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## U.S. Needs a More Integrated Approach to Address Sanitary/ Phytosanitary Issues



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**National Security and  
International Affairs Division**

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The Honorable Thomas A. Daschle  
Minority Leader  
United States Senate

The Honorable Tom Harkin  
Ranking Minority Member  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The Honorable Patrick J. Leahy  
Ranking Minority Member  
Subcommittee on Research, Nutrition and  
General Legislation  
Committee on Agriculture, Nutrition, and Forestry  
United States Senate

The economic health of the U.S. agricultural sector depends increasingly on its ability to export products to foreign markets. However, certain foreign sanitary and phytosanitary (SPS) measures may prohibit U.S. agricultural products from entering foreign markets and constrain the growth of U.S. agricultural exports. SPS measures are designed to protect human, animal, or plant life or health. For example, a government might require imported plant products to be inspected or treated to prevent the introduction of new pests into the country. Subject to certain conditions, SPS measures are allowed under international trade rules, but the U.S. Trade Representative (USTR) and the U.S. Department of Agriculture (USDA) believe that some foreign SPS measures may in reality be disguised barriers to trade. You expressed concern about U.S. government efforts to address foreign SPS measures that may unfairly restrict U.S. agricultural exports.

New rules regarding the appropriate use of SPS measures in relation to trade, established under the World Trade Organization (WTO)<sup>1</sup> in 1995 and the North American Free Trade Agreement (NAFTA)<sup>2</sup> in 1994, present new

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<sup>1</sup>WTO was established on January 1, 1995, as a result of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), which began in 1986 and ended in 1994. WTO facilitates the implementation, administration, and operation of multiple agreements that govern trade among its member countries. As of September 6, 1997, WTO had 132 member countries.

<sup>2</sup>NAFTA is a multilateral trade agreement that contains obligations to govern trade among Canada, Mexico, and the United States. Negotiations began in June 1991, and the agreement was signed in December 1992. This agreement was supplemented in 1993 by negotiations of side agreements on labor, the environment, and the use of temporary import controls for emergency purposes, called "safeguards." NAFTA entered into force on January 1, 1994.

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challenges to the U.S. government. First, determining whether foreign SPS measures comply with WTO or NAFTA rules requires input from U.S. trade agencies as well as U.S. regulatory agencies with technical and scientific expertise on food-related issues. These regulatory agencies were set up to achieve domestic objectives but now are increasingly expected to be involved in addressing international trade issues. Moreover, U.S. efforts to address foreign SPS measures must take into account U.S. regulatory efforts to ensure the health and safety of domestically produced and imported food and agricultural products. (See Related GAO Products for reports dealing with agricultural trade and food safety issues.)

In response to your request, this report provides information and analysis on (1) the extent to which foreign SPS measures may unfairly restrict U.S. agricultural exports and (2) the federal structure and approach for addressing such measures. As you requested, this report does not address U.S. efforts to ensure domestic food safety or other countries' concerns about U.S. SPS measures.<sup>3</sup>

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## Background

Sanitary and phytosanitary measures encompass many complex technical and scientific issues.<sup>4</sup> Typically applied to both domestically produced and imported goods, SPS measures may be designed to protect

- human or animal life or health from food-borne risks,
- humans from animal- and plant-carried diseases,
- plants and animals from pests or diseases, and
- the territory of a country from the spread of a pest or disease.

To minimize or avoid exposure to risk, SPS measures may address how goods are produced, processed, stored, and/or transported. They may require exporters to certify that their products meet importing-country requirements and may require imported products to be inspected or treated before entering the country. If a government believes that certain products present a high risk that cannot be reduced through risk-mitigation techniques, it may impose SPS measures to ban product

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<sup>3</sup>Several GAO reports address U.S. efforts to ensure domestic food safety, including Agricultural Inspection: Improvements Needed to Minimize Threat of Foreign Pests and Diseases (GAO/RCED-97-102, May 5, 1997) and Food Safety: New Initiatives Would Fundamentally Alter the Existing System (GAO/RCED-96-81, Mar. 27, 1996).

<sup>4</sup>Sanitary measures pertain to human and animal health and safety. Phytosanitary measures pertain to protecting plants from pests and diseases.

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entry altogether.<sup>5</sup> Although SPS measures may result in trade restrictions, governments generally recognize that some of these restrictions are necessary and appropriate in order to protect human, animal, and plant life and health. However, governments may disagree about whether certain SPS measures are necessary and appropriate.

SPS measures are not a new issue in global agricultural trade. The United States has long-standing concerns that some SPS measures, such as European Union (EU)<sup>6</sup> measures on meat imports, Chinese measures on wheat imports, and Japanese measures on apple and tomato imports, are unnecessary and have unfairly restricted U.S. agricultural exports. At the same time, other countries have concerns about U.S. SPS measures that restrict agricultural products entering the United States.

Because of its concerns, the United States played a lead role during negotiations to establish the WTO and NAFTA; these negotiations developed rules and principles to help minimize the adverse impact of SPS measures on trade.<sup>7</sup> The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS agreement) and NAFTA's chapter 7 on Agriculture and Sanitary and Phytosanitary Measures recognize that countries have a right to maintain SPS measures that protect the health and safety of their population and agricultural sector and to determine acceptable levels of risk. However, these agreements stipulate that the application of SPS measures and determination of risk levels should not be arbitrary or constitute disguised restrictions to trade. Therefore, they require SPS measures to be based on scientific principles, including an assessment of relevant risks. (These two agreements are similar, but not identical. App. I contains more information about the WTO SPS agreement.)

In addition to these rules and principles, the WTO and NAFTA also provided dispute settlement procedures to help resolve disagreements between countries about their SPS measures. These procedures include consultations (discussions) and review by a dispute settlement panel.

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<sup>5</sup>Such techniques include inspection or treatment in the exporting country or at the point of entry to the importing country, post-entry treatment or detention in quarantine facilities, or restrictions on the use or distribution of a commodity.

<sup>6</sup>EU member countries include Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden, and the United Kingdom.

<sup>7</sup>The ministerial declaration that launched GATT's Uruguay Round in 1986 stated that "negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines by," among other things, "minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture."

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Before invoking dispute settlement procedures, countries generally try to resolve their disagreements through more informal means.

Although the SPS agreement and NAFTA have established certain standards for the application of SPS measures, disagreements between countries about these measures often involve complex issues not specifically addressed by the texts of the agreements. First, the agreements require measures to be based on scientific principles, but scientific research on certain topics may not exist or existing research may be inconclusive. For example, the lack of sufficient research on certain poultry diseases affects U.S. exports of poultry meat to Australia.<sup>8</sup> Second, the SPS agreement and NAFTA require measures to be based on an assessment of risk, but governments may have different risk tolerances or may disagree about how to ensure certain minimal levels of risk. Such a disagreement exists between the United States and China concerning wheat imports.<sup>9</sup> Finally, because of domestic pressures or larger outstanding trade or political issues, governments may be unwilling or unable to change their SPS measures. An EU ban in place since the mid-1980s that prohibits importing meat treated with growth-promoting hormones<sup>10</sup> appears to be linked, in part, to such issues.<sup>11</sup>

Moreover, in attempting to resolve such concerns, the U.S. government may not fully understand a foreign government's reasons for establishing a measure and therefore may have difficulty determining what strategy will be most effective to resolve the issue or assessing whether its efforts are having any impact. If additional research is required, such research can be

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<sup>8</sup>According to USDA officials, the United States needs to determine whether research exists or conduct new research to attempt to refute Australian concerns that avian influenza, a disease that affects poultry, can be transmitted through poultry meat. Because of these concerns, the United States has been unable to export poultry meat to Australia.

<sup>9</sup>China has a stated ban on U.S. wheat exports that contain the *tilletia controversa kuhn* (TCK) fungus, arguing that for food security reasons it cannot be exposed to any risk that might reduce its wheat production. The U.S. government has argued, based on research about the fungus, that China does not have the right climatic conditions for the fungus to become established and, therefore, U.S. wheat exports that are found to contain the fungus do not present a risk to China. China is not a WTO member, but has applied to join. See page 11 and appendix III for more details.

<sup>10</sup>Until November 1, 1993, the EU was known as the European Community. The hormone ban was established under the European Community by the European Commission, which was the executive branch of the European Community and continues to exist under the EU. For ease of reference, we refer to the hormone ban throughout this report as an EU measure.

<sup>11</sup>According to a January 1996 press report, even though scientific evidence demonstrated that the use of growth-promoting hormones in livestock did not present a human health risk, EU agriculture ministers were opposed to lifting the ban because of strong consumer opposition to hormone use. See "U.S. Plans to Launch WTO Challenge of EU Hormone Ban Today," Inside U.S. Trade (Jan. 26, 1996). See page 11 and appendix III for more details.

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time consuming to complete. Finally, the government must work closely with industry officials to determine whether they are willing to perform any risk-mitigation techniques that the foreign government may request. In some cases, although the government may not believe such techniques are necessary, industry officials may be willing to perform risk mitigation in order to gain access to a new market. Because of such issues, addressing and seeking resolution to foreign SPS measures can be a long and complex process that requires substantial negotiation between the United States and foreign governments.

The United States has had long-standing concerns about several foreign SPS measures that the new WTO rules on SPS measures have helped resolve. For example, on June 30, 1997, a WTO dispute settlement panel requested by the United States found that the EU hormone ban does not conform with a number of provisions in the WTO SPS agreement. While this represents a significant achievement for the United States, the matter is not yet resolved because the EU has filed an appeal regarding the decision. Examples of other key SPS issues that were resolved in 1997 include a Japanese ban on U.S. tomato imports, EU acceptance of most U.S. meat inspection procedures, long-standing Chinese bans on U.S. grape and sweet cherry imports, Chilean measures on wheat and several types of fruit, and Mexican measures on sweet cherry imports.<sup>12</sup> Examples of prominent measures that were resolved in 1996 and 1995, respectively, include Russian measures on poultry imports and Korean shelf-life standards. However, in spite of these successes, many other SPS measures remain unresolved, and new problems involving SPS measures continually surface.

Federal efforts to resolve issues related to foreign SPS measures coincide with new expectations that the management of federal programs will increasingly focus on results. Specifically, the Government Performance and Results Act of 1993 (the Results Act) seeks to improve federal program management by requiring federal agencies to set goals for program performance and to measure the results of their efforts.<sup>13</sup> The Results Act envisions that when multiple federal agencies share responsibility for addressing cross-cutting issues, as is true for SPS measures, programs should be closely coordinated to ensure that goals are consistent, and, as appropriate, mutually reinforcing.

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<sup>12</sup>As discussed in footnote 9, China is not a WTO member but has applied to join and would be expected to comply with WTO provisions on SPS measures upon being granted membership.

<sup>13</sup>P.L. 103-62 (Aug. 3, 1993).

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## Results in Brief

Despite growing concern that certain foreign sanitary or phytosanitary measures may be inconsistent with World Trade Organization provisions and may unfairly impede the flow of agricultural trade, the U.S. government is not well positioned to address this issue. Agricultural trade associations and key government officials have identified such measures as an increasingly important issue in agricultural trade. However, the U.S. Trade Representative and the U.S. Department of Agriculture have had difficulty defining the nature and scope of the problem that foreign sanitary and phytosanitary measures present for U.S. exports, partly because of the complex nature of the issue but for other reasons as well. For example, they lack complete information on the number of measures that affect U.S. exports, they are unsure how many measures that have been identified may be inconsistent with World Trade Organization provisions, and they do not have reliable estimates of the impact such measures have had on exports. The best available data indicated that, in June 1996, U.S. agricultural exports faced several hundred measures in 63 countries whose impact on the value of trade was potentially extensive. These data, as well as the experiences of U.S. government and industry officials and our review of six foreign measures, indicate that foreign sanitary and phytosanitary measures affect the exports of a broad range of commodities, result in a variety of trade effects, and may create additional costs for the U.S. industry and government.

The U.S. government approach for addressing foreign sanitary and phytosanitary measures has been evolving in the 2 years since World Trade Organization provisions on such measures took effect. However, the current approach exhibits certain weaknesses. The federal structure for addressing foreign sanitary and phytosanitary measures is complex. At least 12 federal trade, regulatory, and research entities have some responsibility for addressing such measures, but no one entity is directing and coordinating overall federal efforts. Some entities' roles and responsibilities regarding sanitary and phytosanitary measures are not clearly defined, and these entities have had difficulty coordinating their activities. Federal entities lack comprehensive data on which sanitary and phytosanitary measures are being addressed or what progress has been made to address them. They have not developed a process to jointly evaluate measures and determine which ones the government should address, and in what order. Once the government decides to challenge a measure, multiple entities with conflicting viewpoints have made it difficult to develop a unified approach to address measures and decide which cases should be referred to the World Trade Organization (or, in cases involving Canada or Mexico, possibly initiated under the North



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American Free Trade Agreement) for dispute resolution. Finally, coordinated goals, objectives, and performance measurements related to federal efforts to address sanitary and phytosanitary measures do not yet exist.

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## Foreign SPS Measures Are Regarded as an Important Trade Issue, but the Problem Is Not Clearly Defined

Agricultural trade associations and government agencies responsible for promoting agricultural trade regard foreign SPS measures as an important trade issue. Private sector and government officials are concerned that such measures may be used inappropriately to restrict the growth of U.S. agricultural exports. While the government does not know the full scope of the problem, available data indicate that foreign SPS measures affect a broad range of U.S. processed product, meat, poultry, fruit, vegetable, and grain exports. Such measures have disrupted ongoing trade or prevented U.S. products from entering new markets.

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## Agricultural Industry and U.S. Government Have Identified Foreign SPS Measures as a Prominent Agricultural Trade Issue

Many agricultural trade association and U.S. government officials have identified foreign SPS measures as a prominent trade issue. Some U.S. and industry officials attributed this prominence to an increase in the number of SPS measures that appear to affect U.S. exports, while others attributed it to increased visibility of such measures following recent trade agreements. The WTO and NAFTA addressed certain types of policies that have traditionally restricted trade in agricultural products, such as high tariffs and quotas.<sup>14</sup> However, several industry and government officials expressed concern that other countries may be increasing their use of SPS measures as a way to compensate for these required reductions in tariffs and quotas and to continue protecting their markets from imports.

We discussed SPS issues with representatives from 19 agricultural trade associations that represent commodities such as meat, poultry, fruits, vegetables, and wheat. Most of the associations regarded foreign SPS measures as an important and growing issue for U.S. agricultural exports, and several representatives told us they consider such measures to be their association's primary trade concern. These officials provided examples of foreign SPS measures that they believe are inconsistent with WTO provisions and have disrupted their exports to certain markets or

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<sup>14</sup>The WTO Agreement on Agriculture required member countries to convert nontariff barriers (such as quotas and import licenses) to tariffs, reduce the level of tariffs and subsidies, and offer new market access opportunities. These requirements are discussed in *The General Agreement on Tariffs and Trade: Uruguay Round Final Act Should Produce Overall U.S. Economic Gains* (GAO/GGD-94-83a and 83b, July 29, 1994). NAFTA required the gradual removal of tariffs on agricultural products. See *North American Free Trade Agreement: Assessment of Major Issues* (GAO/GGD-93-137a and 137b, Sept. 9, 1993).

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caused them to decrease, created additional costs for their producers, or prevented their exports from entering new markets.

Some U.S. government agencies have also become concerned about the potentially negative impact of foreign SPS measures on U.S. exports. USTR and the Secretary of Agriculture have both identified foreign SPS measures that they believe are inconsistent with WTO rules as key barriers to exports of U.S. agricultural products.<sup>15</sup> Several USDA officials estimated that the number of complaints and the percentage of time they or their staff spend addressing them have increased substantially over the last few years. For example, the Special Assistant for International Trade to the Secretary of Agriculture told us that while he is supposed to handle all agricultural trade issues, his agenda has been dominated by the proliferation of SPS issues. USTR and the Secretary of Agriculture have established the removal of such barriers as a primary objective of their trade agenda to increase U.S. agricultural exports. Total agricultural exports were just over \$60 billion in 1996.

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## Defining the Problem Has Been Difficult

Although USTR and USDA are concerned about foreign SPS measures, they have been unable to precisely define the problem that such measures present for U.S. exports, for several reasons. First, USTR and USDA do not know the number of foreign measures that currently affect U.S. exports, in part because the number changes frequently as new complaints surface and old complaints are resolved. Nevertheless, USTR and USDA have both developed information that indicates that foreign SPS measures that have an actual or apparent adverse affect on U.S. exports exist in many countries and apply to a broad range of U.S. agricultural commodities.

USTR's 1996 annual report on foreign trade barriers contained information about SPS measures in 26 of the 46 countries or regions it reviewed.<sup>16</sup> In early 1996, USDA attempted to develop a more comprehensive definition of the problem. It surveyed (1) Foreign Agricultural Service (FAS) attachés posted overseas that collectively covered 132 countries that accounted for 98 percent of the 1996 U.S. export market for agricultural, forestry, and fisheries products; and (2) representatives of agricultural producer groups. It asked the FAS attachés and producer groups to identify foreign technical barriers to trade that, among other things, appeared to violate one or more

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<sup>15</sup>Statement by Dan Glickman, Secretary of Agriculture, before the House of Representatives, Committee on Agriculture (Mar. 18, 1997). Statement of Ambassador Charlene Barshefsky, before the Senate Finance Committee (Jan. 29, 1997).

<sup>16</sup>1996 National Trade Estimate Report on Foreign Trade Barriers, USTR (Washington, D.C.: 1996).

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provisions of recent trade agreements.<sup>17</sup> As of June 1996, USDA had developed a list of 315 technical barriers to agricultural trade in 63 countries, over 90 percent of which were SPS measures.<sup>18</sup> One USDA official observed that measures were frequently identified in countries that were among the top importers of U.S. agricultural products in 1996.

While the USTR and USDA data provide some sense of the problem, they do not accurately measure its size. The USDA survey is the best available definition of the problem; it represents a “snapshot” of foreign SPS measures that had been identified as of June 1996 and, therefore, does not reflect information about measures that have been resolved or measures that have emerged after that time. An FAS official told us that, in mid-1997, responsible USDA agencies began to update the survey data on a quarterly basis by adding newly identified measures and deleting resolved measures. USDA officials said that, despite its limitations, the survey has helped them better understand the nature and extent of foreign SPS measures.

The second reason that USTR and USDA have had difficulty defining the size of the problem that foreign SPS measures present is because they do not know, of the measures they have identified, how many may be inconsistent with WTO provisions regarding SPS measures. For example, USDA officials said some of the SPS measures identified in the 1996 survey could be legitimate, appropriate measures that the United States should not contest. USTR and USDA officials said that considerable scientific research, testing, and exchange of information is often necessary before the United States can make conclusive determinations about whether or not a foreign measure complies with the WTO SPS agreement. These officials said this process generally takes considerable time.

Third, USTR and USDA do not know how the SPS measures they have identified impact the value of trade, in part because such estimates are inherently difficult to develop. USDA unofficially estimated that the 315 measures identified in the 1996 survey threatened, constrained, or blocked almost \$5 billion of U.S. agricultural exports at the time the survey was conducted. However, some USDA officials told us they question

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<sup>17</sup>The measures had to meet three criteria. First, they had to be recently proposed or currently enforced by foreign government officials. Second, they had to decrease or potentially decrease U.S. exports. Third, they had to appear to be in violation of one or more disciplines of the new trade agreements (for example, the WTO and NAFTA), although the determination of actual violation of any given measure would require substantial additional investigation.

