

# **RISK ASSESSMENT REVIEW UNDER THE WTO DISPUTES SETTLEMENT SYSTEM**

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## **ABSTRACT**

*Regulations inspecting and restricting imported goods are important tools for any modern nation to protect the health of its citizens and of the living organisms within its borders. In order to prevent nations from using these tools to accomplish protectionist goals, and to further minimize unnecessary barriers to trade, the World Trade Organization (hereinafter “WTO”) requires such measures to be based on a risk assessment conforming to scientific principles. This paper focuses on the review standard adopted by WTO adjudicating bodies when reviewing the consistency with such risk assessment with the Agreement on the Application of Sanitary and Phytosanitary Measures. The standard of review employed by earlier WTO panels in their reviewing of Member’s risk assessment is, or is at least very close to, a de novo one. In order to correct previous trends, the Appellate Body in the Hormone Suspension case indicated that a proper standard of review requires the panel scrutinizing such a measure not to conduct its own risk assessment nor to make its own scientific judgment, but simply to ensure that the assessment was conducted*

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*according to the requirements of the relevant legal provisions. It raises hope towards a deferential standard of review regarding risk assessment. However, the Appellate Body Report of Australia — Apples, upon close examination, seems to upset such hope for meaningful deference through standards of review in such WTO dispute settlement proceedings. This is because the intensity of review, that is, the level of rigidity for the panel's scrutiny adopted by the Appellate Body, could not actually deliver the deference warranted in this situation. This standard of review seems to be heavily influenced by the practice in trade remedy cases, despite the significant difference between them. A reform in this regard is warranted.*

**KEYWORDS:** *standard of review, SPS Agreement, dispute settlement, scientific evidence, WTO*