

A HISTORICAL REVIEW OF THE U.S. STRATEGY ON SPS AND TBT ISSUES IN TRANS-PACIFIC PARTNERSHIP NEGOTIATION

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ABSTRACT

With the decline of custom duties, non-tariff measures have become significant barriers to international trade. While multilateral trade rules under the World Trade Organization (hereinafter “WTO”) address concerns over non-tariff measures, many bilateral or regional free trade agreements also tackle this controversial problem by incorporating “WTO-Plus” provisions to further liberalize foreign markets. In sectors regarding trade in food, agricultural or health-related products such as medical devices, pharmaceuticals and cosmetics, sanitary and phytosanitary (hereinafter “SPS”) measures and technical barriers to trade (hereinafter “TBT”) are among those “behind the border” measures that governments may easily create unwarranted obstacles to trade while claiming to achieve legitimate policy objectives such as protection of public health. Given the significance of non-tariff barriers to trade, how to address SPS and TBT matters becomes a major issue in the negotiation of Trans-Pacific Partnership (hereinafter “TPP”) Agreement, originally lead by the United States (hereinafter “U.S.”). Despite the U.S.’s withdraw from the TPP in 2017, most rules under the SPS and TBT chapters survive in the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (hereinafter

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“CPTPP”). This paper will examine relevant “SPS-Plus” and “TBT-Plus” provisions in the CPTPP with a historical look at the U.S. original proposals, and provide preliminary assessment of possible impact on food safety and public health.

KEYWORDS: *sanitary and phytosanitary measures (SPS), technical barriers to trade (TBT), Trans-Pacific Partnership (TPP) Agreement, Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), SPS-Plus, TBT-Plus, WTO-Plus, non-tariff barriers, international standards, harmonization, conformity assessment procedures, transparency, rapid response mechanism (RRM), public health, free trade agreements (FTAs)*