<sup>18</sup>Several USDA agencies participated in developing the survey and analyzing its results. Therefore, we refer to the survey as a USDA effort, although a published report that discusses the survey and its results states that it does not reflect the official USDA position. See *Overview of Foreign Technical Barriers to U.S. Agricultural Exports*, Economic Research Service Staff Paper, Commercial Agriculture Division, Economic Research Service (Washington, D.C.: USDA, Mar. 1997).

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the accuracy of the estimate for several reasons. For example, USDA officials said it is difficult to predict whether an SPS measure would affect all exports of a given commodity or only selected exports of the commodity. Also, in cases where a U.S. commodity does not yet have access to a market, estimates of the market's potential size were based on U.S. exports to a similar market, which may not be accurate. USDA officials also told us the estimates were not derived from empirical trade models and therefore should be regarded only as an order-of-magnitude indication of the significance of foreign SPS measures to U.S. exports.

Without better data, particularly regarding the number of measures that affect U.S. exports and more reliable estimates of their impact on trade, USTR and USDA are unable to determine the size of the problem or whether the problem is growing. They are also unable to evaluate how their efforts have affected the size of the problem and the value of trade.

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## Foreign SPS Measures Appear to Have a Broad and Diverse Effect on Trade

Foreign SPS measures appear to affect a wide range of agricultural products, involve various health and safety issues, and result in multiple trade effects or additional costs. According to USDA and industry officials, the foreign SPS measures they have identified affect numerous commodities, including processed products, grains, oilseeds, animal products, fruits, vegetables, cotton, seeds, nuts, fish, and forestry products. A large portion of the foreign SPS measures identified involve plant health issues, while others involve food safety or animal health issues.

According to U.S. government and industry officials, the way in which foreign SPS measures affect U.S. exports also varies. These measures have threatened or constrained trade to existing markets or prevented U.S. exports from entering new markets. Some measures constrain trade by requiring products to be treated or inspected before entering markets, which may damage the quality and marketability of certain perishable products. Some commodities, such as fruits and vegetables, appear to face a large number of measures while others, such as wheat, appear to face a limited number of measures. USDA and industry officials have estimated that some measures affect several hundred million dollars of trade, while other measures affect \$1 million or less.

We reviewed six foreign SPS measures that have affected or continue to affect U.S. agricultural exports. These measures impacted various commodities, involved various issues, and were estimated to have a range

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of impacts on the value of trade (additional information about these measures and federal efforts to address them are contained in app. III). Of these six measures, one was determined to be inconsistent with WTO provisions regarding SPS measures by a WTO dispute settlement panel (the EU ban on growth-promoting hormones). USDA officials told us that four others may also be inconsistent with these provisions and stated their belief that the measures lacked a scientific basis.<sup>19</sup>

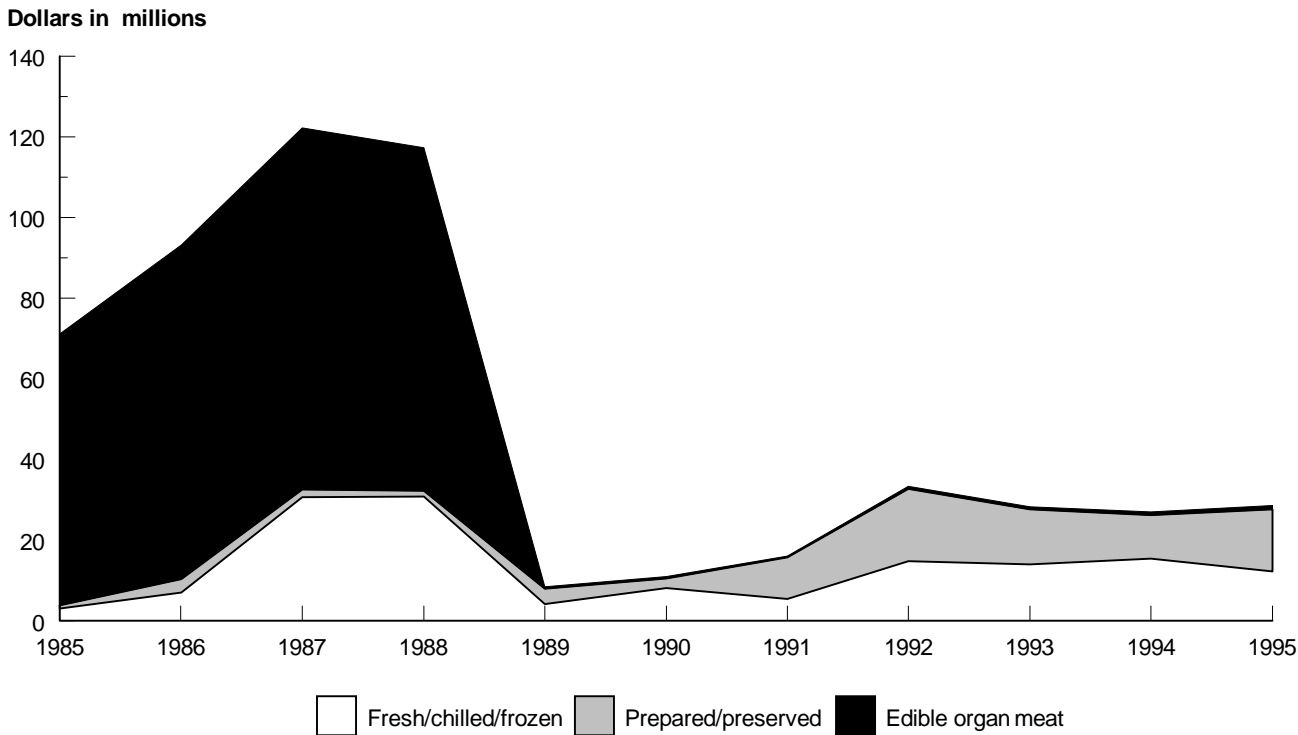
- Since 1974, China has banned wheat shipped from U.S. states in the Pacific Northwest, an area where the TCK fungus is known to occur.<sup>20</sup> China has continued to import wheat shipped from other U.S. ports, but if it detects TCK in these shipments, China requires the price to be discounted and, on a few occasions, has refused to accept such shipments. The impact of the ban on U.S. wheat exports has not been quantified.
- In anticipation of the 1989 implementation of the EU ban on growth-promoting hormones in livestock production, U.S. beef and veal exports to the EU dropped about 93 percent in 1 year, from about \$117 million in 1988 to about \$9 million in 1989, and have recovered little since then (see fig. 1). In June 1997, a WTO dispute settlement panel found the measure to be inconsistent with the SPS agreement. The EU has appealed this decision.

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<sup>19</sup>The four measures include those of China, Japan, Korea, and Russia that we reviewed. Although China and Russia are not WTO members, both have applied to join WTO and would be required to comply with its SPS provisions upon becoming members. Therefore the United States cites WTO provisions in its negotiations on SPS issues with China and Russia.

<sup>20</sup>According to USDA's Agricultural Research Service, the TCK fungus reduces plant height.

Figure 1: U.S. Beef and Veal Exports to the EU, Calendar Years 1985-95



Note: Edible organ meat includes only products destined for human consumption.

Source: USDA.

- Since as early as 1983, Japan blocked U.S. tomato exports over concerns that U.S. tomatoes might carry tobacco blue mold (TBM). After USDA conducted 4 years of research to demonstrate that tomatoes were not a host for TBM, Japan lifted the ban on 25 varieties of tomatoes in April 1997. An industry association estimates U.S. tomato exports to Japan could reach \$50 million annually.
- In 1994, a sudden and unexpected change in Korean shelf-life standards blocked the entry of more than \$1 million worth of perishable U.S. sausage products that had already arrived in Korean ports. According to USTR, had these and other Korean shelf-life measures not been revised following WTO

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consultations, they could have affected as much as \$1 billion in annual U.S. exports by 1999.

- Since 1992, Mexico has required U.S. peach and nectarine exports to be treated and inspected before entering Mexico to protect that country from the Oriental fruit moth, a pest that is known to occur in the United States. USDA officials said the quantity of U.S. peach and nectarine exports to Mexico, measured in terms of metric tons, dropped by about 40 percent from 1991 to 1996.
- In 1996, Russia imposed a brief ban on U.S. poultry exports because of concerns about food safety and poultry disease issues. The ban was in effect for about 1 week before the United States and Russia resolved the issue. The ban did not actually cause U.S. exports to drop, but it appeared to threaten the poultry industry's largest export market, worth over \$900 million in 1996.

SPS measures can result in a variety of costs to the agricultural industry and to the government. In addition to the costs associated with a partial or complete loss of sales, industry officials told us that addressing apparently unfair SPS measures or reaching agreement with foreign officials to enable U.S. exports to begin or continue may result in other costs. In several of the six cases we reviewed, industry groups or private companies incurred additional costs for research, treatment, or inspection. For example, when Russian officials said they wanted to inspect the nearly 300 U.S. poultry processing facilities that export poultry to Russia, these processing facilities paid for Russian officials' travel expenses. Several of the six cases also resulted in additional costs to the U.S. government for such things as research, official travel, or translator services.

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## Evolving U.S. Approach for Addressing SPS Measures Is Not Integrated or Systematic

WTO rules regarding SPS measures have been in place for less than 2 years, and the U.S. approach for addressing SPS measures that restrict U.S. exports is evolving. However, the current approach is not integrated or systematic and exhibits several weaknesses. The approach is based on a complex structure of multiple trade and regulatory entities, but no one entity leads overall federal efforts. In addition, some entities' roles and responsibilities are unclear, and their efforts have not been adequately coordinated. The process by which measures are addressed lacks comprehensive data and guidance for making key decisions, including what measures the United States should address and what steps it should take to address them. Moreover, although federal agencies are increasingly expected to set goals for program performance and coordinate efforts related to cross-cutting programs, as envisioned by the Results Act, the

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federal government lacks coordinated goals, objectives, and performance measurements for addressing foreign SPS measures.

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### Federal Structure Is Complex and Lacks Integration

The federal structure for addressing foreign SPS measures is complex. At least 12 federal entities have some responsibility for identifying and evaluating SPS measures and attempting to resolve bilateral disagreements about measures that appear to be inconsistent with the WTO. No single entity directs and coordinates the entire scope of federal efforts, and the roles and responsibilities of some entities are not clearly defined. Entities' work loads related to addressing SPS measures vary, as do the resources each entity has allocated to this activity. Concerns exist about insufficient resource allocations in some entities. Concerns also exist that the complex structure contributes to a lack of integration and coordination among responsible entities.

### Multiple Federal Entities Are Involved

Of the multiple entities involved in addressing foreign SPS measures, USTR has the broadest responsibility. USTR has statutory responsibility for developing and coordinating the implementation of U.S. international trade policy, monitoring the implementation of trade agreements reached with foreign governments, and enforcing U.S. rights under those agreements.<sup>21</sup> It is also responsible for issuing and coordinating policy guidance to Departments and agencies on WTO-related matters.<sup>22</sup>

Eight USDA entities have collective responsibility for addressing issues related to foreign SPS measures. In addition, the Special Assistant for International Trade to the Secretary of Agriculture has been given a prominent role in addressing SPS measures and coordinating USDA's efforts in this area. As USDA's trade agency, FAS carries out USDA's statutory responsibility for identifying foreign SPS measures that adversely impact U.S. exports and providing relevant information about them to USTR.<sup>23</sup> In addition, FAS participates in negotiations to address such measures and is expected to coordinate its efforts with other USDA agencies and work closely with USTR. USDA has several regulatory<sup>24</sup> entities, including the Animal and Plant Health Inspection Service; Food Safety and Inspection

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<sup>21</sup>Trade Act of 1974, as amended, 19 U.S.C. 2411-2420.

<sup>22</sup>Trade Act of 1974, as amended, 19 U.S.C. 2171(c)(1)(D).

<sup>23</sup>Agricultural Trade Act of 1978, as amended, 7 U.S.C. 5674(c).

<sup>24</sup>For ease of reference, we refer to USDA's Agricultural Marketing Service; Animal and Plant Health Inspection Service; Food Safety and Inspection Service; and Grain Inspection, Packers and Stockyards Administration as regulatory entities, even though the scope of each entity's regulatory authority differs.



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Service; and Grain Inspection, Packers and Stockyards Administration, that have domestic food-related responsibilities and, therefore, are responsible for participating in negotiations to address the technical aspects of foreign SPS measures and evaluating how U.S. trade positions may affect U.S. SPS measures. In addition, USDA's Agricultural Marketing Service plays a limited technical role because it addresses certain product quality issues which, while not considered SPS issues, are nonetheless related.<sup>25</sup> In addition, scientific and economic research is performed primarily by USDA's Agricultural Research Service and Economic Research Service. Finally, legal counsel and assistance is provided by USDA's Office of the General Counsel.

In addition to USTR and USDA, other federal entities help address SPS measures. Federal regulatory authorities with domestic food-related responsibilities have the needed technical expertise for addressing foreign SPS measures and evaluating how U.S. trade positions affect U.S. SPS measures; these include the Department of Health and Human Service's Food and Drug Administration (FDA) and the Environmental Protection Agency (EPA). The Department of State is responsible for facilitating communication with foreign government officials; it also participates in certain bilateral negotiations on SPS issues and contributes to the overall U.S. government policy-making process on SPS issues. Industry groups also play a major role in helping the U.S. government identify foreign SPS measures that affect their actual or potential exports, supporting research on technical issues and advising on strategies to address SPS measures.

Overlapping or closely related areas of responsibility among these federal entities can make it difficult to determine which agency should lead federal efforts to address certain SPS measures. For example, USTR and FAS both perform SPS-related activities and have responsibility for monitoring and addressing agricultural trade issues. Overlap also exists within FAS, where some divisions address trade from a commodity perspective and others address trade from a geographic perspective. Food-related responsibilities among the regulatory entities are closely related (see table 1).

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<sup>25</sup>For all products (including agricultural and industrial products), technical regulations and standards imposed by a country, such as those related to product characteristics or related processes and production methods, are subject to the provisions of the WTO Agreement on Technical Barriers to Trade.

**Table 1: Primary Food-related Responsibilities of Selected U.S. Regulatory Entities**

U.S. entity	Primary food-related responsibility	Products covered
<b>USDA</b>		
AMS	Certifies the quality of a broad range of products through grading and inspection services. Regulates the marketing of products under federal marketing orders. <sup>a</sup>	Wide range of products except grains and seafood (primarily quality)
APHIS	Protects U.S. animal and plant resources from pests and diseases.	Live animals, some animal products, and all plant products
FSIS	Ensures that the U.S. supply of meat, poultry, and some egg products is safe and wholesome.	Meat, poultry, and some egg products
GIPSA	Grades the quality of grain products.	Grains (quality and some diseases)
<b>FDA</b>	Regulates food safety and labeling (except meat, poultry, and some egg products), use of animal drugs including setting and enforcing limits for animal drug residues in food, and animal feed and pet food.	All food (except meat, poultry, and some egg products), animal feed, pet food, animal drugs, food and color additives, food labeling
<b>EPA</b>	Regulates the use of pesticides in the United States. Establishes tolerance levels for pesticide residues in or on food.	Any products affected by pesticides (FDA and FSIS enforce EPA pesticide tolerances)

Legend

AMS = Agricultural Marketing Service.

APHIS = Animal and Plant Health Inspection Service.

FSIS = Food Safety and Inspection Service.

GIPSA = Grain Inspection, Packers and Stockyards Administration.

<sup>a</sup>Marketing orders authorize the Secretary of Agriculture to regulate the marketing of fruits, vegetables, specialty crops, and milk. Depending on the commodity, marketing orders may address product size, grade, quality, maturity, quantity, distribution, packaging, or producer prices. Industry members enter the programs voluntarily and choose to have federal oversight of certain aspects of their operations.

Because of their areas of responsibility, several federal entities may be involved in addressing a foreign SPS measure. For example, the EU ban on growth-promoting hormones has been addressed by USTR, USDA (FAS and the Food Safety and Inspection Service), and FDA. The ban involved technical issues, some of which were under FDA's jurisdiction (the use of drugs in animals) and others of which were under the Food Safety and Inspection Service's jurisdiction (the sale of meat from animals). As

discussed later, we found that in certain instances the involvement of multiple entities has caused coordination and communication problems. However, officials from the various trade and regulatory entities stated that the participation of multiple entities is not inherently problematic because each entity brings its own expertise to an issue.

### No Entity Directs All Federal Efforts

No single federal entity is currently directing and coordinating the entire scope of federal efforts undertaken to address SPS measures. During our review, several U.S. government and industry officials expressed concerns that the federal structure for addressing SPS measures lacked clear leadership and caused various undesirable effects, including independent and separate agendas among responsible entities, difficulty making decisions and tracking federal efforts, and uncoordinated activities. The Secretary of Agriculture's Special Assistant for International Trade was particularly concerned about the difficulty overcoming organizational boundaries among USDA agencies. Several industry representatives said the federal structure made it difficult to know which federal entity should be contacted to report a given problem, how the information the industry provided would be shared among federal entities, or what actions federal entities would take in response to the problem.

Certain mechanisms exist at USTR and USDA through which portions of the federal response are directed and coordinated. However, none of the mechanisms is comprehensive enough to include all responsible federal entities and manage all federal efforts to address SPS measures. As a result, substantial coordination among these mechanisms and responsible federal entities is still necessary.

One coordination mechanism is led by USTR. USTR created the position of Director for SPS Affairs within its Office of WTO and Multilateral Affairs in the fall of 1996 to work closely with other federal entities responsible for addressing SPS measures. At that time, the Director for SPS Affairs began to more actively use the mechanism established for formal interagency trade policy coordination—the Trade Policy Staff Committee (TPSC)—to establish the U.S. position and approach for addressing certain foreign SPS measures.<sup>26</sup> However, TPSC discussions have focused primarily on determining which individual SPS measures the U.S. government should

<sup>26</sup>The TPSC is one of two subcabinet interagency trade policy coordination groups that USTR leads and administers. The TPSC is a staff level group, while the Trade Policy Review Group is comprised of deputy or undersecretaries. Membership includes the Departments of Commerce, Agriculture, State, the Treasury, Labor, Justice, Defense, the Interior, Transportation, Energy, and Health and Human Services; EPA; the Office of Management and Budget; the Council of Economic Advisers; the International Development Cooperation Agency; the National Economic Council; and the National Security Council.

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raise for discussion in meetings of the WTO SPS committee. Neither USTR, because of its limited resources, nor the TPSC addresses all SPS measures that concern the U.S. government.

A second coordination mechanism was recently implemented at USDA. Although the bulk of federal efforts to address foreign SPS measures occurs at USDA, neither any of the eight USDA agencies nor the Secretary of Agriculture's Special Assistant for International Trade has responsibility for directing and prioritizing overall USDA efforts to address SPS measures or allocating resources. We discussed this situation several times with the Special Assistant during the course of our review. In October 1997, the Secretary of Agriculture announced the formation of a Working Group on Agricultural Trade Policy to address SPS and other trade issues. The working group, which will be led by the Special Assistant and comprised of the heads of several USDA agencies, is to coordinate USDA efforts on agricultural trade issues and provide direction regarding the allocation of resources and establishment of priorities. However, because the group's primary purpose is to improve coordination within USDA on trade issues, participation is to be limited to USDA agencies. The group is to serve as USDA's point of reference for coordination on trade policy issues with other federal agencies.

