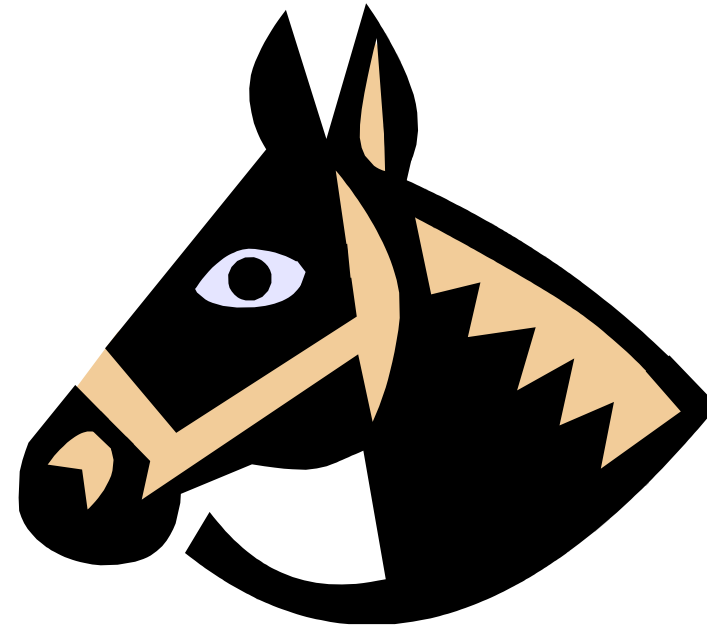
1. Food Safety vs Food Security
2. Relevant WTO Rules
3. Sanitary measures: complaints and realities
4. Dispute settlement
5. RTA efforts for WTO+ solutions
6. Tentative Conclusions

1. Food Safety vs Food Security

- ✓ **Food security** is about production, processing and consumption, but (also) a matter of trade and (international) technology and investment
- ✓ **Food safety** is about health. For WHO this has three aspects: food availability, access, and use (+ adequate water and sanitation)
- The “9 Billion Challenge” is about both

Where does WTO come in?

- Horse meat scandal in Europe (2013):
 - a matter for SPS or TBT Committee, or both?



2. Relevant WTO Rules

Two basic rules for **non-discrimination**:

- (1) Same rights for all club members (“*most-favoured nation*”): no discrimination **among** foreign suppliers of goods and services
- (2) No discrimination of **foreign vs domestic** suppliers (“*national treatment*”)

No rule without exceptions

Of course, there are **exceptions**, and exceptions to the exceptions, and not all countries have the negotiating weight or the same custom duty levels.

But these rules have a **snowball effect** for all Club Members.

Free-riding (on tariffs) is possible – but not if you want to promote your own trade interests.

WTO = Negotiating Policy Space for Market Access

- WTO = increased market access against mutually bound policy space.
- The rules and commitments of and for all
 - limit border protection (tariffs)
 - limit and reduce price and product support
 - limit and reduce export subsidies
- Many problems remain – and protectionism again increases...
- ...but international market shares have gradually shifted towards more competitive exporters.

Are WTO rules enforceable and supreme?

- The one intergovernmental organisation with enforceable rules and disciplines, because trading nations needing market access security accept corresponding constraints.
- Primacy of international trade law? Where is the limit to trade rules when it comes to social, health, agricultural and environmental policies, societal choices and cultural differences between nations?
- Do you have to accept my health standards in your country?

☹️ WTO is NOT a science court – or is it?

What's food safety got to do with trade rules?

- Can WTO tell Chile to produce or import GM food?
- Can the US oblige Chile to patent GM seeds?
- Can the EU refuse to import growth hormone-treated beef?
- Can Chile export mature, symptomless apples to Australia?
- Can the EU refuse to import Chilean salmon with traces of antibiotica?

