



SANITARY AND PHYOSANITARY CHAPTER: **Constraints on Food Safety Provisions**

- **New language on border inspection allows exporters to challenge border inspection procedures:** The TPP contains specific language on border inspections that allow challenges to the U.S. border inspection system. Border inspections must “limited to what is reasonable and necessary” and “rationally related to available science,” which allows challenges to the manner inspections and laboratory tests are conducted. (Art. 7.11 at para. 5.)
- **New language allows exporters to challenge specific detentions at the border for food safety problems:** New language that replicates the industry demand for a so-called Rapid Response Mechanism that requires border inspectors to notify exporters for every food safety check that finds a problem and give the exporter the right to bring a challenge to that port inspection determination. (Art. 7.11 at paras. 6 to 8.) This is a new right to bring a trade challenge to individual border inspection decisions (including potentially laboratory or other testing) that second-guesses U.S. inspectors and creates a chilling effect that would deter rigorous oversight of imported foods.
- **Stronger language on risk assessment makes it easier to challenge U.S. food safety laws and allows foreign review of U.S. regulatory process:** The TPP SPS risk assessment language is considerably stronger than the WTO SPS rules and includes deregulatory catch-phrases that are designed to make it easier to lodge trade disputes against food safety measures. (Art. 7.9 at para. 5.) Food safety oversight would be assessed based not on the extent to which it protected consumers but primarily on the extent it impacted trade, and the language favors risk management strategies that put trade before food safety. (Art. 7.9 at para. 6(b).) The U.S. regulatory process already has considerable risk assessment and cost benefit requirements, this language allows foreign countries to challenge the underlying determination, science and analysis in the rulemaking process.
- **Encourages the use of private certifications for food safety instead of government inspection:** The TPP includes new language that encourages the use of private certifications of food safety assurances — either third party certifications or potentially even self-certification — that would meet the same food safety objectives. (Art. 7.12.) Third party or self-certified food safety claims are considerably worse than independent, government oversight because there is a financial incentive to certify the food as safe. Several U.S. food safety outbreaks have occurred at facilities that received private certifications that attested to their food safety (the companies behind the 2009 peanut butter salmonella outbreak, 2010 egg salmonella outbreak and the 2011 cantaloupe listeria outbreak all received outstanding ratings from their third-party certifier).
- **Thematically prioritizes the international trade in food ahead of food safety:** The TPP SPS preamble says governments can protect human, animal and plant health and life “*while facilitating and expanding trade*” — which means that food safety oversight can exist only in conjunction with trade expansion. The WTO SPS preamble allows food safety oversight but warns of food safety programs that are discriminatory or act as barriers to trade. (Art. 7.2(a).)