A group of industry associations representing various commodities has suggested that the federal structure and approach for addressing SPS measures could be improved with the creation of a single office that would be responsible for receiving complaints about SPS measures, coordinating U.S. government activities to address the measure, and communicating with the industry.

Some Roles and Responsibilities Not Clearly Defined

Absent overall leadership of federal efforts, some federal entities' specific roles in addressing individual measures as well as their overall responsibility for addressing trade issues have not been clearly defined. Although USTR is statutorily responsible for coordinating U.S. trade policy, USTR and USDA officials told us that initial federal efforts to address SPS measures are often handled by another federal entity, such as FAS or one of the regulatory entities. However, it may be difficult to determine which of these entities should lead initial federal efforts to address an individual SPS measure because their areas of responsibility overlap or are closely related. In discussing federal efforts to address individual SPS measures with responsible officials, we sometimes found examples of a lack of clarity about which entity was considered to be leading federal efforts or disagreement about which entity should be leading federal efforts. For

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example, it was not clear whether USTR or USDA was leading federal efforts to address the Chinese ban on U.S. wheat imports found to contain TCK, and there were differences of opinion about whether the U.S. strategy should focus on technical issues or trade policy.

USTR, FAS, the Animal and Plant Health Inspection Service, and the Food Safety and Inspection Service have all had leadership roles in addressing certain SPS measures and have all supported each other's leadership in addressing other measures. FDA and EPA officials told us they have generally not led federal efforts to address individual SPS measures but have instead supported such efforts by providing important technical expertise. (As discussed in app. II, FDA has a lead role in other SPS-related activities that were not the focus of this report.) The Agricultural Research Service, the Economic Research Service, and State have also played primarily support roles.

In addition to the lack of clarity about leadership roles to address individual SPS measures, several U.S. and industry officials expressed concern about various entities' overall responsibility for, and commitment to, addressing trade issues. For example, several industry officials expressed concern that USTR has not taken a sufficiently active role in addressing foreign SPS measures. While USTR is the only federal entity that can initiate WTO dispute settlement cases, some industry officials said USTR has appeared reluctant to do so regarding certain SPS measures. USTR officials said they will pursue dispute settlement in all SPS cases that have merit, but said that dispute settlement may not be the only way to resolve a problem. They also said industry groups are sometimes uncomfortable elevating their complaints to such a formal level. Some industry officials also said USTR has appeared reluctant to play a role during bilateral negotiations on certain SPS measures, prior to seeking dispute settlement within the WTO or NAFTA. USTR officials said their role tends to become more active on a bilateral basis when USDA agencies believe they have done all they can to address a case. USTR officials noted they had been heavily involved in several bilateral negotiations on SPS measures.

Several government and industry officials also expressed concern that regulatory and research entities' roles and responsibilities for addressing foreign SPS measures have not been clearly defined. As discussed previously, regulatory and research entities were created to achieve domestic objectives related to ensuring food safety and protecting U.S. agricultural resources but are increasingly expected to help facilitate trade. However, officials from USTR and FAS and several industry officials

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expressed concern that some regulatory entities do not regard their role in addressing foreign SPS measures as an agency priority. On the other hand, several regulatory officials expressed concern that their role in the trade area has expanded but their resources, which must still be allocated to their primary food-related missions, have not changed. Therefore, they said, increasing their trade facilitation activities would probably require resources to be reprogrammed.

Many officials from trade, regulatory, and research agencies, and industry representatives agreed that the participation of regulatory and research entities in this area is necessary because these entities have technical and scientific expertise that trade agencies lack. Beyond their technical expertise, certain USDA entities have a mandated trade role because they are responsible for certifying that exports of products they regulate are healthy and safe.<sup>27</sup>

#### Workloads and Resources Vary

Because the SPS-related roles and responsibilities of federal entities vary, their workloads and the resources they have allocated to addressing SPS measures also vary. Some entities have substantial responsibility regarding SPS measures, while others' responsibility is more limited. Some entities, accordingly, have increased the staff allocated to this issue. However, the resource allocations of certain entities remained a concern among government and industry officials.

In USTR, SPS responsibilities are handled primarily by the Director for SPS Affairs, staff from the Offices of Agricultural Affairs and General Counsel and, as needed, various regional trade specialists. USTR officials acknowledged that its responsibilities for addressing SPS measures are broad, but its resources for doing so are limited. The Director for SPS Affairs, who is currently detailed to USTR from State, estimated that USTR allocates three to four full-time staff year equivalents to addressing SPS issues; other staff are assigned as needed. As a result, USTR officials said they rely on USDA agencies to help them identify SPS measures, perform technical and scientific assessments of the measures, initiate discussions with foreign government officials about measures, and keep USTR informed of their progress. In addition, several USTR and USDA officials said USTR's small legal staff has been overwhelmed by the growing workload

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<sup>27</sup>The Animal and Plant Health Inspection Service certifies that plant products are free of pests and diseases and that live animals are free of disease. In 1995, it issued 274,000 export certificates for plant products and an estimated 25,000 export certificates for live animals. The Food Safety and Inspection Service certifies that meat, poultry, and egg product exports are safe and wholesome. It could not provide data on the number of certificates issued, but responsible officials estimated the figure at over 200,000 each year.

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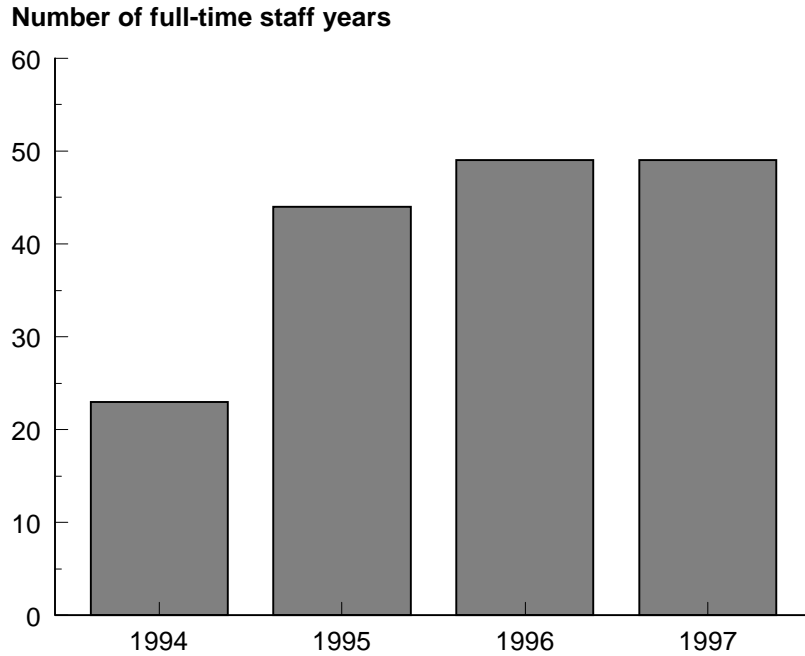
associated with initiating and following dispute settlement cases on behalf of multiple trade sectors. USTR officials said the number of dispute settlement cases involving agricultural products, in particular, has grown since the WTO was created, and the litigation of such cases is extremely resource intensive.<sup>28</sup> (As discussed in app. I, a WTO official also expressed concern about the growing number of dispute settlement cases.)

Within USDA, although the Secretary's Special Assistant has a central role in coordinating USDA efforts to address SPS measures, he does not control any budget or staff resources. FAS, which has broad daily responsibility for addressing SPS measures, has increased its staff resources over the last few years to respond to this problem (see fig. 2). In 1990, it established the Office of Food Safety and Technical Services to better address SPS issues affecting U.S. exports. In 1997, the office was renamed the Food Safety and Technical Services Division.

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<sup>28</sup>From 1986 through 1992, the United States requested 12 GATT panels be formed to review issues involving agricultural products (including fish and processed products). Most of these were requested between 1986 and 1988. Between the WTO's creation on January 1, 1995, and August 30, 1997, the United States had engaged in WTO consultations or had dispute settlement panels be established 12 times for issues involving agricultural products (including fish or processed products).

**Figure 2: FAS Full-time Staff Years for Addressing Foreign SPS Measures, Fiscal Years 1994-97**



Note: Includes staff in FAS' Food Safety and Technical Services Division, commodity divisions, and overseas posts.

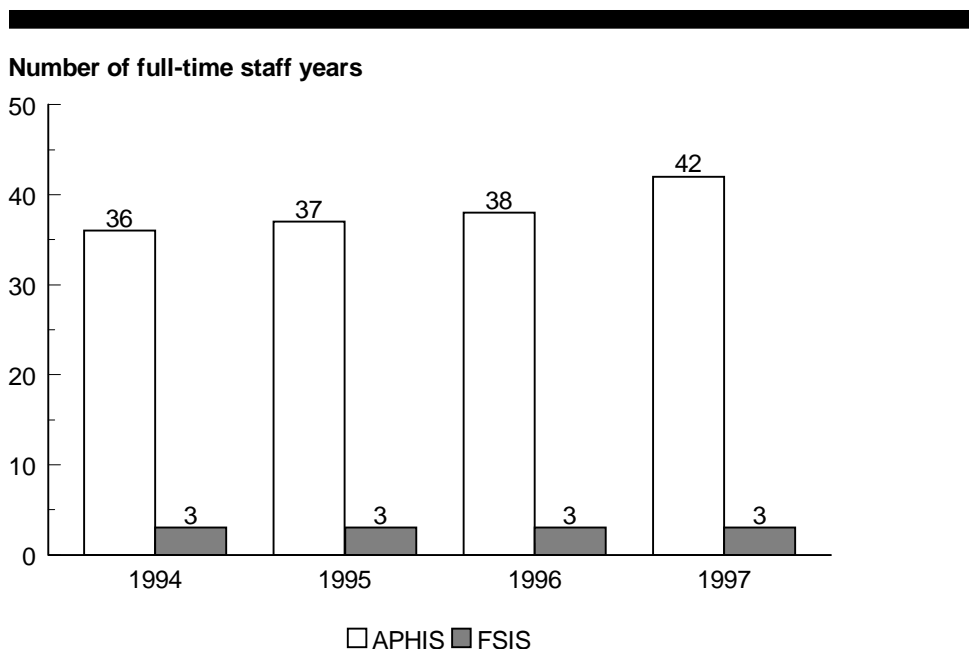
Source: USDA.

Among regulatory entities, workloads for addressing SPS measures vary according to their food-related responsibilities and technical expertise. USDA officials told us that technical assistance is required most often from the Animal and Plant Health Inspection Service, the Food Safety and Inspection Service, and FDA. Because of varying workloads, as well as the continued lack of clarity about regulatory entities' growing trade role, these entities have allocated different levels of resources to address SPS measures. For example, officials from the Animal and Plant Health Inspection Service told us that their agency's mission has been expanded to include trade facilitation of both imports and exports and they have allocated additional staff and budget resources to addressing foreign SPS



measures.<sup>29</sup> Officials from the Food Safety and Inspection Service told us that while trade facilitation is important, it is not their primary mission, and they have not allocated additional resources to this activity. Figure 3 shows the full-time staff years that the Animal and Plant Health Inspection Service and the Food Safety and Inspection Service told us they devoted to negotiating with foreign government officials about SPS measures from 1994 to 1997.

**Figure 3: Selected USDA Regulatory Entities' Full-time Staff Years for Addressing Foreign SPS Measures, Fiscal Years 1994-97**



Legend

APHIS = Animal and Plant Health Inspection Service  
 FSIS = Food Safety and Inspection Service

Source: USDA.

FDA and EPA officials told us they do not have a mandate or any resources to assist agricultural exports, although they have made resources available when USDA or USTR requested their assistance. FDA officials said the

<sup>29</sup>For example, in 1992, the Animal and Plant Health Inspection Service established a Trade Support Team to ensure internal coordination on technical trade issues and facilitate the agency's relationship with other USDA and non-USDA entities. In 1995, it established a Phytosanitary Issues Management Team to better manage the agency's trade responsibilities for plant products.

## Concerns Expressed About Uncoordinated Activities

resources required for regulatory entities to address foreign SPS measures and defend U.S. SPS measures have not been adequately evaluated and are likely to be substantial.

Several industry and government officials expressed concern that insufficient coordination among federal entities hinders the effectiveness of federal efforts to address SPS measures. Responsible federal officials said inadequate coordination led to a lack of knowledge among responsible entities about which measures each was working on, what activities were planned or had been performed, or the status of each other's efforts. We found inadequate coordination could be attributed to several factors, including lack of overall leadership, shifting and sometimes unclear roles, and separate management structures. For example, seven of the eight USDA entities report to their own administrators and to one of four undersecretaries or assistant secretaries, who make independent decisions about their agencies' priorities and how to allocate their agencies' budget and staff resources.<sup>30</sup>

Inadequate coordination among multiple federal entities is not a new problem. For example, in our past work on the U.S. system for ensuring food safety, which is comprised of multiple federal entities, we concluded that agency self-interest and differing regulatory approaches hindered adequate coordination.<sup>31</sup> Moreover, we noted that efforts to improve coordination have traditionally fallen short because federal entities continued to operate under different statutes and appropriation acts. Many of the entities we examined in our past work also have responsibility for addressing the technical aspects of foreign SPS measures.

In a March 1997 review of NAFTA implementation, USDA's Office of the Inspector General also concluded that departmental guidance is needed to improve coordination among USDA trade and regulatory entities on trade issues, particularly regarding the development of unified negotiating strategies.<sup>32</sup> The Inspector General also found that the lack of such

<sup>30</sup>FAS reports to the Undersecretary for Farm and Foreign Agricultural Services. The Agricultural Marketing Service; the Animal and Plant Health Inspection Service; and the Grain Inspection, Packers and Stockyards Administration report to the Assistant Secretary for Marketing and Regulatory Programs. The Food Safety and Inspection Service reports to the Undersecretary for Food Safety. The Agricultural Research Service and the Economic Research Service report to the Undersecretary for Research, Education, and Economics.

<sup>31</sup>See *Food Safety and Quality: Uniform, Risk-based Inspection System Needed to Ensure Safe Food Supply* (GAO/RCED-92-152, June 26, 1992) and *GAO/RCED-96-81*, Mar. 27, 1996.

<sup>32</sup>See *Implementation of Agricultural Provisions of NAFTA*, Office of the Inspector General, USDA (Washington, D.C.: USDA, Mar. 1997).

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coordination had hampered USDA's progress in negotiating with Mexico about SPS measures and related issues that blocked access for certain U.S. agricultural products.

To address coordination problems within USDA, two interagency groups were created in 1995 at the staff and management levels. The staff level group is headed by FAS' Food Safety and Technical Services Division; it includes staff from all responsible USDA entities and coordinates informally with non-USDA entities. It meets weekly to discuss new developments and the status of ongoing efforts. The management level group, called the "SPS Action Team," was headed by the Secretary of Agriculture's Special Assistant and included high-level staff from all responsible USDA entities. The action team met intermittently to coordinate overall USDA efforts regarding certain SPS measures based on information provided by the staff level group. According to the Special Assistant, the action team is being replaced by the Working Group on Agricultural Trade Policy. He said the emphasis of the two groups differs—the action team focused on coordinating USDA efforts to address certain measures, while the working group is to have a broader management focus by addressing overall coordination, resource allocation, and prioritization of efforts.

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## Federal Approach Is Not Systematic and Lacks Guidance to Make Key Decisions

The federal approach for addressing SPS measures encompasses many activities, including negotiating with trading partners about individual measures; performing scientific research; working with international bodies such as the WTO, NAFTA, and certain international standard-setting organizations;<sup>33</sup> and managing the overall federal work load. In this report, we focus on federal efforts to systematically identify, evaluate, prioritize, and address SPS measures that appear inconsistent with WTO provisions and to manage the associated work load.

Federal entities seek to address foreign SPS measures through bilateral discussions and within multilateral forums; both approaches may focus on technical issues or international trade rules. Based on our review of federal efforts to resolve six SPS measures, we found that the specific

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<sup>33</sup>Key organizations include the Codex Alimentarius Commission, the International Office of Epizootics, and the International Plant Protection Convention. The Codex Alimentarius Commission was established in 1962 by the United Nations Food and Agriculture Organization and the World Health Organization to facilitate fair trade in food, protect the health of consumers, and promote the creation of international food standards. It has examined pesticides, food additives and contaminants, and veterinary drugs related to a broad range of agricultural products. The International Office of Epizootics was established in 1924 to facilitate international trade in animals and animal products by addressing health issues to avoid the spread of animal diseases. The International Plant Protection Convention was established in 1951 to facilitate the development of international phytosanitary standards.

federal efforts undertaken to address each measure differed from case to case. We also found that entities with food-related technical expertise typically lead bilateral discussions on technical issues, in which they assess the necessity of foreign measures and provide data or conduct research to demonstrate the health or safety of U.S. products or the process by which they are produced. Trade entities typically lead bilateral discussions that focus on international trade rules, in which they discuss a foreign measure's compliance with WTO rules regarding SPS measures. In a few instances, the government has turned to the multilateral arenas of the WTO or NAFTA and invoked dispute settlement procedures to resolve certain issues. USTR is responsible for leading U.S. efforts in multilateral trade arenas. (App. II contains more information about the federal approach for addressing SPS measures and related activities.)

#### No Process to Develop Centralized Information and Evaluate Measures

The U.S. government lacks centralized, up-to-date information to track its efforts to address foreign SPS measures, such as the number of foreign SPS measures that affect U.S. exports, which of these measures federal entities are addressing, what steps have been taken to address each measure, which measures have been resolved, and how any resolved cases have affected U.S. exports. The federal structure contributes to this problem because information about SPS measures is collected and tracked separately by trade and regulatory entities. For example, several USDA entities have developed their own electronic data bases or management systems for identifying SPS measures and tracking the status of their efforts to address them. However, even though these systems may include some of the same issues, they are not linked and cannot be accessed by other USDA staff. Moreover, whether entities had such systems or not, most were unable to tell us what measures they were working on at any given time.

Some centralized information has been developed, but it is of limited use. In 1996, the Animal and Plant Health Inspection Service developed a system to track the status of its efforts to address trade issues, many of which are SPS measures. The system, in which the Animal and Plant Health Inspection Service plans to store certain other entities' trade issues, can be accessed outside of the agency by authorized USDA staff. So far the system only contains information about a limited number of issues tracked by the Animal and Plant Health Inspection Service and the Agricultural Marketing Service. Officials from the Food Safety and Inspection Service and the Grain Inspection, Packers and Stockyards Administration told us they plan to add their trade issues to the system, but FAS officials said they do not plan to do so. According to several USDA officials, progress on developing this system has been slowed by concern among the participating entities

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about storing what they view as internal agency information on a system that can be accessed by other USDA agencies or the public. The other centralized information is contained in the 1996 USDA survey. FAS has begun to update the survey on a quarterly basis to add new issues and remove resolved issues. It is not clear whether the Animal and Plant Health Inspection Service system and FAS efforts related to the USDA survey are duplicative.

In addition to lacking centralized information about SPS measures and their efforts to address them, the U.S. government does not have a regular process by which entities jointly evaluate complaints about foreign SPS measures to determine which measures the U.S. government should address. Trade entities evaluate foreign SPS measures for their compliance with WTO provisions, while regulatory entities evaluate foreign SPS measures for their technical or scientific basis. However, we found that differences of opinion regarding the consistency of certain foreign SPS measures to relevant WTO provisions or their technical legitimacy may exist among federal entities or between federal entities and the affected industry. The lack of a regular process that ensures that entities with both trade and technical expertise collectively evaluate foreign SPS measures creates the potential that limited government resources may be allocated to addressing measures some federal entities do not regard as problematic.