(1) The Agreement on Sanitary and Phytosanitary Measures (SPS)

Basic principles of the SPS Agreement:

- Measures necessary for the protection of human, animal and plant life and health for legitimate health reasons and pest prevention
- Reference to international standards (Codex, OIE, IPPC)
- Higher standards OK but only with scientific justification (“appropriate level of protection”)

Protection YES, Protectionism NO

SPS Rationale

- Harmonised standards
- Promotion of international trade vs protecting life and health
- Solution: risk assessment and sufficient scientific evidence!
- “Rational relationship“ between the SPS measure and the scientific evidence
- Separate (scientific) risk assessment and (political) risk management

Examples of SPS Measures

- Requiring specific product or process criteria
- Requiring product to come from disease-free area
- Quarantine regulations
- Certification or inspection procedures
- Sampling and testing requirements
- Food safety packaging and labelling requirements
- Limitation on food additives, pesticide residue

SPS-Art. 2 – Rights and obligations

All measures must

- be applied only to extent necessary to protect human, animal, or plant life or health
- be based on scientific evidence, except when Article 5.7 applies (precautionary principle).
- not constitute a disguised restriction on international trade
- Coherence: Must not arbitrarily or unjustifiably discriminate between members where similar conditions apply

Precautionary Principle (Art.5.7 SPS)

Members may provisionally take measures...

- if relevant scientific evidence is insufficient
- on the basis of available information

BUT: Members in so doing shall

- seek to obtain the additional information
- review within a reasonable period of time

(EC – Hormones)

(2) The Agreement on Technical Barriers to Trade (TBT)

Basic Principles

- Non-discrimination
- Harmonisation of standards
- Equivalence and Mutual recognition
- Transparency

Measures

- Mandatory product regulations
- Voluntary product standards
- Conformity assessment procedures

The **Technical Barriers to Trade Agreement (TBT)** tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles. However, the agreement also recognizes countries' rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or **health**, for the protection of the environment or to meet other consumer interests.

Moreover, Members are not prevented from taking measures necessary to ensure their standards are met. But that is counterbalanced with disciplines. A myriad of regulations can be a nightmare for manufacturers and exporters.

Private standards matter!

- ❖ Which disciplines for mandatory standards e.g.
 - labelling of health warnings?
 - certification of organic products?
- ❖ Are private standards a WTO issue e.g.
 - „GMO free“
 - „Swiss quality beef“
 - „Made in Germany“
- ❖ What can you do when a retailer says «no GMO»
 - SPS or TBT, or neither?

3. Sanitary measures: complaints and realities

- Everybody wants to export food products without health policy barriers.
- Non-Tariff Measures maintained by the importing country \neq Non-Tariff Barriers
- But sanitary measures are a convenient way to avoid competition
- Do not expect favourable treatment for developing country products: no real WTO (or any other) provisions to help you.

Food Trade vs. Health Measures

- New forms of protectionism – or „emerging rocks in a receding (tariff) tide“?
- Importance of non-tariff barriers (NTBs) relative to tariffs in agriculture (in particular SPS), and what can be done on NTBs in the future?
- New rules needed – or should we expect more dispute settlement?

Facts and Figures

Sofía Bozo

Evolución de los mecanismos de la OMC en MSF y desarrollo económico

Rodolfo Rivers

Situación regional en inocuidad y calidad alimentaria



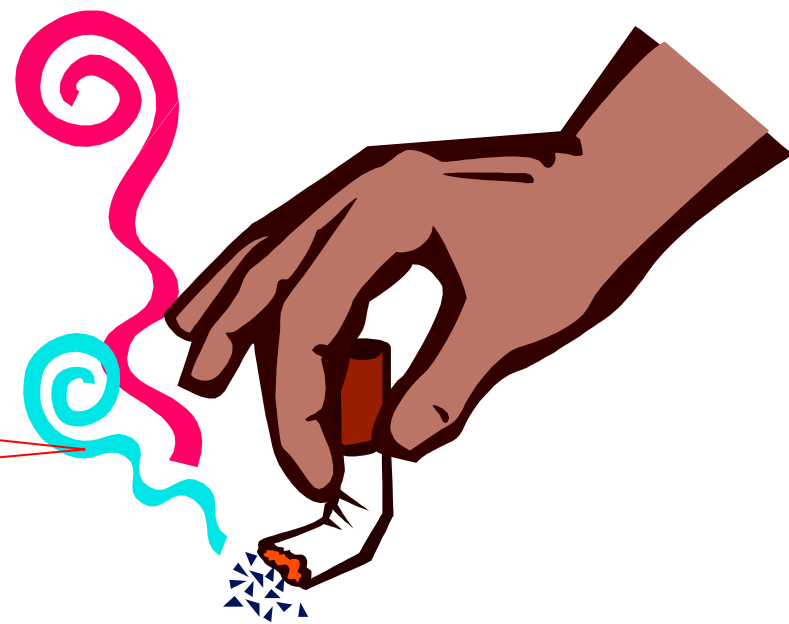
Health protection measures

Cigarette package labelling

signalling health risks

SPS Measure?

