1Article 1

applies to all sanitary and phytosanitary measures which may,
affect international trade. Such measures shall be developed and
with the provisions of this Agreement.

of this Agreement, the definitions provided in Annex A shall apply.

an integral part of this Agreement.

greement shall affect the rights of Members under the Agreement on
Trade with respect to measures not within the scope of this

greement

1.2.1.1.2 Measures which may directly or indirectly affect international trade

3.   In   , the Panel agreed with the parties' argument that the measures at issue could be considered as SPS measures if they satisfy the other requirement of Article 1.1 namely if they directly or indirectly impact international trade:

> "Both parties … agree that, according to Article 1.1 of the SPS Agreement, the SPS Agreement is applicable to this dispute. Article 1.1 provides that the SPS Agreement
>
>> 'applies to all sanitary and phytosanitary measures which may, directly or indirectly, affect international trade'.
>
> We agree with the parties that the EC measures 'may, directly or indirectly, affect international trade'. It cannot be contested that an import ban affects international trade."[2]

4.   In   , the Panel noted that this second requirement under Article 1 could be lessened given the wording used in the Article:

> "Article 1.1 of the   provides,   , that the

the recommendations made by the risk analyst. Even if the recommendations presented in the reports were taken into account when determining the requirements to be imposed, these reports, by themselves or individually, did not have any effect on international trade. Without any other action being taken, i.e. the imposition of the phytosanitary requirements at issue in this dispute through the resolutions, there would be no effect, direct or indirect, on international trade, even with the existence of the reports."[9]

1.2.1.2 Temporal scope of the SPS Agreement

9.   In   , in discussing the applicability of the SPS Agreement to a measure which was enacted before the entry into force of the Agreement, the Appellate Body held that the SPS Agreement would apply to situations or measures that had not ceased to exist, unless the SPS Agreement revealed a contrary intention. Furthermore, the Appellate Body noted that certain measures of the SPS Agreement "expressly contemplate applicability to SPS measures that already existed on 1 January 1995":

> "We addressed the issue of temporal application in our Report in   and concluded on the basis of Article 28 of the   that:
>
>> Absent a contrary intention, a treaty cannot apply to acts or facts which took place, or situations which ceased to exist, before the date of its entry into force.
>
> We agree with the Panel that the   would apply to situations or measures that did not cease to exist, such as the 1981 and 1988 Directives, unless the   reveals a contrary intention. We also agree with the Panel that the   does not reveal such an intention. The   does not contain any provision limiting the temporal application of the   , or of any provision thereof, to SPS measures adopted after 1 January 1995. In the absence of such a provision, it cannot be assumed that central provisions of the   , such as Articles 5.1 and 5.5, do not apply to measures which were enacted before 1995 but which continue to be in force thereafter. If the negotiators had wanted to exempt the very large group of SPS measures in existence   January 1995 from the disciplines of provisions as important as Articles 5.1 and 5.5, it appears reasonable to us to expect that they would have said so explicitly. Articles 5.1 and 5.5 do not distinguish between SPS measures adopted before January 1995 and measures adopted since; the relevant implication is that they are intended to be applicable to both. Furthermore, provisions of the   , such as Articles 2.2, 2.3, 3.3 and 5.6, expressly contemplate applicability to SPS measures that already existed on 1 January 1995."