#### No Process to Determine Priorities

Responsible federal entities receive more complaints about foreign SPS measures than they are able to work on, but the U.S. government does not have a systematic process to prioritize its efforts. We found that responsible federal entities have had different views about which SPS measures should be addressed and in what order. Some entities have made their own decisions about which measures they would address, which sometimes conflicted with the decisions of other entities. Officials from both trade and regulatory entities provided examples of instances in which they had requested help from another entity to address one of their issues, but the other entity did not respond in a timely way or did not appear to place as much importance on the issue. Some USDA officials expressed concern that industry pressure has played a larger role in determining what USDA addresses than has objective analysis of individual measures and their impact on trade.

During most of our review, federal entities lacked objective criteria to help them decide which foreign SPS measures should be addressed and prioritize their efforts. In February 1997, USTR developed provisional

criteria to help TPSC members determine which of a small subset of measures should be raised for discussion in WTO SPS committee meetings. The criteria included the following factors: (1) domestic producers requested government assistance to address the measure; (2) the measure appears to be inconsistent with the WTO SPS agreement or other WTO provisions or involves the non-use or improper use of international standards, guidelines, and recommendations; (3) bilateral technical discussions or WTO consultations have taken place but have not achieved progress toward resolution; and (4) agencies agree that addressing the measure in the WTO SPS committee will promote resolution of the issue and will not damage other U.S. bilateral interests. In an August 1997 meeting, USTR officials identified other factors that are not among the list of provisional criteria. For example, they told us the TPSC considers whether sufficient scientific evidence exists to refute the measure and whether U.S. efforts to address the measure will undermine U.S. regulatory interests.

USDA officials told us the Department does not have formal criteria for determining which foreign SPS measures responsible agencies should address or establishing priorities, but FAS officials identified unofficial criteria they believe are useful. These included the estimated impact of the measure on U.S. exports, an assessment of the industry's interest in resolving the measure, and the availability of conclusive scientific evidence (or whether additional research must be conducted and, if so, whether the research can be funded and the amount of time required for its completion).

The Secretary's Special Assistant told us the Working Group on Agricultural Trade Policy will establish official criteria to help evaluate SPS measures and determine USDA priorities and resource allocation. The Special Assistant said it is possible USTR's and USDA's criteria will differ, but said this is appropriate because USDA's efforts are focused on evaluating hundreds of measures to determine which ones USDA should address and in what order while USTR's efforts are focused on evaluating a smaller subset of measures to determine which ones the United States should raise to the more formal WTO level.

### No Guidance to Determine Unified Approach

No guidance exists to help federal entities overcome differences of opinion and develop a unified approach for addressing individual SPS measures. In determining how to deal with any individual SPS measure, several key decisions must be made regarding the U.S. position about a measure, the substance and timing of U.S. communication with the foreign government, the data the U.S. government will supply or the research it

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will undertake, the agreements or solutions that are acceptable, and the appropriateness of invoking dispute settlement procedures. Several U.S. officials also said the U.S. position about a foreign measure must avoid undermining U.S. regulatory interests.

As our review of federal efforts to address six foreign SPS measures shows, various combinations of federal entities and actions may be employed to address such measures. However, federal entities have had difficulty agreeing about what specific actions should be taken in individual cases and what resolutions are acceptable. Federal entities have also had different opinions about whether the approach being followed is effective or needs to be changed.

In its NAFTA implementation report, the USDA Inspector General found that USDA entities did not always develop a strategy before meeting with officials of other NAFTA governments to discuss trade issues.<sup>34</sup> It reported concerns that USDA's objectives for such meetings were not clear. The Inspector General found that differing perspectives among trade and regulatory authorities about the correct approach may have hampered strategy formulation. It also found that USDA trade and regulatory entities differed in their viewpoint about whether bilateral issues should be discussed at meetings of the NAFTA SPS committee—FAS considered this to be a key function of the committee, whereas regulatory entities were reluctant to discuss issues in the committee until they had thoroughly pursued bilateral negotiations. The Inspector General concluded that departmental guidance is needed to overcome these differences of opinion about approach and ensure that coordinated strategies are developed.

Like the Inspector General, we found that trade and regulatory authorities, as well as industry representatives, sometimes had different opinions about the appropriateness of a foreign measure or the country's reason for establishing it. Therefore, they were likely to disagree about the best negotiating approach to resolve the issue. In such instances, government and industry officials often expressed concern that the lack of agreement hampered effective decision-making and progress. We found differences of opinion (such as among government entities, among industry officials, and between the government and industry) throughout the six SPS measures we reviewed. In these cases, and others that we discussed with federal and industry officials, we found that trade authorities and industry officials were more likely to characterize a foreign measure as an unfair trade barrier and favor moving quickly to trade policy discussions with foreign

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<sup>34</sup>See [Implementation of Agricultural Provisions of NAFTA](#).

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trade authorities. Meanwhile, regulatory authorities were more likely to emphasize the technical complexity of the issue and favor thorough technical discussions with foreign regulatory authorities.

We found that conflicting perspectives between trade and regulatory authorities were not unusual. For example, some trade authorities and industry officials expressed frustration that regulatory authorities seemed to lack a sense of urgency regarding trade matters and were willing to engage in technical discussions for many months and years. They expressed concerns that regulatory authorities lacked negotiating expertise, which sometimes precluded them from obtaining the most advantageous result for the U.S. industry. Some regulatory authorities expressed frustration that trade authorities and industry officials did not seem to understand that deliberate and lengthy technical and scientific processes were often necessary to adequately and properly address foreign regulatory authorities' stated concerns about U.S. products. They stated that, as regulatory authorities, they respected foreign authorities' efforts to ensure adequate protection for human, animal, and plant life and health.

Several U.S. government and industry officials observed that in certain limited circumstances, such as when a foreign SPS measure has threatened a large amount of U.S. exports, responsible federal entities have responded quickly and cohesively. These officials suggested that such cases were unique because high-level officials from a single entity assumed responsibility for directing federal efforts and assigning roles to trade and regulatory authorities.

In response to internal concerns about USDA's efforts, several of the responsible USDA agencies began to meet on a monthly basis in October 1996 to discuss SPS issues affecting U.S. trade, facilitate the exchange of information between the agencies, coordinate joint action to resolve issues, identify medium- and long-term priorities, and improve team building. However, we were unable to determine whether the meetings have achieved their stated purposes because, although we requested thorough documentation of the meetings and their results, USDA could only provide a limited number of meeting minutes. Based on the minutes we did review, the meetings appeared to be focused more on the exchange of information about current efforts than on developing priorities and strategies for addressing SPS measures.



## Need for Invoking Dispute Settlement Is Debated

In addition to differences of opinion about the best approach to address a foreign SPS measure, federal entities have debated whether and when WTO or NAFTA dispute settlement procedures should be invoked to resolve problems over certain SPS measures. This debate occurs at several levels. Within USDA, responsible entities have had difficulty agreeing that they have done all they can to resolve an SPS issue and that dispute settlement is probably the appropriate next step. This may stem from underlying disagreements about whether current efforts are working or different opinions about whether scientific evidence against a particular measure is strong. When USTR and USDA determine that a more formal process should be considered to address a measure, such as the WTO SPS committee or WTO consultations or dispute settlement, the debate expands to include relevant members of the TPSC. USTR officials said the TPSC discusses the issue according to the provisional criteria USTR established, but said substantial debate among TPSC members still occurs.

The debate about whether to refer SPS cases to the WTO for dispute settlement occurs not only among federal entities but between federal entities and the private sector, as shown by several of the SPS cases we reviewed. Dispute settlement procedures were invoked regarding Korean shelf-life standards and the EU ban on hormones and were considered as a possible approach regarding the Japanese ban on tomatoes. In several of these cases, we found evidence of debate among federal entities about whether dispute settlement was the appropriate course of action. In several cases, industry officials told us they were disappointed that the government was slow to decide about moving to dispute settlement. For example, some industry officials told us they expected USTR to invoke dispute settlement procedures in the EU hormone case immediately following the WTO's implementation in January 1995. Filing this case was delayed until May 1996, however, in part because of indications during 1995 that the EU might revise the measure. Similarly, some industry officials told us they intended to insist that USTR invoke dispute settlement procedures in the Japanese case if it was not resolved by early 1996. While dispute settlement was considered and the possibility may have been mentioned to Japanese officials, it was not pursued. This case was ultimately resolved over a year later, in April 1997. In the Korean shelf-life case, USTR engaged in WTO consultations within 6 months of the WTO's implementation, and the case was resolved.

## Coordinated Goals, Objectives, and Performance Measurements Lacking

Responsible federal entities have not developed coordinated goals, objectives, and performance measurements for programs designed to address SPS measures. In response to the Results Act, USTR and USDA

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prepared strategic plans to outline their agencies' overall goals and objectives as required by the act.<sup>35</sup> These plans identified foreign SPS measures as a key issue that the United States faces in its goal to expand agricultural exports and contained broad goals for addressing SPS measures.<sup>36</sup> The plans also recognized the need to coordinate with other responsible entities in addressing SPS measures. More specific and better-coordinated goals, objectives, and performance measurements, however, are critical to forming the integrated approach for addressing SPS measures that our work has shown is needed.

The principles underlying the Results Act provide guidance that the multiple responsible agencies can use to develop coordinated goals, objectives, and performance measurements and to improve the management of individual agency and overall federal efforts related to SPS measures. For example, the act focuses on clarifying missions, setting program goals, and measuring performance toward achieving those goals. In addition, the act's focus on results implies that federal programs contributing to the same or similar results, often referred to as "cross-cutting programs," should be closely coordinated to ensure that goals are consistent and, as appropriate, program efforts are mutually reinforcing. This means that federal agencies are to look beyond their organizational boundaries and coordinate with other agencies to ensure their efforts are aligned.

In our work examining implementation of the Results Act, we identified several critical issues that need to be addressed if the act is to succeed in improving management of federal agencies. Among these is the need to improve the management of cross-cutting program efforts by ensuring that those programs are appropriately coordinated.<sup>37</sup> The recognition in USTR's and USDA's strategic plans of the need to coordinate with other agencies in addressing SPS issues is an essential first step for developing a more

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<sup>35</sup>The Results Act required agencies to submit strategic plans to Congress by September 30, 1997. The plans, which were to cover a period of at least 5 years forward from the fiscal year in which they were submitted, were to contain (1) mission statements, (2) long-term general goals and objectives, (3) strategies that agencies would use to achieve their goals and objectives, and (4) any key external factors that could affect the achievement of these goals. Agencies were to consult with Congress and solicit the views of other stakeholders in the development of their plans. Additional guidance from the Office of Management and Budget directed agencies to consult with each other about their plans' treatment of cross-cutting functions (see "Office of Management and Budget Circular A-11," part 2, sec. 200.15).

<sup>36</sup>For our overall analysis of a draft of USTR's strategic plan, see *The Results Act: Observations on USTR's September 1996 Draft Strategic Plan* (GAO/NSIAD-97-199R, July 18, 1997). For our overall analysis of several drafts of USDA's strategic plan, see *Results Act: Observations on USDA's Draft Strategic Plan* (GAO/T-RCED-98-17, Oct. 1, 1997).

<sup>37</sup>*Managing for Results: Building on Agencies' Strategic Plans to Improve Federal Management* (GAO/T-GGD/AIMD-98-29, Oct. 30, 1997).

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integrated approach. The difficult challenge that lies ahead is for the multiple agencies with responsibility for addressing SPS issues to undertake substantive coordination to ensure that their responsibilities are effectively managed and their agency goals and objectives are complementary.

The next phase of implementation of the Results Act requires agencies to develop annual performance plans that are linked to their strategic plans. These plans are to contain annual performance goals, performance measurements to gauge progress toward achieving the goals, and the resources agencies will need to meet their goals. The development of annual plans may provide the multiple federal agencies with SPS-related responsibilities the next opportunity to develop coordinated goals, objectives, and performance measurements for addressing SPS issues.

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## Conclusions

Agricultural industry and U.S. government officials increasingly regard foreign SPS measures that are or appear to be inconsistent with WTO provisions as important issues that must be addressed in order to protect U.S. trade interests. Although the WTO and NAFTA established rules to govern the use of SPS measures in trade, the process of determining whether measures comply with the agreements and developing strategies to address potentially unfair measures is a complex undertaking. In light of the U.S. process that involves multiple federal entities with varying responsibilities for addressing foreign SPS measures, we believe a more organized, integrated, strategic approach with unified and clearly defined objectives would be beneficial.

The Results Act offers a useful framework to help federal entities with SPS responsibilities not only to manage their own efforts but also to work together to address foreign SPS measures. By clarifying their respective SPS-related missions, USTR, USDA, and other responsible entities could begin to overcome structural weaknesses that stem from the participation of multiple agencies with unclear roles and overlapping or closely related areas of responsibility. By following the act's guidance to set program goals and measure their performance toward these goals, USTR, USDA, and the other federal entities could address problems related to inadequate data about SPS measures and the lack of a process to evaluate measures, prioritize federal efforts, and agree on unified approaches. Finally, by undertaking more substantive coordination on this cross-cutting issue, the various agencies could begin to ensure their individual efforts are complementary and not unnecessarily duplicative.

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## Recommendations

We recommend that the U.S. Trade Representative and the Secretary of Agriculture, in consultation with the Commissioner of Food and Drugs, the Administrator of EPA, and the Secretary of State—or their designees—should work together to develop coordinated goals, objectives, and performance measurements for addressing foreign SPS measures that appear to be inconsistent with the WTO SPS agreement. The Government Performance and Results Act and implementing guidance provide a framework for federal agencies to consult on such cross-cutting programs.

Further, given USDA's substantial role in identifying and addressing SPS measures, the Secretary of Agriculture should (1) develop centralized, aggregated data on the number of SPS measures that have been identified, which ones are being addressed, and which ones have been resolved; and (2) establish a more systematic process by which USDA entities evaluate complaints they receive about SPS measures, determine which ones they should address, prioritize their efforts, develop unified approaches, and determine when to recommend consideration of dispute settlement procedures to USTR. This process should be developed and implemented in consultation with the U.S. Trade Representative, the Commissioner of Food and Drugs, the Administrator of EPA, and the Secretary of State, or their designees.

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## Agency Comments and Our Evaluation

We received comments on a draft of this report from USTR, USDA, FDA, and State (see apps. V-VIII); EPA indicated it did not have any comments on the report. The agencies provided a range of views and identified several key issues that the report should address. For example, USDA and State said the report provided an accurate, comprehensive review of the federal process to address foreign SPS measures. However, USTR and USDA said the report should reflect recent initiatives they have adopted regarding these issues. To address this concern, we updated the report to include information about the TPSC process USTR leads and the formation of a USDA Working Group on Agricultural Trade Policy, among other things.

While USTR did not offer any comments concerning our recommendations, USDA, FDA, and State did. All three agreed with the thrust of the recommendations. However, FDA and State suggested that the first recommendation should ensure that USTR and USDA consult with other agencies in setting goals, objectives, and performance measurements for addressing SPS measures. In response, we revised the first recommendation to emphasize the need for these agencies to work

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together to develop coordinated goals, objectives, and performance measurements for addressing SPS measures.

USTR and FDA also suggested that the report should address the need for balance between export interests and domestic health and food safety interests and the important role regulatory agencies play in ensuring that U.S. trade positions do not undermine U.S. regulation. We agree with their comments and added information in the report to recognize the importance of domestic concerns for federal efforts to address foreign SPS measures.

The following individual comments were also made:

USTR said our report exaggerated the usefulness of tracking lists in drawing definitive conclusions about the WTO-legality of SPS measures and their impact on trade. It said that considerable resources have been devoted to such a project, but the results have been of limited use in assessing or managing these issues. We disagree. As we note in the report, USDA officials said that in spite of certain weaknesses, the data they developed on foreign SPS measures improved their understanding of the problem. Thus, we continue to believe that the U.S. government's data collection and tracking efforts related to foreign SPS measures could be improved. Without better data, executive branch agencies do not know the size of the problem and therefore cannot reasonably assure that they have properly prioritized their efforts or determined the level of resources needed. Moreover, they cannot assess the effectiveness of their efforts to address the problem.

FDA said that it sees the roles of the various regulatory agencies involved in resolving SPS disputes as complementary rather than overlapping. In response, we changed our description of regulatory agencies' responsibilities from "overlapping" to "closely related." However, we noted that we had found evidence of coordination problems among the regulatory agencies in our past work on the U.S. system for ensuring domestic food safety. FDA also said that the report should recognize that the process outlined in the WTO SPS agreement for determining that other countries' SPS-related systems are equivalent can be done on a unilateral as well as a mutual basis. We modified our description of this process to reflect FDA's input.

USTR, USDA, and FDA also suggested a number of technical revisions to our draft. In addition, we received technical comments from the WTO

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Secretariat. We have incorporated these suggestions in the report where appropriate.

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## Scope and Methodology

To address the extent of foreign SPS measures and their impact on U.S. exports, we reviewed USDA, private sector, and academic analyses of the history and impact of technical barriers to trade, including SPS measures. We discussed these issues with knowledgeable government, private sector, and academic officials. We also examined the impact of six foreign SPS measures that we reviewed in detail.

To address the federal structure and approach for addressing foreign SPS measures, we developed information on the U.S. trade and regulatory structures for agricultural products, including entities' missions, staff levels, and budgetary resources related to SPS issues. We developed information on U.S. government actions taken to address six foreign SPS measures that have blocked or continue to block U.S. exports. We also discussed U.S. government efforts with trade and regulatory officials that have been active in addressing questionable foreign SPS measures and reviewed internal USDA assessments of U.S. efforts to address questionable foreign SPS measures. Finally, we discussed the U.S. government's effectiveness with agricultural trade associations.

More information about our scope and methodology is contained in appendix IV. We conducted our work at USDA, USTR, FDA, EPA, and State. Our work at USDA covered the Office of the Secretary; the Agricultural Marketing Service; the Animal and Plant Health Inspection Service; the Agricultural Research Service; the Economic Research Service; FAS; the Food Safety and Inspection Service; the Grain Inspection, Packers and Stockyards Administration; and the Office of the General Counsel.

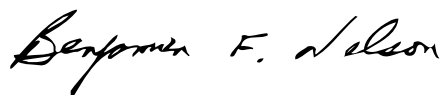
We performed our review from January 1996 to October 1997 in accordance with generally accepted government auditing standards.

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As agreed with you, we plan no further distribution of this report until 30 days after its issue date, unless you publicly announce its contents earlier. At that time, we will send copies to appropriate congressional committees, the U.S. Trade Representative, the Secretary of Agriculture, the Commissioner of Food and Drugs, the Administrator of EPA, and the Secretary of State. Copies will be made available to others upon request.

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This review was done under the direction of JayEtta Z. Hecker, Associate Director. If you or your staff have any questions concerning this report, please contact Ms. Hecker at (202) 512-8984. Major contributors to this report are listed in appendix IX.