No! TBT Measure!



Health protection measures

Regulation requiring that all milk products for sale be from pasteurized milk (imports AND local production)

•TBT Measure?

No! SPS measure!

(from Switzerland, of course)

The World's Best Cheese



Chile and SPS/1

- Chile has shown a particular interest in the use of international standards within the context of the SPS Agreement.
- In March 2012, Chile and other Members presented a joint submission on SPS measures and international standards, guidelines and recommendations. The document raised concerns with the increase in the number of SPS measures that are not based on international standards, guidelines and recommendations or that have inadequate scientific justification.

Chile and SPS/2

- The submission aimed at reconfirming the need: (i) for science-based international guidelines, standards and recommendations; (ii) to support and strengthen confidence in SPS international standard-setting bodies; and (iii) for sanitary and phytosanitary measures which result in a higher level of protection than would be achieved by measures based on the relevant international standards, guidelines and recommendations to be established on the basis of science.

Chile and SPS/3

- Chile ranks among the top ten notifiers of SPS measures to the WTO.
- Chile is also quite active in the area of specific trade concerns (STCs): it has raised eight STCs and supported 22.
- A total of six STCs have been raised concerning measures maintained by Chile.

(Source: G/SPS/GEN/1143/Rev.2 and G/SPS/GEN/804/Rev.4)

4. Dispute Settlement

Ejemplos de casos emblemáticos del
Órgano de Solución de Controversias de
la OMC

1. EC – Biotech
2. EC – Hormones
3. Australia – Apples



EC – Hormones



- After a long and bitter feud, the EU and the US/Canada recently reached a deal whereby the EU, instead of importing beef from cattle raised with growth hormones, would open (additional) “Hilton Beef” quotas for these 2 countries.
- The 2 complainants agreed to definitely withdraw the “retaliation measures” they had been granted after the EU import ban was found incompatible with the SPS Agreement.
- ☺ What does this deal mean for other suppliers (or for a EU – MERCOSUR FTA)? For EU cattle producers? For societal choices?

EC – Biotech

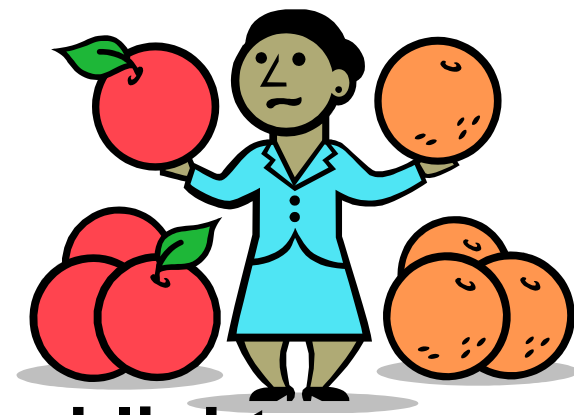


Complainants: Argentina, Canada and USA

EC-Measures on GMO Product Admissions in violation of SPS-
Article 8 and Annex C(1)(a), first clause:

1. There was a **general *de facto* moratorium** (1998-2003)
2. 24 out of 27 **product-specific measures** with „undue delays“ in the approval procedures
3. All 9 **Safeguards** in 6 Member States (A, F, D, GR, IT, LUX) [5.1 and 2.2 SPS] not based on sufficient risk assessments and hence maintained without sufficient scientific evidence.
4. EC has not acted inconsistently with its obligations under other provisions, including Articles 5.1, 5.5, 5.6, 2.2 or 2.3.
 - ▶ *science* was not at stake
 - ▶ *precautionary principle/CBD*: Panel „need not take a position“
 - ☺ what will happen to non-GMO feed in a free trade context?