Benjamin F. Nelson  
Director, International Relations  
and Trade Issues

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## Abbreviations

AMS	Agricultural Marketing Service
APAC	Agricultural Policy Advisory Committee
APHIS	Animal and Plant Health Inspection Service
ARS	Agricultural Research Service
ATAC	Agricultural Technical Advisory Committee
EPA	Environmental Protection Agency
ERS	Economic Research Service
EU	European Union
FAS	Foreign Agricultural Service
FDA	Food and Drug Administration
FSIS	Food Safety and Inspection Service
GATT	General Agreement on Tariffs and Trade
GIPSA	Grain Inspection, Packers and Stockyards Administration
NAFTA	North American Free Trade Agreement
MAFF	Ministry of Agriculture, Forestry and Fisheries (Japan)
OFM	Oriental fruit moth
TBM	tobacco blue mold
TCK	tilletia controversa kuhn
TPSC	Trade Policy Staff Committee
SPS	sanitary and phytosanitary
USDA	U.S. Department of Agriculture
USTR	U.S. Trade Representative
WTO	World Trade Organization

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# Trade Agreement Is in Force, but Impact of Provisions Varies

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The World Trade Organization (WTO) Agreement on the Application of Sanitary and Phytosanitary Measures (SPS agreement) represents the first time that comprehensive multilateral rules were enacted specifically to cover the use of sanitary and phytosanitary (SPS) measures in agricultural trade.<sup>1</sup> The agreement became effective on January 1, 1995. U.S. and WTO officials said some of the provisions have had an immediate impact on trade, such as those that enable members to challenge SPS measures in dispute settlement. These officials said other provisions, such as those encouraging broader harmonization of SPS measures, require work to be done by WTO members before they are likely to have a substantial impact on trade.

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## Relevant Provisions of the Agreement

The WTO agreement established members' rights and obligations regarding SPS measures in relation to trade. WTO member countries have the right to maintain SPS measures that protect the health and safety of their population and agricultural sector and to determine acceptable levels of risk. However, members should not apply SPS measures or determine risk levels in a way that is arbitrary or constitutes a disguised restriction to trade. Therefore, the agreement requires SPS measures to be based on scientific principles, including an assessment of relevant risks.<sup>2</sup>

In addition to these criteria, the agreement encourages progress toward achieving three objectives: (1) broad harmonization of SPS measures through greater use of international standards, (2) recognition among members that their SPS measures may differ but still be considered "equivalent" provided they achieve the same level of protection, and

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<sup>1</sup>Under the General Agreement on Tariffs and Trade (GATT), which governed international trade from 1947 to 1995, members were permitted to adopt measures necessary to protect human, animal, or plant life or health, provided that such measures were not applied in an arbitrary or unjustifiably discriminatory manner and did not constitute disguised restrictions on international trade. In GATT's Tokyo Round (1973-79), at least 36 GATT members agreed to additional rules to govern the use of standards, including most SPS standards (the Agreement on Technical Barriers to Trade). However, members were given great discretion to deviate from international standards when applying SPS measures and were not required to cite scientific evidence or judgment in the dispute settlement process. Chapter 7 of the North American Free Trade Agreement (NAFTA) also contains provisions regarding the use of SPS measures in agricultural trade among its members.

<sup>2</sup>In assessing risks, members are directed to take various factors into account, including available scientific evidence; relevant processes and production methods; relevant inspection, sampling, and testing methods; prevalence of specific diseases or pests; existence of pest- or disease-free areas; relevant ecological and environmental conditions; and quarantine or other treatment. In addition, in assessing the risks to animal and plant life or health, members shall take into account as relevant economic factors the potential damage in terms of loss of production or sales in the event of the entry, establishment, or spread of a pest or disease; the costs of control or eradication in the territory of the importing country; and the relative cost-effectiveness of alternative approaches to limiting risk.

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**Appendix I**  
**Trade Agreement Is in Force, but Impact of**  
**Provisions Varies**

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(3) adaptation of SPS measures to recognize pest- and disease-free regions.<sup>3</sup> Provisions that address harmonization encourage members to participate in international organizations that establish SPS standards, particularly the Codex Alimentarius Commission, the International Office of Epizootics, and the International Plant Protection Convention. Figure I.1 summarizes selected provisions of the agreement.

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<sup>3</sup>Annex A(6) of the SPS agreement defines a pest- or disease-free area as “an area, whether all of a country, part of a country, or all or parts of several countries, as identified by the competent authorities, in which a specific pest or disease does not occur.” According to U.S. Department of Agriculture (USDA) officials, SPS measures typically do not recognize that imports from part of a country may be safe even if imports from the entire country are not.

**Figure I.1: Summary of Selected Provisions of SPS Agreement**

- Measures shall be based on scientific principles, not maintained without sufficient scientific evidence, and applied only to the extent necessary to protect human, animal, or plant life or health. (Article 2.2)
- In cases where scientific evidence is insufficient, provisional measures may be adopted on the basis of available information from relevant international organizations and other members. (Article 5.7)
- Measures shall not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail, including between a member country's own territory and that of other countries, and shall not constitute a disguised restriction on trade. (Article 2.3)
- Measures shall be based on assessment of risk, taking into account relevant scientific, technical,<sup>a</sup> ecological, environmental, and, with regard to animal or plant life, economic factors. (Article 5)
- Measures shall be based on existing international standards, guidelines, and recommendations, except that measures that achieve a higher level of protection than international standards may be maintained if there is scientific justification or if a country otherwise determines the measure to be appropriate in accordance with the agreement's risk assessment provisions. (Article 3)
- Members shall recognize the equivalency of measures that differ from their own but are demonstrated to offer the same level of protection. (Article 4.1)
- Measures shall recognize the concept that regions within one or several countries may be free of, or have a low prevalence of, pests and diseases. (Article 6)

<sup>a</sup>Technical factors include relevant processes and production methods and relevant inspection, sampling, and testing methods.

## Dispute Settlement

Disputes arising under the SPS agreement are subject to the WTO dispute settlement mechanism, which provides for consultations and review by a

WTO dispute settlement panel. The agreement authorizes such panels to seek expert advice on scientific or technical issues. As anticipated, member countries have begun to use these mechanisms to resolve disputes about SPS measures. For example, on behalf of the United States, the U.S. Trade Representative (USTR) has invoked WTO dispute settlement procedures regarding five SPS measures or groups of measures since the agreement became effective.<sup>4</sup> Two of these cases have had positive outcomes for the United States, while the other cases have not been resolved yet.<sup>5</sup> A WTO official said that, while increased use of the dispute settlement process was anticipated, the growing number of cases has strained the WTO Secretariat's limited resources. USDA and USTR officials said that countries generally prefer to resolve issues informally, but the dispute settlement mechanism is an important tool for cases where informal resolution cannot be achieved.

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## Administrative Aspects

For administrative purposes, the SPS agreement established an SPS committee, comprised of member countries, that is responsible for overseeing implementation of the agreement and facilitating consultations among members on specific SPS measures.<sup>6</sup> For example, as part of its responsibility, the WTO committee is expected to develop guidelines on risk management and monitor progress toward harmonization of SPS standards. USDA officials said they are particularly interested in using the committee as a way to raise their concerns about specific SPS measures and have done so in several WTO committee meetings.<sup>7</sup>

Another administrative provision requires member countries to publish information about their SPS measures and notify other members before implementing any new measures or modifications that are not based on international standards. The purpose of advance notification is to allow

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<sup>4</sup>The SPS measures the United States has challenged in the WTO include the European Union (EU) measures affecting meat and meat products, Korean shelf-life requirements for meat and bottled water, Korean testing and inspection requirements for agricultural imports, Japanese measures on fruit and vegetable imports, and an Australian ban on salmon imports. The United States also initiated technical consultations once under NAFTA, requesting a review of Mexican measures banning U.S. sweet cherries.

<sup>5</sup>On July 20, 1995, the United States and Korea notified the WTO that they had reached agreement about modifications to Korea's shelf-life requirements. On June 30, 1997, a WTO dispute settlement panel found the EU hormone ban was inconsistent with WTO provisions; the EU filed an appeal regarding this decision on September 24, 1997. Following the NAFTA consultations, USDA announced on February 20, 1997, that Mexico would begin importing U.S. sweet cherries in accordance with a work plan agreed to by both sides.

<sup>6</sup>NAFTA also established an SPS committee for the members to discuss their responsibilities under the agreement and to consult on implementation issues.

<sup>7</sup>The United States has also discussed specific SPS measures in NAFTA SPS committee meetings.

member countries time to adapt their products or processes to the new requirement and to comment on the measure.<sup>8</sup>

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## **Initial Impact and Need for Further Interpretation**

According to U.S. and WTO officials, some of the SPS agreement's provisions have had an immediate impact, while the impact of other provisions remains to be seen. These officials said members currently appear to be more focused on provisions that enable them to resolve disputes over SPS measures, such as the requirements that SPS measures be based on scientific evidence and risk assessment, than on provisions that encourage harmonization and the recognition of equivalent systems and pest- or disease-free regions. USDA and WTO officials said that while the latter provisions could help minimize trade disputes, the practices they encourage are not currently widespread. Moreover, many years of bilateral or multilateral discussion may be needed before SPS measures are broadly harmonized or equivalent systems and pest- or disease-free regions are broadly recognized, therefore progress in these areas is likely to be slow. One example supports that viewpoint—the United States and the EU negotiated for 3 years before reaching a partial agreement about the equivalence of their respective inspection systems for animal products.<sup>9</sup>

U.S. and WTO officials also said that the interpretation of certain provisions will be clarified through the dispute settlement process. For example, a USDA official said members may have different interpretations regarding whether a country's right to determine an acceptable level of risk is stronger than its obligation to base risk assessment on scientific evidence. A WTO official characterized the SPS agreement as a framework agreement that articulates certain rules and objectives but does not specify how they should be achieved. In such cases, it is up to the members to decide how the provisions should be interpreted.

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<sup>8</sup>According to USDA, between January 1, 1995, and April 30, 1997, information on 530 SPS measures in 46 of 131 members had been reported to the WTO. A USDA official said no SPS measures are actually reported in accordance with NAFTA because Canada, Mexico, and the United States provide information to the WTO instead.

<sup>9</sup>The U.S.-EU discussions covered meat, poultry, seafood, dairy, egg, and pet food products, among others. The two countries were unable to reach agreement about the equivalence of their poultry production and inspection systems.



# U.S. Approach, Related Activities, and Resources for Addressing Foreign SPS Measures

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U.S. efforts to address individual SPS measures are an important component of overall activities related to SPS issues. The U.S. government addresses individual measures through technical- and trade-based approaches. In addition, federal entities perform other activities that are related to SPS issues, such as certifying that U.S. exports are healthy and safe and participating in international organizations that set SPS-related standards. Within USDA, the staff and budget resources allocated to all SPS activities have generally increased since 1994. Approximately one-quarter of USDA's SPS-related staff resources have been allocated to addressing foreign SPS measures in technical or trade negotiations, the main focus of this report, while about three-quarters of its SPS-related staff resources have been allocated to other activities.

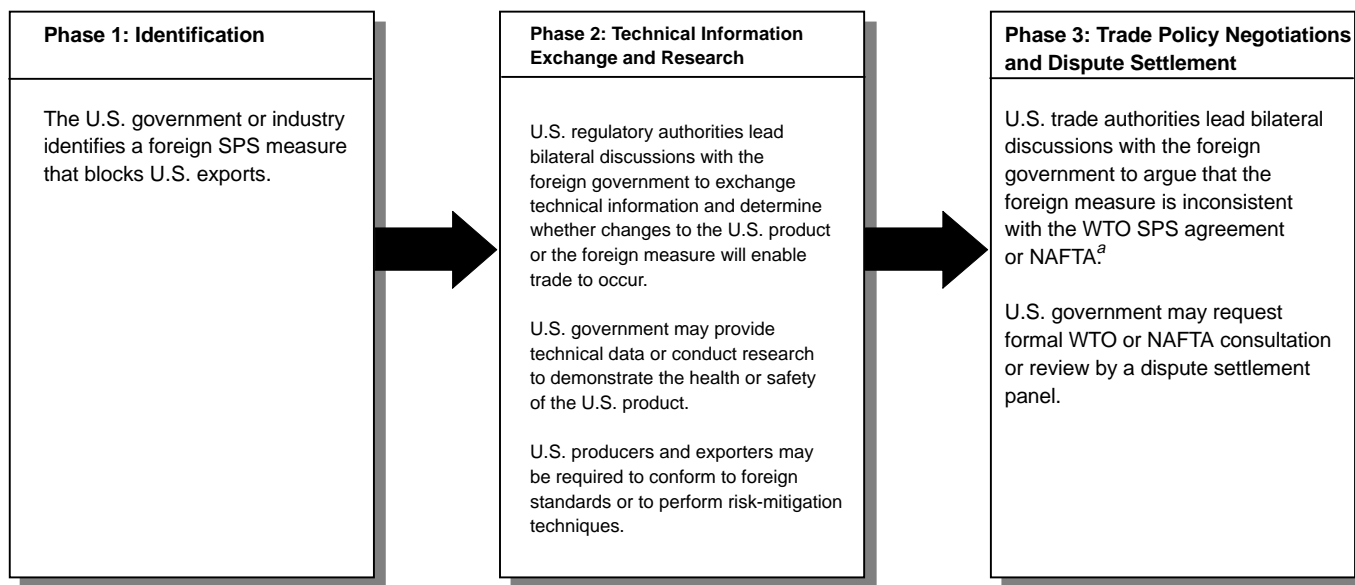
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## U.S. Approach for Addressing SPS Measures

USDA officials told us the U.S. approach for addressing foreign SPS measures varies depending on the measure, because each case has unique aspects. Based on our review of federal efforts to address six SPS measures and our discussions with responsible U.S. officials, we found that individual approaches have similar elements. We developed a framework comprised of three phases to help explain how federal entities have addressed SPS measures (see fig. II.1).

**Appendix II**  
**U.S. Approach, Related Activities, and**  
**Resources for Addressing Foreign SPS**  
**Measures**

**Figure II.1: Three Phases of Federal Efforts to Address Individual SPS Measures**



<sup>a</sup>The SPS agreement and NAFTA are only binding on WTO and NAFTA members, respectively. However, several U.S. trading partners that are not WTO members, including China and Russia, have applied to join the WTO and would be expected to comply with the SPS agreement if they become members.

During the first phase (identification), the U.S. government attempts to learn more about an identified SPS measure and determine whether the measure is a minor problem that can be fixed quickly or a more serious problem that will take some time to resolve.<sup>1</sup> During the second phase (technical exchange), regulatory entities usually lead U.S. government efforts, but trade entities may play a supporting role. This phase can last several months or years, depending on how often the two sides meet and what actions they agree to take.

During the third phase (trade negotiations), trade entities usually lead U.S. government efforts, but regulatory entities may play a supporting role. Trade negotiations are often viewed as “elevating” the U.S. approach to a higher political level and sometimes become necessary when the U.S. government concludes the foreign government is not responding to technical arguments. In a few cases where neither technical exchange nor

<sup>1</sup>According to USDA officials, minor problems can occur if the export certificates accompanying U.S. exports are incorrect. These types of problems usually affect certain shipments of a product rather than all exports of a product and can generally be fixed quickly by providing corrected paperwork.

trade negotiations have achieved resolution, the U.S. government has decided to request formal WTO or NAFTA consultations or review by a dispute settlement panel.

Based on our review of six measures and our discussions with responsible federal officials, federal efforts to address individual SPS measures may include primarily technical exchanges, primarily trade negotiations, or a combination of the two. In addition, it appears that SPS measures may be resolved at any point during the three phases we identify and some disagreements are resolved more quickly than others depending on the circumstances.

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## Other SPS-related Activities

Our review focused on U.S. government efforts to address foreign SPS measures, but federal entities perform other activities related to SPS issues that are designed to facilitate existing trade or generally enhance global dialogue about SPS measures and their relation to trade. For example, the overall U.S. system for ensuring food safety and protecting animals and plants from pests or diseases facilitates exports by providing safe, healthy products. U.S. regulatory entities, such as the Food and Drug Administration (FDA) and USDA's Food Safety and Inspection Service (FSIS) and Animal and Plant Health Inspection Service (APHIS) are the lead agencies in this process. In addition, APHIS and FSIS routinely certify the health and safety of U.S. exports to facilitate their entry into foreign markets. Sometimes, as a result of technical exchanges or trade negotiations, these agencies certify that U.S. products conform to specific requirements agreed to by the United States and the foreign government.

U.S. trade and regulatory officials participate in several international trade organizations or agreements that have developed or continue to develop trade rules regarding SPS measures. These include the WTO, NAFTA, and a preparatory working group on SPS measures for negotiations on a Free Trade Area of the Americas. U.S. regulatory officials represent the United States in several international and regional organizations, including the Codex Alimentarius Commission, the International Office of Epizootics, and the International Plant Protection Convention, that facilitate discussion of technical issues with a view toward developing international SPS standards. Finally, under the auspices of the WTO, U.S. government officials have participated in training seminars to help developing country officials understand their WTO SPS obligations.

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## **USDA Staff and Budget Resources**

Because most federal efforts related to SPS issues are initiated or managed by USDA, we asked the Secretary of Agriculture's Special Assistant for International Trade to provide information about USDA entities' staff and budget resources devoted to export-related SPS issues from 1994 to 1997. In some cases, the entities were able to provide full-time staff years that are devoted to these issues; in other cases, entities had to estimate the full-time equivalent because their staff work on other issues as well. We also identified four functional categories that summarize the various USDA activities and asked the entities to indicate which functional categories cover most of their activities. These categories are (1) negotiations, (2) export certification, (3) technical work, and (4) participation in international organizations.

In responding to our request, the Secretary's Special Assistant observed that the majority of USDA's export-related SPS staff years are allocated to activities that facilitate exports such as the issuance and review of export certificates. These activities take place solely within regulatory entities. Table II.1 shows the actual or estimated full-time staff years that USDA entities allocated to all SPS activities from fiscal years 1994 to 1997 and the functional categories each entity covers. The Special Assistant also observed that staff years devoted to the topic of this report, technical or trade negotiations with other countries, and the establishment of related policies accounted for less than one-fourth of the export-related SPS staff years allocated in 1997. Table II.2 shows the staff years that APHIS, the Foreign Agricultural Service (FAS), and FSIS reported they allocated to technical or trade negotiations from fiscal years 1994 to 1997. Table II.3 shows the estimated budget resources these entities allocated to all SPS-related activities during the same period.

**Appendix II  
U.S. Approach, Related Activities, and  
Resources for Addressing Foreign SPS  
Measures**

**Table II.1: USDA Entities' SPS Functions and Full-time Staff Years Allocated to All Export-related SPS Issues, Fiscal Years 1994-97**

Entity	Functions	FY '94 staff years	FY '95 staff years	FY '96 staff years	FY '97 staff years	% change FY '94 to FY '97
APHIS	EC, IO, N, T	175.0	190.0	200.0	209.0	+ 19%
FAS	IO, N	23.0	44.0	49.0	49.0	+ 113
FSIS	EC, IO, N, T	55.0	60.0	70.0	82.0	+ 49
GIPSA	EC, N, T	5.0	5.0	5.1	5.1	+ 2
ARS	N, T	32.0	32.0	32.0	32.0	0
OSEC	Guidance	0	0	0.5	0.5	n/a
<b>Total</b>		<b>290</b>	<b>331</b>	<b>356.6</b>	<b>377.6</b>	<b>+ 30%</b>

Legend

ARS = Agricultural Research Service  
OSEC = Office of the Secretary (of Agriculture)  
EC = Issuance and review of export certificates  
GIPSA = Grain Inspection, Packers and Stockyards Administration  
IO = Participation in international trade and SPS standard-setting organizations, including establishing related USDA or agency export policies  
N = Bilateral negotiation with trading partners about SPS measures with the goal of export facilitation. Can include establishing related USDA or agency export policies  
N/A = not applicable  
T = Performance of technical work, including risk assessments, research, and other technical support

Source: USDA.

**Table II.2: APHIS, FAS, and FSIS  
Full-time Staff Years Allocated to  
Technical or Trade Negotiations, Fiscal  
Years 1994-97**

Entity	FY '94 staff years	FY '95 staff years	FY '96 staff years	FY '97 staff years	% change FY '94 to FY '97
APHIS	36	37	38	42	+ 17%
FAS	23	44	49	49	+ 113
FSIS	3	3	3	3	0

Note: We attribute all FAS staff years to trade negotiations because this is FAS' primary SPS-related function.

Source: USDA.

**Appendix II**  
**U.S. Approach, Related Activities, and**  
**Resources for Addressing Foreign SPS**  
**Measures**

**Table II.3: USDA Entities' Budget Resources for Export-related SPS Issues, Fiscal Years 1994-97**

Dollars in thousands

<b>Entity</b>	<b>FY '94 budget resources</b>	<b>FY '95 budget resources</b>	<b>FY '96 budget resources</b>	<b>FY '97 budget resources</b>	<b>% change FY '94 to FY '97</b>
APHIS	\$11,068	\$12,450	\$13,182	\$15,741	+ 42%
FAS	1,449	2,860	3,283	3,381	+ 133
FSIS	3,507	3,561	4,036	4,274	+ 22
GIPSA	168	174	187	192	+ 14
ARS	9,962	10,062	10,164	10,266	+ 3
OSEC	0	0	61	62	n/a
<b>Total</b>	<b>\$26,154</b>	<b>\$29,107</b>	<b>\$30,913</b>	<b>\$33,916</b>	<b>+ 30%</b>

Source: USDA.

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# Federal Efforts to Address Six Foreign SPS Measures

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To enhance our understanding of the U.S. government structure and approach for addressing foreign SPS measures, we developed information on six cases where another country's SPS measure(s) have blocked or continue to block U.S. agricultural exports to that country. The six cases involved various commodities and countries, including U.S. wheat exports to China, potential U.S. tomato exports to Japan, U.S. beef and veal exports to the EU, U.S. peach and nectarine exports to Mexico, certain U.S. meat product exports to Korea, and U.S. poultry exports to Russia. Information about how we selected these cases and developed information about them is contained in appendix IV.

Of the six measures we examined, three have been long-standing, two of which have been resolved (although in one of these cases renewed U.S. exports are not assured). The oldest measure is the Chinese "zero tolerance" for wheat imports found to contain *tilletia controversa kuhn* (TCK), a common smut fungus. The Chinese ban was established in 1973 and began to affect U.S. wheat exports from the Pacific Northwest in 1974. The second measure is the Japanese ban on the importation of U.S. tomatoes because of concern that such tomatoes could be a host for tobacco blue mold (TBM). That ban was lifted for 25 varieties of tomatoes on April 25, 1997. The third measure is the EU ban on the use of growth-promoting hormones in livestock, which was implemented in 1989. On June 30, 1997, a WTO dispute settlement panel found the ban to be inconsistent with the SPS agreement. However, the EU filed an appeal regarding this decision on September 24, 1997.

The three other SPS measures we examined are more recent, and all three have been resolved. The first measure is Mexican preshipment requirements, dating back to 1991, for U.S. peaches and nectarines. The second measure is a 1994 Korean requirement limiting the shelf-life on certain frozen meat products to 30 days. The third measure is the Russian ban on U.S. poultry in 1996 due to concerns about food safety and poultry disease issues.

Five of these six measures resulted in disruption of an ongoing U.S. export market. In one case, there was a brief but total ban on U.S. exports (poultry to Russia); while in two cases, there was a partial ban on U.S. exports (beef to the EU and wheat to China). In the other two cases, foreign requirements caused U.S. exports to drop significantly (certain meat products to Korea and peaches and nectarines to Mexico). The sixth measure did not disrupt an ongoing market but, rather, resulted in the exclusion of U.S. exports from a market (tomatoes to Japan).

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## **Wheat to China**

The Chinese “zero tolerance” for TCK was established in 1973, just 1 year following the resumption of diplomatic relations between the United States and China. According to the Agricultural Research Service (ARS), the disease caused by TCK reduces plant height by up to 50 percent, replaces kernels of grain with useless spores in the seed head, and gives wheat a fishy odor. Since 1974, China has banned wheat shipped from the states of the Pacific Northwest, an area where TCK is known to occur, but has continued to import wheat shipped from other U.S. ports. However, in the summer of 1996, China rejected several shipments of U.S. wheat, shipped from Gulf ports, that Chinese officials said were found to contain TCK.

The impact of the Chinese ban on U.S. wheat exports is difficult to determine. U.S. exports of wheat to China have fluctuated significantly during the more than 20 years that the United States has exported wheat to China. Figure III.1 shows China’s wheat imports from 1982 to 1992. According to a USDA official, it is not clear that overall U.S. wheat exports to China have decreased as a result of the Chinese ban. Even if the ban were not in place, it is not clear that China would have bought more wheat from the United States and less wheat from other wheat exporters, such as Canada. USDA’s Economic Research Service (ERS) concluded in December 1993 that CEROILS, the Chinese state trading agency that purchases all China’s wheat imports, relies on pricing more than on other factors when making wheat purchase decisions.



**Appendix III  
Federal Efforts to Address Six Foreign SPS  
Measures**

**Figure III.1: China Wheat Imports, Calendar Years 1982-92**



Source: USDA.

The Chinese ban on wheat with TCK is the longest-standing SPS measure that we examined. There have been intermittent discussions between the United States and China during the last 24 years, including joint research efforts, but the positions of the two countries have remained substantially unchanged.

The Chinese government states that it is very concerned with food security and cannot risk having TCK become established in China. For this reason, China maintains its official “zero” tolerance of TCK. In practice, however, China has accepted some level of risk. For example, during 1988, China

accepted wheat from the Pacific Northwest on an experimental basis but stopped this practice because it continued to detect TCK in these shipments. China also reported finding TCK in U.S. wheat shipped from a Gulf port in 1989; USDA retested this shipment but did not find TCK. In the late 1980s, China established a schedule in its contracts with U.S. exporters to discount the price of wheat when TCK is found. (One wheat exporter told us that in 1995, it had shipped 2 million tons of wheat to China on over 40 vessels and had only one \$3 claim on one vessel.)

The U.S. government has stated that there is minimal risk of TCK becoming established in China from imported wheat because climatic conditions in China are not conducive to allowing TCK spores to germinate. According to a Grain Inspection, Packers and Stockyards Administration (GIPSA) official, although data indicate that China has been importing wheat with some low levels of TCK for years, China continues to state that TCK does not exist in that country. Furthermore, U.S. officials said that one or two other countries have voiced some concern about TCK, but China is the only country that prohibits the import of wheat with TCK. In short, the U.S. position is that China's zero-tolerance for TCK is not based on sound science. The U.S. position is that China can safely accept some minimal level of exposure to TCK and not risk damage to its wheat production.

Several USDA agencies have been involved in attempts to resolve the TCK issue with China over the last 20 years. Agencies that have had major roles at various times have included APHIS, FAS, the Federal Grain Inspection Service (which later was combined with another agency to become GIPSA), ARS, and the Agricultural Marketing Service (AMS). The Office of the Secretary of Agriculture has also been involved, and special task forces have been established over the years.

Discussions between U.S. and Chinese officials remained at a technical level for many years. A prominent issue the two sides discussed during the early 1990s was how to correctly distinguish TCK spores from those of other diseases that did not concern China so that U.S. wheat shipments were not detained or rejected inappropriately. ARS and AMS played important roles in conducting joint research with Chinese scientists to develop a common spore-identification methodology. The two sides have also discussed options that would allow U.S. wheat to enter China freely at southern ports that are physically distant from China's main wheat-production regions. In 1993, the Chinese offered to allow U.S. wheat to enter at Hainan Island, but the United States considered this option

unacceptable because grain processing facilities on the island were inadequate.

More recently, the issue has been discussed primarily at a trade level. Since 1986, China has been seeking to join the WTO and, at various times, some U.S. officials have stated that the TCK issue will have to be resolved before the United States can support China's bid for membership. The United States and China signed a memorandum of understanding in 1992, according to which China promised that all SPS standards and testing requirements would be based on sound science and administered in a manner that does not impede trade or create barriers to imported products. The U.S. position is that China must honor that agreement in order to gain access to the WTO. Although Chinese officials have continuously identified the TCK issue as a technical problem, a GIPSA official said that U.S. efforts to resolve the issue through technical exchanges have not produced results and expressed the opinion that the issue can only be resolved through a political solution.

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## Tomatoes to Japan

For at least 14 years, Japan has blocked the import of U.S. tomatoes because of concerns that such products were a host for TBM. According to U.S. officials, Japan based this concern on citations in scientific literature published in 1933 and 1989 that identified tomatoes as a possible host for TBM. On April 25, 1997, USDA announced that Japan had lifted its ban and would allow the importation of 25 varieties of U.S. tomatoes. According to the announcement, U.S. industry estimated that the size of the Japanese market for U.S. tomatoes could reach approximately \$50 million annually.

The U.S. position was that TBM does not infest tomatoes. According to APHIS officials, although TBM is present in the United States, there have been no incidents of TBM reported in California, where tomato growers were interested in exporting to Japan.<sup>1</sup> Negotiations between the two countries since 1983 were primarily technical in nature, with APHIS taking the lead for the United States. FAS' role was more limited and involved prompting movement on the case with Japanese officials. In addition, ARS co-sponsored a study with industry groups to test whether tomatoes could be inoculated with TBM. USTR was consulted regarding the prospects for taking the case to the WTO. The U.S. Ambassador to Japan brought the case up to the Japanese agriculture minister.

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<sup>1</sup>Tomato growers in Florida and other states subsequently expressed an interest in exporting to Japan.

APHIS began discussing the TBM issue as early as 1983 during annual bilateral meetings with Japan's Ministry of Agriculture, Forestry and Fisheries (MAFF). Although APHIS presented available research that suggested tomatoes were not a host for TBM, Japanese officials remained unconvinced. During 1991, Japan suggested the United States should conduct additional research to demonstrate that tomato plants could not be infected with TBM, even when inoculated with the fungus.

In response, APHIS submitted a research proposal that MAFF accepted. ARS conducted the research funded jointly by APHIS and the tomato industry. The results of this research, which conclusively supported the U.S. position, were provided to MAFF in 1995. However, through 1996, Japanese authorities repeatedly asked the U.S. government for additional data and scientific research. The Japanese also asked the U.S. side to correct the USDA Agricultural Handbook (an American Phytopathological Society publication), which made a reference to TBM on tomatoes.

In June 1996, APHIS asked the FAS Administrator to meet with Japanese officials and explain that the United States was prepared to bring the case before the WTO if there were further delays by the Japanese. Later that year, MAFF indicated its intention to remove the ban. However, according to Japanese regulations, Japanese authorities had first to obtain comments from and hold public hearings involving Japanese producer groups before making a final decision on whether to lift the ban. Japan initially delayed implementation because of resistance among Japanese tomato growers but finally lifted the ban for 25 varieties of tomatoes in April 1997.

Both U.S. industry and government sources have complained about the slow pace of progress in the negotiations. One industry spokesman said that while the Japanese appeared to stall and drag out the negotiations, APHIS' practice of waiting for formal annual bilateral meetings to raise outstanding concerns did not facilitate rapid progress either.

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## Beef to the EU

On January 1, 1989, implementation of an EU ban on the use of growth-promoting hormones in livestock and on imports of meat from animals so treated caused U.S. beef and veal exports to drop from about \$120 million in 1988 to less than \$10 million in 1989. The ban applied to all meat but primarily affected U.S. exports of edible organ meats, the export value of which dropped from \$85 million in 1988 to \$0.5 million in 1989. U.S. sales of edible organ meat to the EU remain limited, at only \$1 million in 1995.

The U.S. position on the hormone ban is that the measure is inconsistent with the WTO SPS agreement because, among other things, it is not supported with scientific evidence or risk assessment, it is not necessary for the protection of human health, and it ignores relevant international standards.<sup>2</sup> Further, the United States argued that the measure is designed to protect domestic producers from competition. The U.S. complaint about the EU ban was an important test of the SPS agreement on strengthened rules and procedures for dealing with food safety and health measures that restrain trade and of the WTO's dispute settlement process.

Concerns in Europe about hormone use and its impact on human health began in 1980 when a health scandal in Italy had raised suspicions about school lunches containing veal that may have contained hormone residues. An EU Council Directive of July 1981 prohibited the use of hormones, except for therapeutic purposes. The EU set up a scientific working group (the Lamming Committee) to determine whether the use of five specific hormones (three natural and two synthetic) as growth promotants posed any health risk.<sup>3</sup> The Lamming Committee concluded that the three natural hormones would not present any harmful effects to the health of the consumer. In June 1984, the EU proposed allowing the use of the three natural hormones.

In October 1985, however, the European Parliament adopted a resolution claiming that scientific information about the five hormonal substances was "far from complete." It endorsed a ban on the two synthetic hormones and rejected the proposed authorization of the three natural hormones, with a continued exception for therapeutic purposes. In December 1985, an EU Council Directive banned the use of natural hormones except for therapeutic purposes, the use of synthetic hormones, and the importation of meat from animals to which any hormones had been administered. The directive was to take effect on January 1, 1988, but was delayed 1 year.

Much of the negotiations between the United States and the EU concerning the hormone ban have been conducted by trade officials and have been very formal. In September 1986, the United States challenged the EU hormone ban under the GATT Agreement on Technical Barriers to Trade

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<sup>2</sup>In 1995, the Codex Alimentarius Commission adopted standards on five of the hormones banned by the EU. Codex determined that three natural hormones (estradiol, progesterone, and testosterone) are unlikely to pose a human health hazard. Codex also established usage standards for two synthetic hormones (trenbolone and zeranol) that would protect human health. The EU's measure is stricter than Codex standards.

<sup>3</sup>The three natural hormones the Lamming Committee studied were estradiol, progesterone, and testosterone. The two synthetic hormones studied were trenbolone and zeranol.

and in 1987 requested that the matter be referred to a group of technical experts. The EU blocked formation of the technical group, and the dispute went unresolved. USTR subsequently developed a retaliation list of EU commodities on which there would be sanctions but suspended application of the list for a year until the scheduled implementation of the EU ban. In January 1989, however, the EU directive went into effect, and the United States reacted by applying the retaliation list that had been suspended.

During the 1990s, both sides looked to the Uruguay Round negotiations on SPS measures to provide some new basis for deciding the issue. After the SPS agreement was implemented in 1995, USTR and USDA again tried to resolve this issue. During 1995, USDA officials met several times with EU officials but were unable to obtain resolution. In late 1995, the EU held its Scientific Conference on Growth Promotion in Meat Production. The conference concluded there was no evidence of health risk from the five hormones approved for use in the United States. However, following the conference, the EU reaffirmed its commitment to maintaining the ban.

In January 1996, the United States requested WTO consultations with the EU. Consultations were on held March 27, 1996, but failed to resolve the dispute. The United States requested that the WTO Dispute Settlement Body establish a panel to review the case, which was done on May 20, 1996. The U.S. complaint addressed the three natural hormones, the two synthetic hormones, and a sixth hormone.<sup>4</sup> FDA had a major role in developing the technical aspects of the U.S. complaint. On June 30, 1997, the panel found the EU ban to be inconsistent with the SPS agreement. The EU filed an appeal regarding this decision on September 24, 1997.

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## **Peaches and Nectarines to Mexico**

In 1991, the Mexican government established a ban on imports of several types of fresh fruit, including U.S. peaches and nectarines, because of their susceptibility to being attacked by the Oriental fruit moth (OFM). At the same time, Mexico identified several other pests of concern related to U.S. peach and nectarine imports. Before 1991, U.S. peach and nectarine exports to Mexico were not subject to any restrictions. Since 1992, U.S. peaches and nectarines have been exported to Mexico in accordance with the requirements of a work plan agreed to by U.S. and Mexican government officials. For example, the work plan requires U.S. peaches and nectarines to be treated and inspected before shipment. USDA officials

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<sup>4</sup>The hormones addressed by the U.S. complaint were estradiol, progesterone, testosterone, trenbolone, zeranol, and melengestrol acetate.

said the quantity of U.S. peaches and nectarines exported to Mexico, measured in metric tons, dropped by almost 40 percent between 1991 and 1996. In addition, industry officials told us that the cost associated with treating the fruit for OFM is high.

In 1991, the plant health agency of Mexico's department of agriculture told APHIS officials that the agency believed phytosanitary requirements needed to be established for fresh fruit imports from the United States in order to protect Mexico from exposure to certain pest risks, including OFM. Mexican officials asserted that OFM is not found in Mexico.

APHIS officials told us they consider the Mexican concern about OFM and the associated treatment requirements to be legitimate. FAS officials said they agreed with APHIS' position. However, industry officials said they question a basic premise of the Mexican phytosanitary measure, namely, that OFM does not exist in Mexico.<sup>5</sup> Furthermore, the officials said they believe that the treatment and inspection measures that are required to allow peaches and nectarines to enter Mexico are excessive.

APHIS was the primary U.S. agency involved in the Mexican case, and it assumed the lead in technical negotiations with its Mexican counterpart. ARS provided substantial technical support to APHIS. FAS officials also had a supporting role in the resolution of the case. In addition to U.S. government entities, the California Department of Food and Agriculture played a fairly large role in developing the annual work plans.

Technical negotiations between APHIS and Mexican plant health authorities began in late 1991. First APHIS convinced the Mexicans to reduce the number of pests that concerned them from eight to three. Between 1992 and 1995, the two sides developed annual work plans that would allow U.S. peaches and nectarines to be exported to Mexico. (Such work plans exist for certain Mexican products being exported to the United States.) The work plan requires the fruit to be fumigated with methyl bromide before shipment. In 1993, the work plan was modified at the request of the Mexican government to require that the U.S. industry pay for Mexican inspectors to be stationed in the United States to monitor the fumigation process. (APHIS inspectors are similarly stationed in Mexico.) Shipments are to be accompanied by an APHIS-issued phytosanitary certificate attesting that all requirements have been met. In 1995, a permanent work plan was adopted, although there have been slight modifications to the

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<sup>5</sup>Industry officials cited a British report that showed OFM was found in Mexico. However, APHIS officials told us they had examined the report and its supporting material and found the conclusion about OFM's existence in Mexico to be erroneous.

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work plan since then. For example, in 1997, APHIS persuaded Mexico to accept an alternative treatment method to methyl bromide for 10 percent of the peaches and nectarines being exported to Mexico.<sup>6</sup>

Although U.S. industry was pleased with the U.S. government response to the Mexican requirements when they first went into effect, the Mexican case is perhaps the best example of one where there has been strong disagreement between U.S. government and industry officials about the legitimacy of a foreign SPS measure.