Australia – Apples

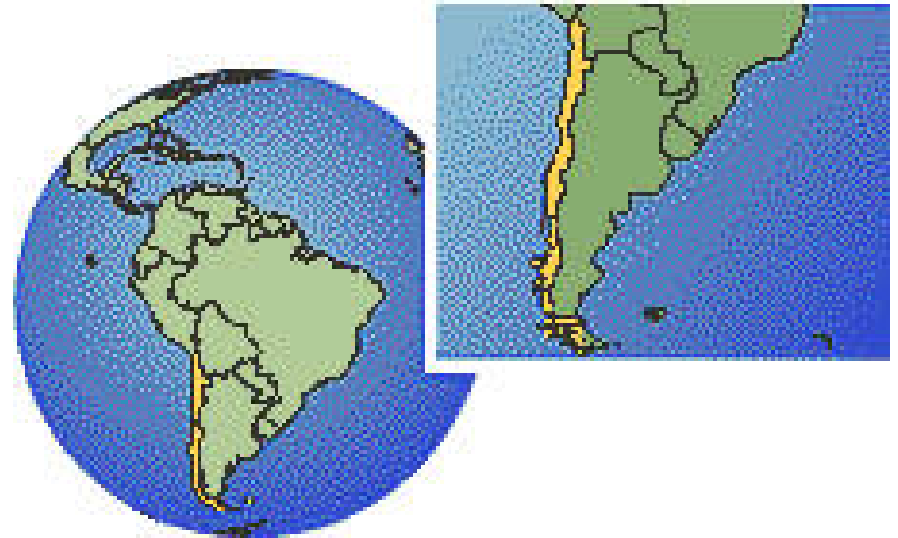


Quarantine measures to prevent fireblight on mature, symptomless apples from New Zealand vs. Australia's obligations under the SPS Agreement

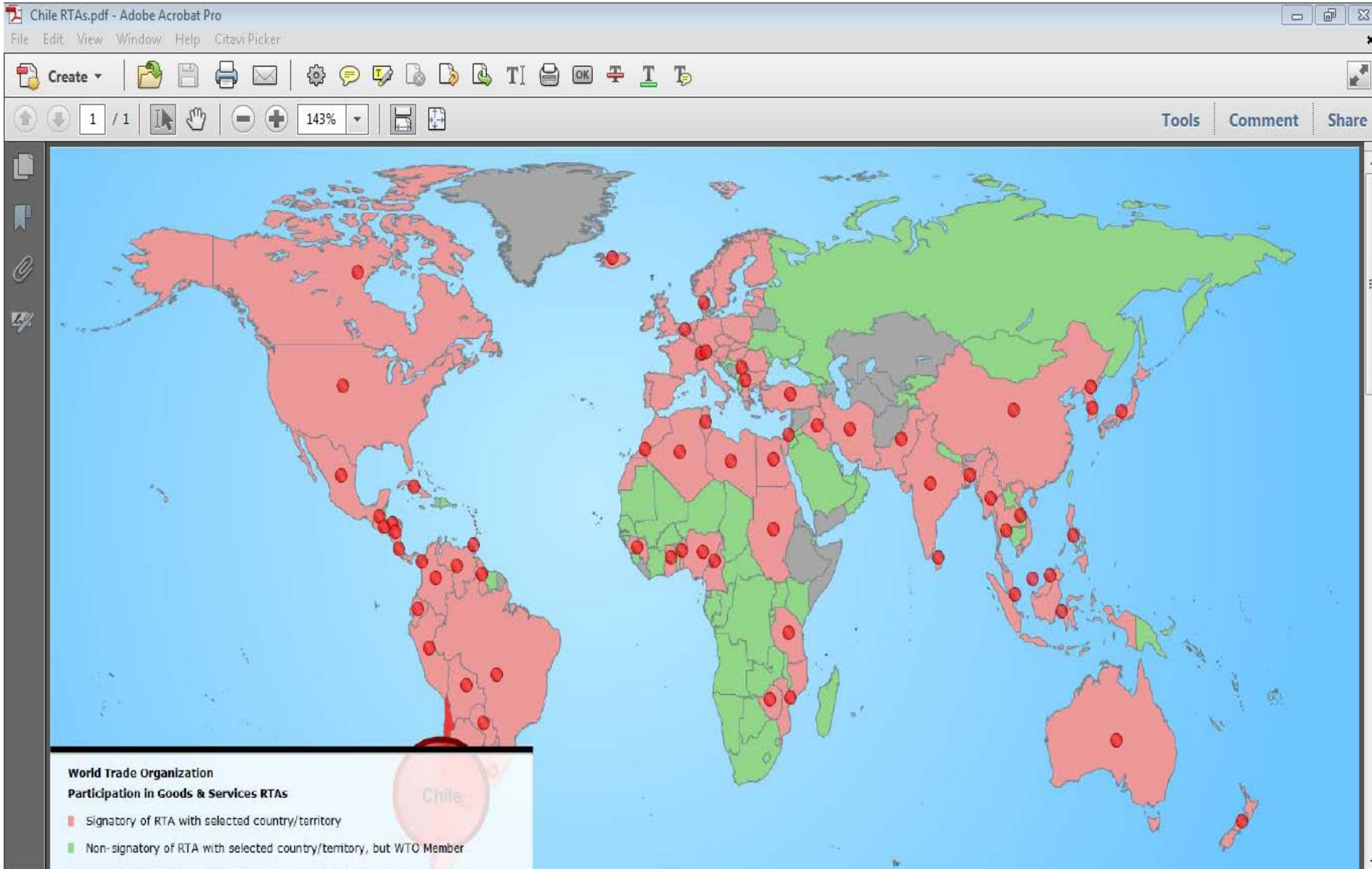
The Appellate Body upheld the panel's finding that the 16 measures at issue constituted SPS measures within the meaning of Annex A(1). The 16 measures were not based on a proper risk assessment and, accordingly, were inconsistent with various articles of the SPS Agreement.