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## **Certain Meat Products to Korea**

In February 1994, Korea began to enforce a 30-day shelf-life requirement on cooked frozen meat products, specifically sausages exported to Korea. The permitted shelf life had been 90 days for the 4 years before 1994. According to U.S. officials, by limiting the shelf life of these products to 30 days, Korean authorities effectively denied U.S. products access to the Korean market, since it took at least 35 days for shipments to reach Korea and roughly 30 days for the sausages to clear port. Following WTO consultations in 1995, Korea agreed to accept the manufacturer-determined shelf life by July 1, 1996. Imports of sausages from the United States to Korea in 1993 totaled \$7.4 million. In 1994, such imports had dropped to \$4 million, a decrease of 45 percent.

According to U.S. officials we interviewed and documents we reviewed, there were two major elements in the Korean position regarding the need to establish the 30-day shelf-life requirement. First, Korean experts maintained that cooked sausages were susceptible to infection by microorganisms when the condition of the sausages fluctuated between frozen and unfrozen states, as was often the case for frozen food distributed in Korea. Second, since there was no international standard on the shelf life of cooked frozen sausages, Korean authorities surveyed the practices of major advanced countries. Korean authorities argued that while a number of those countries allowed manufacturers to determine the shelf life of their products, it would be premature for Korea to do the same, given the level of development of its food manufacturing industry.

The U.S. government position was that Korea's 30-day shelf-life requirement was unscientific. U.S. authorities argued that scientific and

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<sup>6</sup>Methyl bromide is a highly effective fumigant that is widely used in agricultural production to control a broad spectrum of pests. It has been identified by scientists as an ozone-depleting substance. In 1993, EPA issued regulations to phase out the production and importation of methyl bromide in the United States. See *Pesticides: The Phaseout of Methyl Bromide in the United States* (GAO/RCED-96-16, Dec. 15, 1995).



regulatory data supported a shelf life of about 1 year for cooked frozen sausages. U.S. officials also argued that allowing manufacturers to set their own shelf life is a well-established practice around the world.

USTR and FAS had major roles in resolving this case. FSIS and FDA provided technical support to USTR and FAS. The U.S. Ambassador to Korea and FAS and USTR officials met with Korean health authorities soon after the case came to the attention of the U.S. government in March 1994. Over the next few months, USTR, USDA, and embassy officials communicated their disappointment about Korea's decision to Korean health and foreign affairs authorities.

In November 1994, a U.S. industry group filed a petition about the Korean measure with USTR under section 301 of the Trade Act of 1974 (19 U.S.C. 2411). In January 1995, following discussions about the section 301 case, the Korean government reversed itself on shelf-life requirements for certain meat products. However, Korea's proposal was unsatisfactory to the United States because a system for manufacturer-determined shelf life for these products would not take effect until 1998.

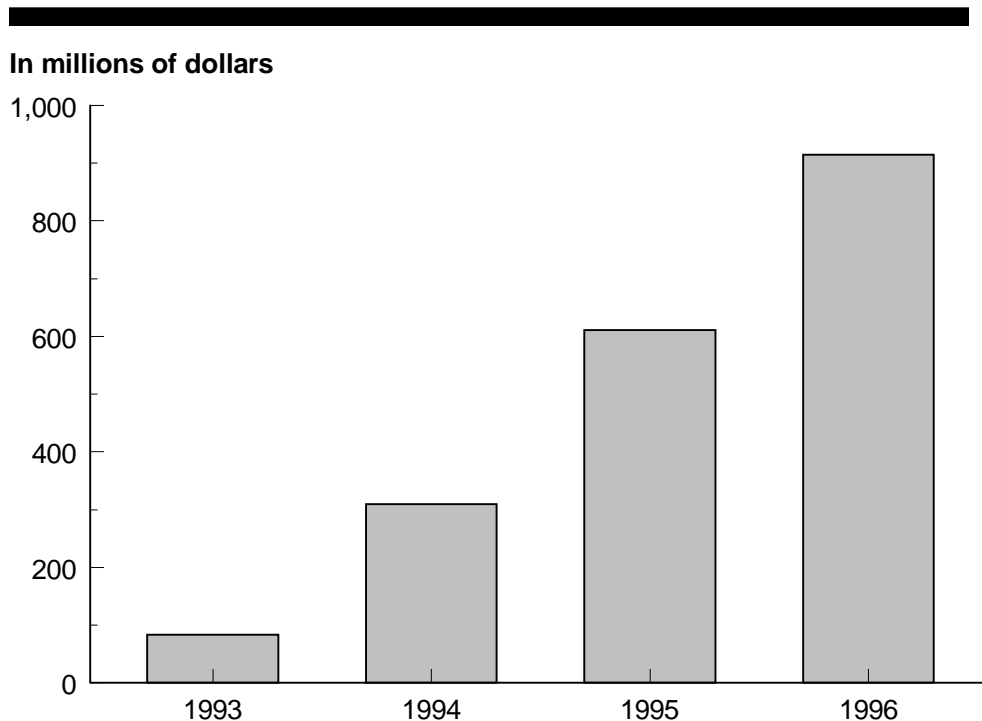
Under the auspices of the WTO, in May 1995, USTR requested consultations with Korea on the shelf-life requirements. The consultations addressed shelf-life requirements not only for chilled and frozen meat products but also for a number of other products. According to USTR, damage estimates due to multiple Korean shelf-life requirements ranged from \$240 million in 1994 to as much as \$1 billion annually by 1999.

The consultations led to an agreement, on July 20, 1995, whereby Korean authorities agreed to phase out their government-mandated shelf-life system and accept the manufacturer-determined shelf-life for imported products. The new system became effective for all dried, packaged, canned, or bottled products on October 1, 1995, and for chilled, vacuum-packed pork and beef and all frozen food on July 1, 1996. According to a WTO official, the system for other products was to be phased in over time. After the agreement was announced, USTR and FAS officials said they monitored Korea's implementation to ensure it adhered to the agreement. These officials said Korea's initial notification to the WTO of its new measures in July 1995 did not appear to be consistent with the agreement reached, but a subsequent notification in September 1996 seemed to comply with the agreement.

## Poultry to Russia

In 1996, the Russian poultry ban threatened a U.S. market that had been growing dramatically since the collapse of the Soviet Union, from about \$84 million in 1993 to about \$608 million in 1995 (see fig. III.2). Russia has become the largest single market for U.S. poultry exports—U.S. poultry exports to Russia represented about 26 percent of total U.S. poultry exports in 1995. Poultry exports have also become the largest single U.S. export to Russia. Because the ban was in effect for only about a week before the United States and Russia reached an agreement, and because U.S. poultry exports to Russia had increased somewhat during January and February of 1996 in anticipation of the ban's taking effect, total U.S. poultry exports to Russia actually increased during 1996. Nonetheless, the potential loss from a long-term ban was quite substantial.

**Figure III.2: U.S. Poultry and Poultry Product Exports to Russia, Calendar Years 1993-96**



Source: USDA, Foreign Agricultural Trade Statistics of the United States, various issues.

The case had its origins in a shipment of “off-condition” chicken received by a Russian importer in June 1995. In November 1995, Russian veterinary

health officials stated they had concerns about the U.S. system for ensuring the safety of U.S. poultry exports and demanded that all U.S. processing and cold storage facilities involved in the export of chicken to Russia be inspected by Russian veterinarians.

After consulting with industry officials, USDA officials agreed to the Russian inspection of U.S. facilities, even though an inspection of such magnitude was unusual. Shortly before the arrival of the Russian veterinarians in January 1996, Russia provided standards by which the U.S. facilities were to be judged. USDA and industry officials said the standards were very strict and were not similar to the existing U.S. poultry processing system. After inspecting about 50 of the more than 300 plants that were to be reviewed, a top Russian health official announced in February 1996 that none of the U.S. facilities had met Russian standards.

Following this announcement, U.S. (APHIS, FSIS, and FAS) and Russian officials engaged in technical negotiations to attempt to resolve the problem. The negotiations addressed food safety and animal disease issues and lasted for several weeks. The U.S. position was that the U.S. system produces a safe and wholesome product and the Russian import requirements were unreasonable. U.S. officials argued that processing and inspection systems could differ but still offer the same degree of protection. On February 16, 1996, Russian officials announced that a ban on U.S. poultry imports would go into effect within 30 days unless Russian concerns were addressed. U.S. officials who participated in the talks said it became clear to them that technical negotiations were not going to resolve the problem.

Following indications by Russian officials that they would ban U.S. poultry imports, the Office of the Vice President became involved, and USTR took the lead in the negotiations. The Russian ban was announced on March 16, 1996. Negotiations between the United States and Russia followed, and a resolution was announced about 1 week later, on March 25, 1996. The two sides reached agreement, among other things, on an updated export certificate and a framework for periodic inspections of U.S. poultry processing and cold storage facilities. According to U.S. officials, in this case, the Office of the Vice President had a unique channel to work through—a committee set up between the Vice President and the Russian Prime Minister that held semiannual meetings to discuss bilateral issues.

U.S. industry, which was willing to make certain concessions to protect its market, was heavily involved in developing the U.S. negotiating position.

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**Appendix III**  
**Federal Efforts to Address Six Foreign SPS**  
**Measures**

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U.S. industry has noted, however, that the ban could perhaps have been avoided had higher level and/or appropriate U.S. officials been involved earlier in the negotiations. Some U.S. officials also expressed concern that allowing Russian veterinarians to come to the United States with the purpose of inspecting all the processing plants that exported poultry to Russia may have set an expensive precedent for both the federal government and the agricultural industry.

# Objectives, Scope, and Methodology

The objectives of our work were to provide Congress with information and analysis on (1) the extent to which foreign SPS measures may unfairly restrict U.S. agricultural exports and (2) the federal structure and approach for addressing such measures. Our work does not address other countries' concerns about U.S. SPS measures or federal efforts to ensure the safety of domestically produced and imported food.

To address the extent of foreign SPS measures and their impact on U.S. agricultural exports, we

- reviewed USDA and academic literature that addressed (1) the history of technical barriers to agricultural trade, including SPS measures; and (2) the impact of certain SPS measures on trade;
- discussed the extent and impact of SPS measures with (1) appropriate trade and regulatory officials at USDA, USTR, FDA, the Environmental Protection Agency (EPA), and the Department of State; (2) representatives of agricultural trade associations for beef, fruits, pork, poultry, seeds, vegetables, wheat, and other commodities; (3) officials from the National Association of State Departments of Agriculture and selected state departments of agriculture; and (4) academic experts at the University of California;
- reviewed USDA and private sector analyses of how other countries' SPS measures impact U.S. exports;
- attended the 1996 and 1997 USDA Agricultural Outlook Conferences, as well as the National Association of State Departments of Agriculture's 1996 Legislative Conference, where the primary issues facing U.S. agricultural exports were discussed; and
- reviewed selected official records of meetings from 1991 to 1996 of USDA's Agricultural Policy Advisory Committee (APAC) and multiple Agricultural Technical Advisory Committees (ATAC) for various commodity groupings to track changes in the level of concern expressed about the impact of foreign SPS measures.

To describe and analyze the federal structure and approach for addressing foreign SPS measures, we

- reviewed studies of the U.S. trade structure for agricultural products and the U.S. regulatory structure for food safety and animal and plant health to determine which entities were responsible for this issue;
- reviewed responsible entities' relevant statutory authorities, mission statements, organizational charts, budgets, and staff levels, particularly related to addressing foreign SPS measures;

- interviewed relevant officials in USDA's Office of the Secretary; at eight USDA agencies; USTR; FDA; EPA; and State to discuss their Department's or agency's role in addressing foreign SPS measures, activities their Department or agency has undertaken to address specific foreign measures, their working relationships with other responsible entities, the extent to which responsible entities have coordinated their efforts, and how key decisions were made in individual cases;
- attended or reviewed documentation of USDA interagency meetings held to coordinate and share information about the status of efforts to address foreign SPS measures;
- reviewed structural and procedural limitations of the current approach as well as possible changes that could address certain problems with high-level USDA officials and agency staff, including the Special Assistant for International Trade to the Secretary of Agriculture and the FAS Administrator;
- reviewed nonpublic agency documents that identified specific problems and suggested possible solutions, including a report by the USDA Office of Inspector General that examined USDA's response to NAFTA implementation;
- reviewed documentation of several USDA agencies' computer data bases that are used to track and manage SPS-related activities;
- attended APAC and ATAC meetings where concerns about the U.S. government approach to address SPS measures were discussed with USDA and USTR officials;
- interviewed and obtained documentation from representatives of agricultural trade associations that have requested U.S. government assistance to address SPS measures to assess their experiences, what problems they encountered, and how satisfied they were with U.S. government efforts; and
- reviewed agricultural trade association documents that identified specific problems in the current structure and approach and suggested possible solutions.

To further support this objective, we developed information on U.S. government actions to address six foreign SPS measure(s) that have threatened, constrained, or blocked or continue to block U.S. agricultural exports. To select the six measures, we examined a variety of factors and attempted to develop a group of measures that would allow us to address a range of issues, including (1) commodities affected, (2) countries establishing the measures, (3) duration of the measures (from a few months to many years), (4) impact of the measures on trade (from relatively small to relatively large), (5) status of U.S. efforts to resolve the case (from resolved to unresolved), (6) coverage by multilateral rules

(involving WTO members, NAFTA members, and nonmembers of either agreement), and (7) the extent of participation of responsible U.S. government entities in addressing the measure.

The measures we examined included

- a Chinese stated “zero tolerance” on wheat infected with the TCK fungus, a measure in effect since 1973 that has primarily affected certain northwestern U.S. states where the fungus is known to occur;
- a Japanese ban (encountered as early as 1983) on imports of U.S. tomatoes because of Japanese government concerns that tomatoes carried TBM;
- a 1989 EU ban on imports of hormone-treated meat that blocks U.S. beef and veal exports;
- 1991 measures adopted in Mexico to establish multiple preshipment requirements for imports of fresh U.S. peaches and nectarines;
- a 1994 change to a Republic of Korea shelf-life standard that adversely affected U.S. meat product exports; and
- a brief 1996 Russian ban on U.S. poultry exports due to Russian dissatisfaction with U.S. inspection processes and disease certifications.

For each measure, we developed a chronology of U.S. government and industry actions taken to address the measure, from the time the U.S. government first learned about the measure until the measure was resolved, or if unresolved, to the present time. To do so, we conducted interviews with agency officials who had been involved in addressing the measure; obtained any documents these officials could provide to demonstrate their or their entity’s actions, including chronologies, trip reports, memos, meeting minutes, press releases, and the text of any agreements reached with the foreign government; and reviewed reporting cables between State (headquarters) and embassy officials located abroad during 1994-96 that discussed these cases, including information about meetings with foreign officials and their results. We also met with agricultural trade association officials who had been involved in these cases to discuss what actions they had taken and ascertain their opinions of U.S. efforts.

# Comments From the U.S. Trade Representative

Note: GAO comments supplementing those in the report text appear at the end of this appendix.

EXECUTIVE OFFICE OF THE PRESIDENT  
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE  
WASHINGTON, D. C. 20508

SEP - 9 1997

MEMORANDUM

TO: Jayetta Hecker  
Associate Director, International Relations and Trade Issues, GAO

FROM: Dorothy Dwoskin  
Assistant U.S. Trade Representative

SUBJECT: USTR Comments on the Draft Report: "Agricultural Exports: U.S. Needs Sound Approach to Address Sanitary/Phytosanitary Issues"

Thank you for the opportunity to comment on this draft. The request for this report is a timely response to the growing importance of SPS-related trade issues. However, USTR has a number of concerns with the initial draft, some of which were discussed when our staffs met on August 19. USTR's detailed comments on specific elements of the draft text are attached, and I highlight some of the more important issues in this memo. In view of our substantive concerns, USTR would appreciate the opportunity to again review the draft report, after Administration comments have been taken into account, and before its final release.

1. The draft's discussion of the Administration's GPRR goals and interagency policy management process should be updated:

Most of the information collected from USTR, in particular, is from interviews that were conducted in the first half of 1996, shortly after the entry into force of the SPS Agreement. USTR and the rest of our interagency TPSC team have been very active in this area since then. The current draft does not adequately reflect a number of important organizational and operational accomplishments during the last year.

As the draft notes on page 12, USTR and USDA "have established the removal of such barriers as a primary objective of their trade agenda to increase agricultural exports." Reflecting this commitment, USTR's draft FY1997 GPRR report identifies specific negotiating goals in this area.

The Administration is currently pursuing an aggressive agenda of SPS-related trade policy concerns. While preparing for an appeal in the animal hormones dispute with the EU, we are engaged in WTO dispute settlement consultations in three other cases (Japan apples, Australia salmon, and Korea import processing procedures). SPS issues are systematically covered in USTR's National Trade Estimates report and are likely to feature prominently in our 1997 Super 301 negotiating agenda. We have raised the profile of SPS issues in a wide range of bilateral and regional trade agendas, and are insisting on strong commitments in WTO accession consultations.

See comment 1.



**Appendix V  
Comments From the U.S. Trade  
Representative**

Page 2

In meetings of the WTO SPS committee, the Administration has pushed aggressively for full compliance with the SPS Agreement's transparency requirements and other trade disciplines, and for resolution of specific trade problems affecting U.S. agricultural exports. We have also begun our interagency preparations for the triennial review of the SPS Agreement, which will be conducted in 1998. The Administration will of course be consulting with agricultural exporters and other interested domestic constituencies as this process continues.

The draft report focuses primarily on USDA's SPS-related activities, while overlooking the substantial amount of interagency work that USTR coordinates on a range of important SPS issues. When appropriate, USTR attends weekly FAS staff meetings and monthly APHIS strategy meetings, in which a large number of potential SPS trade problems are tracked. The results of these meetings are reported to interagency Trade Policy Staff Committee (TPSC) working groups, which are chaired by USTR. Other agencies with sectoral trade responsibilities, such as USDOC's National Marine Fisheries Service, also bring potential trade problems to the attention of the TPSC. A number of other specialized agencies, including State, FDA and EPA, actively participate in TPSC activities relating to SPS issues.

The TPSC establishes priorities and makes recommendations as to which issues should be raised in the SPS Committee, placed on our Super 301 negotiating agenda, or pursued through WTO dispute settlement consultations or panel procedures. Because of the complex technical nature of the issues, the TPSC frequently recommends further scientific research, testing and technical consultations before deciding whether to challenge the WTO-legality of specific SPS measures.

The Administration's track record demonstrates that these procedures for managing SPS issues are effective. USTR strongly disagrees with the draft's assertion that the "U.S. government has not yet developed a sound approach for evaluating and taking necessary steps to eliminate measures that are inconsistent with WTO provisions" (page 9) and with similar statements elsewhere in the report (e.g., page 39).

2. The report should provide a balanced view of U.S. interests in SPS issues:

U.S. decisions on SPS issues must address two important and distinct sets of national interests: (1) export markets and (2) public health and safety. To have a balanced understanding of the decision-making environment and process, it is important to understand how each of these interests relate to SPS trade issues. The draft report, however, focuses only on U.S. export interests. While interviews were conducted with a large number of trade associations, the research apparently did not include contact with the domestic constituencies that are keenly interested in the public health and environmental implications of SPS trade issues.

The United States' health, safety and environmental standards establish the parameters for our approach to related international trade issues. In this sense, citing FDA and EPA officials' statements that they have "only played support roles" in decision-making on SPS trade issues is

See comment 2.

**Appendix V  
Comments From the U.S. Trade  
Representative**

Page 3

misleading. Actions taken by FDA and EPA in compliance with their statutory responsibilities to ensure a healthy food supply and a clean and safe environment are an essential component of our trade agenda in this area. In addition, the regulatory agencies are the principal repository of the government's scientific and technical expertise on many SPS issues. Their active participation was key to our success in the WTO dispute settlement case involving the EU's ban on meat treated with hormones for growth purposes and is equally important in our ongoing efforts to resolve other SPS trade problems.

3. The draft exaggerates the usefulness of tracking lists in drawing "definitive conclusions" about the WTO-legality of SPS measures and their impact on U.S. trade:

The draft places a great deal of emphasis on the development of "comprehensive" lists of "definitive" WTO violations (e.g., pp. 8, 15). However, the Administration has already devoted considerable resources to such a project (the 1996 ERS survey) and has discovered that the results are of very limited use in assessing or managing these issues. In its discussion of the ERS project, the draft report points to some of the problems with such information (pp. 14-16).

As we note in our detailed comments, when the government first becomes aware of a potential trade problem associated with an SPS measure, it is in most cases unclear whether or not that measure violates WTO trade rules. Considerable interagency analysis and review, including scientific assessments by technical specialists, is often required. In addition, it may be necessary to conduct extensive research and testing to determine whether there is a scientific basis for the measure in question and whether alternative measures which would achieve the same protection in a less trade-restrictive manner are available. Exporters may sometimes be impatient with this process. Most understand, however, the need to develop solid scientific and legal evidence before challenging a trading partner's public health measures.

cc. A.Erickson, D.Brinza

See comment 3.

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The following are GAO's comments on the U.S. Trade Representative's memorandum dated September 9, 1997.

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## GAO Comments

1. We updated our discussion of USTR's Government Performance and Results Act (Results Act) strategic plan based on the final version that had not been completed when the draft report was sent to USTR for comment. We also added information about organizational developments at USTR and the interagency Trade Policy Staff Committee (TPSC) that USTR leads. Information throughout the report is based on discussions held with USTR and USDA officials continuously through October 1997 and documents gathered from both agencies. However, we continue to believe that our assessment of the overall U.S. approach and the need for coordinated goals, objectives, and performance measurements is accurate. First, the TPSC process is not a substitute for coordinated management of overall federal efforts. While this process is an important component of the federal approach, it is focused on obtaining interagency consensus on a limited number of SPS issues that the United States may raise for discussion in the WTO SPS committee and possibly refer to dispute settlement. According to USTR and USDA officials, the number of issues addressed in the TPSC process is a small subset of the hundreds that USDA entities address, which accounts for the report's focus on USDA's SPS-related activities. Second, we found only broad goals related to SPS measures in USTR's Results Act plan, rather than the "specific negotiating goals" that USTR said it contained. In our view, these broad goals are not sufficient to ensure the more integrated approach for addressing SPS measures that we believe is necessary.

2. We added information about the important role the regulatory agencies play not only in addressing foreign SPS measures but also in ensuring that U.S. trade policy does not undermine U.S. regulatory interests. However, the focus of this report is, as requested, on the facilitation of U.S. agricultural exports.

3. We discussed our response to this issue in the section of the letter entitled "Agency Comments and Our Evaluation." See page 35.

# Comments From the Department of Agriculture

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



DEPARTMENT OF AGRICULTURE  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20250

SEP 11 1997

Ms. Jayetta Z. Hecker  
Associate Director  
International Relations and Trade Issues  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington D.C. 20548

Dear Ms. Hecker:

Attached please find the United States Department of Agriculture's comments to the General Accounting Office draft report GAO/NSIAD-97-161: *Agricultural Exports: U.S. Needs Sound Approach to Address Sanitary/Phytosanitary Issues*.

Sincerely,

A handwritten signature in cursive script that reads "Paul Drazek".

Paul Drazek  
Special Assistant for International Trade

Enclosure

AN EQUAL OPPORTUNITY EMPLOYER

**Appendix VI  
Comments From the Department of  
Agriculture**

United States Department of Agriculture  
**Comments on the Draft General Accounting Office Report:**  
*Agricultural Exports: U.S. Needs Sound Approach to Address Sanitary/Phytosanitary Issues*  
GAO/NSIAD-97-161

The U. S. Department of Agriculture supports the recommendations outlined in the draft report and, in fact, has been actively taking steps towards implementing these broad approaches. The Department of Agriculture has been and continues to work internally to assure USDA goals, objectives and performance measurements for addressing trade disruptive SPS measures are consistent across USDA agencies and are strategically addressed in the Government Performance and Results Act. We are also continuing to work closely with the Office of the U.S. Trade Representative to assure that we have consensus on the most appropriate negotiating strategies for resolving sanitary and phytosanitary measures believed inconsistent with the WTO Agreement on the *Application of Sanitary and Phytosanitary Measures*.

The Department of Agriculture is working closely with USTR to ensure that our GPRA goals, objectives, and performance measures on SPS are consistent and complementary. USDA and USTR have reviewed and exchanged comments on strategic plans, including suggestions relating specifically to SPS issues. Moreover, USDA is currently well advanced in instituting an internal USDA strategic decision making process similar to the inter-agency Trade Policy Steering Committee for coordinating in an effective manner SPS and other related, broad international trade policy issues. We agree with the General Accounting Office that increased written guidance is appropriate to more fully document the informal processes that currently exists within the Department. The new internal USDA process, which should be initiated by September 30, 1997, will strengthen USDA's ability for obtaining a broader interagency consensus for resolving SPS trade-related issues.

Similarly, the Department of Agriculture continues to improve its informational database on new and outstanding foreign SPS measures that restrict U.S. agricultural exports. This system currently allows USDA to quickly review resolved versus outstanding issues. However, it remains unclear whether a totally centralized information management system which can provide key staff within each USDA agency an up-to-date status of each issue would be cost effective.

The General Accounting Office's report provides a comprehensive review of the process by which the United States Government identifies and resolves sanitary and phytosanitary measures that restrict U.S. agricultural exports.

Nevertheless, the report can upon a cursory review leave the impression that the process currently in place does not work and is not achieving results. As GAO notes on page 7.... "*The United States has had concerns about several measures that have been in place for 10 to 20 years, but has recently been able to resolve its concerns about several foreign measures.*" That we have had coordinated, successful resolution of a number of key issues is a clear demonstration that the U.S. government is using the disciplines of the SPS agreement to challenge arbitrary and unjustifiable SPS measures.

Page 2...

See comment 1.

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**Appendix VI  
Comments From the Department of  
Agriculture**

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*Page 2 USDA Comments on Draft Report: GAO/NSIAD-97-161*

See comment 2.

The statement made on page 9, “*the U.S. government has not yet developed a sound approach for evaluating and taking necessary steps to eliminate measures that are inconsistent with the World Trade Organization provisions*” is too broad. Possibly the report intends to highlight the fact that not all issues can be handled at once, and that a number of issues must still be carefully scrutinized to determine if they are clearly inconsistent with the WTO provisions, as well as whether the resource allocations required to undertake a WTO dispute resolution would be in the full interest of both the U.S. government and the affected industry. Similarly, the paragraph on the bottom of page 39 citing the lack of guidance from USTR and the absence of a regular process to collectively evaluate foreign SPS measures fails to take into account what has occurred over the last eight months.

See comment 3.

As stated on page 22, USTR has the statutory responsibility for monitoring the implementation of trade agreements reached and enforcing U.S. rights under those agreements and that USTR in turn relies on the U.S. Department of Agriculture to monitor agreements related to agricultural trade. The Foreign Agricultural Service, APHIS, AMS, FSIS and GIPSA have been holding monthly meetings to discuss which issues should continue to be pursued bilaterally, which should be raised at WTO SPS Committee and which should be more formally addressed through Article 22/23 consultations or dispute settlement. Ad hoc meetings routinely occur among USDA agencies and USTR to share views and discuss possible actions on specific SPS issues, and represent important staff interactions for addressing issues as they arise. The GAO report emphasizes the lack of structure and fails to mention the importance of these informal mechanisms in successfully addressing the complexity of SPS issues.

See comment 4.

Overall, the draft report provides a good overview of the process. The report could however be strengthened by reflecting changes implemented over the last eight months, which provided USDA with the functional and organizational experience to implement new departmental procedures for the critical policy level segment of SPS issues.

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The following are GAO's comments on the Department of Agriculture's letter dated September 11, 1997.

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## GAO Comments

1. The report identifies several SPS measures that have been resolved or regarding which the U.S. government has made progress, including five of our six case studies, and discusses how federal entities have used the provisions of the WTO SPS agreement in their negotiations to address SPS measures. However, we continue to believe that federal entities cannot measure the degree of their success because they lack adequate data on the size and potential impact of the problem, the status of their efforts to address the problem, and the effect of their efforts on U.S. exports. Moreover, we believe that federal efforts to address SPS measures are hampered by the structural and procedural weaknesses we identify.
2. We clarified that our assessment of the U.S. approach applied to the entire scope of federal efforts, not just to measures that might be referred to the WTO. As noted in our response to USTR's comments (app. V, comment 1), we updated our discussion of recent organizational initiatives but continue to believe our overall assessment of the federal approach is accurate.
3. We understand that informal mechanisms may be a valuable and integral part of any system. However, our review demonstrates that, in the absence of high-level, unified management, the ad hoc and informal nature of USDA's efforts to address SPS measures has caused coordination, communication, and prioritization problems. USDA notes in its comment letter that increased written guidance is needed to document its informal processes. We encourage USDA to focus this guidance on how federal entities can best use such processes.
4. We added information about monthly strategy meetings held to discuss SPS issues and the planned formation of the Working Group on Agricultural Trade Policy. Based on information USDA officials provided, the working group appears to be an appropriate step toward improving USDA's management of Departmentwide efforts to address SPS measures, provided the plan is implemented and maintained and the working group's effectiveness is periodically evaluated.

# Comments From the Food and Drug Administration

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration  
Rockville MD 20857

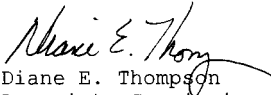
AUG 22 1997

Ms. JayEtta Z. Hecker  
Associate Director  
International Relations and Trade Issues  
U.S. General Accounting Office  
441 G Street, N.W.  
Washington, D.C. 20548

Dear Ms. Hecker:

Enclosed are the comments of the Food and Drug Administration on the draft report entitled: Agricultural Exports: U.S. Needs Sound Approach to Address Sanitary/Phytosanitary Issues, GAO/NSIAD-97-161.

Sincerely,

  
Diane E. Thompson  
Associate Commissioner  
for Legislative Affairs

Enclosure



**Appendix VII  
Comments From the Food and Drug  
Administration**

COMMENTS OF THE FOOD AND DRUG ADMINISTRATION ON THE DRAFT  
GENERAL ACCOUNTING OFFICE (GAO) REPORT ENTITLED: AGRICULTURAL  
EXPORTS: U.S. NEEDS SOUND APPROACH TO ADDRESS  
SANITARY/PHYTOSANITARY ISSUES, GAO/NSIAD-97-161

General Comments

The Food and Drug Administration (FDA) appreciates the opportunity to review this report, which identifies issues that not only are important for international trade, but are of significant concern with respect to regulatory agencies' ability to protect the health and well-being of American consumers. In that context, we offer the following comments.

First, the report should reflect more fully the role of U.S. regulatory agencies in identifying and resolving policy and legal issues raised by disputes involving foreign Sanitary/Phytosanitary (SPS) measures. The draft report correctly notes that such agencies can supply necessary technical knowledge and understanding that the trade agencies lack, as demonstrated by U.S. regulatory agencies' involvement in the U.S. challenge to the European Union (EU) ban on importation of meat treated with growth-promoting hormones. In addition, however, regulatory agencies such as FDA, the Environmental Protection Agency (EPA) and the U.S. Department of Agriculture's (USDA) Food Safety and Inspection Service (FSIS) perform an essential review function by evaluating the significance of proposed U.S. positions and statements from the perspective of U.S. domestic SPS law, policy and programs. In the beef hormones case, for example, FDA carefully evaluated how proposed statements, formulations of issues and positions regarding the interpretation of the World Trade Organization (WTO) SPS agreement would affect the U.S. government's ability to defend provisions of the Federal Food Drug and Cosmetic Act, including the Delaney anti-cancer clause. The trade agencies [i.e., the U.S. Trade Representative (USTR) and USDA's Foreign Agriculture Service (FAS)] cannot be expected to be fully cognizant of all possible domestic consequences of the positions they consider asserting in a trade dispute with another country, particularly when the issue is a foreign SPS measure. To ensure that the possible domestic consequences are appropriately considered in SPS adjudications, it is essential that agencies like FDA, EPA and FSIS be involved in developing the overall U.S. government position in such disputes.

Furthermore, adequate protection of the health of U.S. consumers makes it essential that agencies which have a public health mandate such as FDA, FSIS and EPA participate in the development of US positions for the resolution of disputes with foreign countries involving the export of American food products. This involvement will give the federal government the technical guidance needed to enable the federal government to continue its effort to promote the sale of U.S. products while still satisfying its responsibility to assure that products

See comment 1.

**Appendix VII  
Comments From the Food and Drug  
Administration**

imported into our country do not cause an unacceptable risk to the health of U.S. citizens. Thus, because it is critical that the policy for exporting food products be connected to the policy for importing food products in order to protect the public from harm, FDA suggests that a mechanism be created to keep these two interests fully informed of activities relating to trade agreements.

Likewise, the report would be more balanced if it expressly recognized that every offensive position the U.S. takes has significant potential to affect the regulatory agencies' options when defending a U.S. SPS measure and therefore, the U.S. regulatory agencies such as FDA, EPA and FSIS should participate actively in developing both offensive and defensive U.S. government positions with respect to SPS measures. The resource implications for affected domestic agencies of effectively staffing these disputes have not been adequately evaluated and are likely to be substantial.

See comment 2.

Second, FDA sees the roles of the various agencies involved in resolving SPS disputes as complementary rather than overlapping. For example, both FDA and USDA have responsibilities that are affected by the EU ban on hormone-treated beef. FDA has jurisdiction over the safety and the use of drugs used in food-processing animals, which includes both the animal safety and human food safety implications from drug residues in meat. FSIS has jurisdiction over the processing and sale of meat, including performing inspections to ensure that any drug residue tolerances set by FDA are not exceeded. EPA registers pesticides and establishes safe levels in food (tolerances), while FDA inspects food and enforces the EPA tolerances.

See comment 3.

Finally, the draft report inaccurately describes the long-term objectives of the WTO agreement regarding recognition of SPS measures because it only discusses mutual recognition between member countries. Mutual recognition refers only to the situation wherein two or more countries agree that each country's SPS measures satisfy the other's level of protection. The SPS agreement, however, does not restrict equivalence determinations to such situations. It also encompasses one-way recognition agreements in which the measures of one country are determined to satisfy the levels of protection of another, even though the reverse is not true; for example, when country A has stricter measures and a higher level of protection than country B. This is an important issue because many of the foreign SPS measures that FDA will need to address will entail unilateral determinations of equivalence, not mutual agreements with other countries. The report should be revised to reflect the full range of "recognitions" permitted under the agreement.

**GAO RECOMMENDATION**

The U.S. Trade Representative and the Secretary of Agriculture should work together to develop coordinated goals, objectives, and performance measures for addressing unfair

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**Appendix VII  
Comments From the Food and Drug  
Administration**

foreign SPS measures. The Government Performance and Results Act and implementing guidance provide a framework for federal agencies to consult on such crosscutting functions.

The Secretary of Agriculture, in consultation with the U.S. Trade Representative, the FDA Commissioner, the EPA Administrator, and the Secretary of State, or their designees, should (1) develop better centralized, aggregated data on the number of SPS measures that have been identified, which ones are being addressed, and which ones have been resolved; and (2) develop guidance to help USDA entities evaluate complaints they receive about SPS measures, determine which ones they should address, establish criteria to prioritize their efforts, develop unified approaches, and determine when dispute settlement procedures should be considered.

**FDA RESPONSE**

We concur. We strongly suggest, however, that the report recommend that USTR and USDA consult with the appropriate federal agencies as goals, objectives, and performance measures are developed. The regulatory agencies should also be consulted regarding a centralized data base on SPS measures and guidance for evaluating complaints.

See comment 4.

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The following are GAO's comments on the FDA's letter dated August 22, 1997.

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## **GAO Comments**

1. We added information to the report to more completely reflect the role that regulatory agencies play, not only in providing technical expertise to help evaluate foreign SPS measures, but also in developing and evaluating U.S. trade positions to ensure they do not undermine U.S. regulatory interests. We also added information to indicate that the potential impact on U.S. regulatory interests is one of several factors that are considered when determining which foreign SPS measures the United States will raise for discussion in the WTO SPS committee.
2. We discussed our response to this issue in the section of the letter entitled "Agency Comments and Our Evaluation." See page 35.
3. We discussed our response to this issue in the section of the letter entitled "Agency Comments and Our Evaluation." See page 35.
4. We modified the recommendation to suggest that USTR and USDA consult with FDA, EPA, and State in the development of coordinated goals, objectives, and performance measurements for addressing SPS measures.

# Comments From the Department of State

Note: GAO comments supplementing those in the report text appear at the end of this appendix.



**United States Department of State**

**Chief Financial Officer**

**Washington, D.C. 20520-7427**

August 20, 1997

Dear Mr. Hinton:

We appreciate the opportunity to provide the following Department of State comments on your draft report, "AGRICULTURAL EXPORTS: U.S. Needs Sound Approach to Address Sanitary/Phytosanitary Issues," GAO Job Code 711176.

The Department of State believes that the draft report cited above provides an accurate description of U.S. Government efforts to adequately address concerns about foreign sanitary and phytosanitary (SPS) measures which may constrain U.S. agricultural exports.

We agree with the draft report recommendation that "the U.S. Trade Representative and the Secretary of Agriculture should work together to develop coordinated goals, objectives, and performance measurements for addressing unfair foreign SPS measures."

Further, the Department of State suggests that GAO expand the recommendation to read, "The U.S. Trade Representative, the Secretary of Agriculture and the Secretary of State should work together . . ." This addition would better reflect the important role played by the State Department in addressing unfair foreign SPS measures. The State Department's role includes actively participating in multilateral, regional and bilateral SPS meetings, facilitating communication with foreign governments, and contributing to the interagency policy-making process on SPS matters.

Mr. Henry L. Hinton, Jr,  
Assistant Comptroller General,  
National Security and International Affairs,  
U.S. General Accounting Office.

See comment 1.

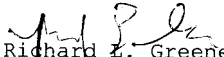
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**Appendix VIII**  
**Comments From the Department of State**

- 2 -

If you have any questions concerning this response, please call Mr. Alan Larson, Assistant Secretary, Economic and Business Affairs, at (202) 647-7971.

Sincerely,

  
Richard E. Greene

cc:  
GAO/NSIAD - Ms. Hecker  
          - Mr. Thomas  
STATE/EB - Mr. Larson

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The following is GAO's comment on the Department of State's letter dated August 20, 1997.

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**GAO's Comment**

1. We modified the recommendation to suggest that USTR and USDA consult with FDA, EPA, and State in the development of coordinated goals, objectives, and performance measurements for addressing SPS measures. Although we recognize that State has played an important role in addressing foreign SPS measures, it does not have the same degree of responsibility for identifying, evaluating, and conducting negotiations on these issues that USTR and USDA have.

# Major Contributors to This Report

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National Security and  
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Herbert I. Dunn

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Los Angeles Regional  
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Juan Gobel  
Patricia Cázares



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**Appendix IX**  
**Major Contributors to This Report**

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