5. RTA efforts for WTO+ solutions

- Chile's RTAs
- FTA US-Chile



Chile's Regional Trade Agreements

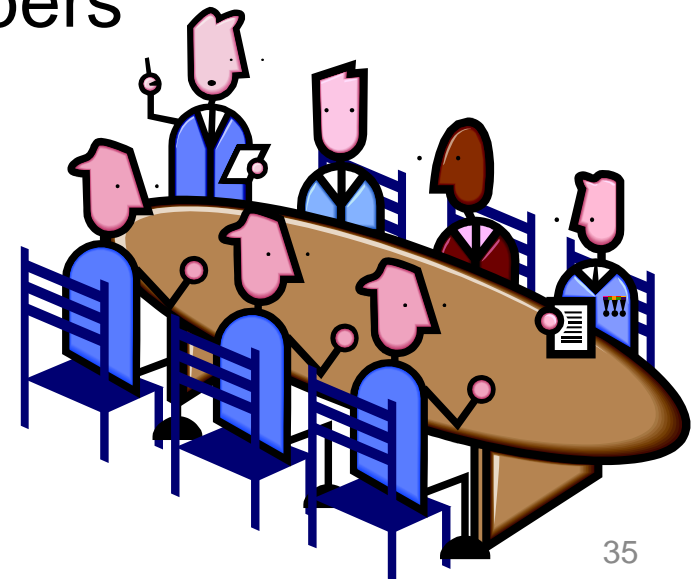


Chile – US Free Trade Agreement

- “The objectives of this Chapter (6) are to protect human, animal, and plant health conditions in the Parties’ territories, **enhance the Parties’ implementation of the SPS Agreement, provide a forum for addressing bilateral sanitary and phytosanitary matters**, resolve trade issues, and thereby expand trade opportunities.” (*Objectives*)
- “Each Party will undertake reasonable efforts, through a transparent and participatory process, **to develop and propose legislation within 4 years from the entry into force of this Agreement that makes available patent protection for plants that are new**, involve an inventive step, and are capable of industrial application.” (*para 17.9*)

Where is the WTO+ for food safety?

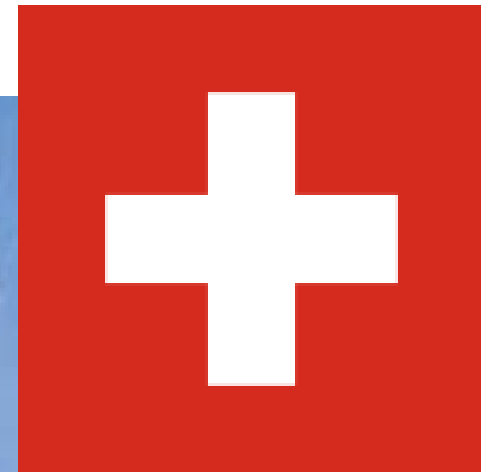
- Procedural advantages (e.g. rapid consultation mechanisms, comitology)
- Few substantive WTO+ obligations
- National Treatment obligation applies to RTAs between WTO Members



6. Tentative Conclusions

- Is there a conflict between health and trade policies?
 - «It depends...»
 - Allegations are more numerous than actual cases
 - Different for risk analysis, management, and communication
 - Arbitration is a political decision to be taken on the basis of qualified scientific advice, extensive stakeholder consultation, and by all Ministries concerned
- ✓ Frankenstein is a bad adviser.

Thank you for your attention!



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