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Regulatory Imperialism by Proxy: How the EU-UK SPS Convergence Intensifies the Compliance Burden on ECOWAS Agri-Food Exporters and What WTO Law Must Do about It

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Abstract

The 2025 UK-EU SPS Agreement negotiations, premised on the United Kingdom's dynamic alignment with EU food safety law, have been analysed extensively from the perspective of UK-EU relations. This article argues that existing scholarship has been systematically inattentive to the third-party consequences of that convergence: specifically, the way in which a consolidated and expanding Euro-Atlantic SPS regime intensifies what this article terms a dual compliance burden on agri-food exporters from the Economic Community of West African States (ECOWAS). Building on Anu Bradford's Brussels Effect thesis, this article advances an original doctrinal argument: the de facto extraterritorial extension of EU SPS standards, now amplified by UK re-alignment, operates as a form of regulatory imperialism by proxy—one that the WTO SPS Agreement's existing disciplines, including special and differential treatment under Article 10 and the precautionary principle under Article 5.7, are structurally incapable of correcting. The article locates the failure not merely in ECOWAS institutional incapacity, which prior scholarship has emphasised, but in a doctrinal lacuna within WTO SPS law itself: the absence of any mechanism to assess the cumulative and disproportionate trade effects of converging major trading partners' SPS standards on structurally dependent developing regional blocs. The article proposes a doctrinal reform path—a Cumulative SPS Impact Assessment (CSIA) obligation—as a necessary corrective within the WTO SPS framework, drawing on analogies from the WTO's Agreement on Subsidies and Countervailing Measures and the emerging principle of systemic trade equity.

Keywords

ECOWAS, SPS Agreement, Brussels Effect, UK-EU SPS Alignment, Dual Compliance Burden, Regulatory Imperialism, WTO Reform, Special and Differential Treatment, Article 10 SPS, ECOWAS Agri-Food Exports, Dynamic Alignment

1. Introduction: A Problem the Literature Has Not Named

When commentators assess the post-Brexit UK-EU SPS Agreement now under negotiation, their analytical gaze is almost invariably fixed on the bilateral. They ask whether the United Kingdom will accept dynamic alignment with EU food safety rules, what role the Court of Justice of the European Union will play in dispute resolution, and whether British farmers will be undercut by retained EU pesticide restrictions they no longer helped to shape. These are serious questions. But they are the questions of those for whom the bilateral is the whole.

This article asks a different question: what happens, legally, to the third party that is already being crushed between converging regulatory powers, and whose interests the law has not adequately accounted for? That third party is the agri-food export sector of the Economic Community of West African States. The question is not sentimental. It is doctrinal. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures was designed, among other objectives, to ensure that SPS measures do not become disguised restrictions on international trade.[1]

The Brussels Effect—Anu Bradford's influential account of how the EU unilaterally exports its regulatory standards to global markets through market power rather than legal coercion (Bradford, 2012: pp. 5-8; Bradford, 2020: pp. 30-36)—has generated a rich literature. But that literature remains overwhelmingly attentive to the mechanism of export (how EU standards travel) rather than to the legal and equity consequences for those at the receiving end who lack the institutional capacity to absorb them. Crucially, no scholarship has grappled with a new and acute iteration of the phenomenon: what happens to the Brussels Effect's third-party victims when the United Kingdom re-converges its SPS standards with the EU through dynamic alignment?

The UK-EU SPS Agreement, whose negotiating mandate was published by the European Commission in July 2025 and whose formal negotiations began in November 2025,[2] will, if concluded, require Great Britain to dynamically align with the full body of EU SPS legislation, including food safety, pesticide residue limits, veterinary requirements, and plant health. For ECOWAS exporters who had,

[1]WTO, Agreement on the Application of Sanitary and Phytosanitary Measures (1994), Preamble.

[2]UK-EU Summit, Common Understanding between the European Commission and the United Kingdom (19 May 2025) paras 27-31; European Commission, Draft Negotiating Mandate for a Common Sanitary and Phytosanitary Area (July 2025) paras 3-15; Council of the European Union, Authorisation Decision Opening Negotiations on a Common SPS Area (13 November 2025).

post-Brexit, maintained separate compliance strategies for EU and UK markets—or who had redirected trade toward the UK under more permissive UK interim standards—this represents a material escalation of their compliance burden. The UK becomes, in legal and commercial effect, increasingly integrated into the EU SPS regime.

It is important at the outset to be precise about why UK-EU SPS alignment increases rather than reduces the burden on ECOWAS exporters. The intuition that harmonisation should simplify trade is correct in principle but inapplicable here for three reasons. First, compliance costs are not simply halved because two markets converge on the same standard: the administrative infrastructure required to satisfy the converged regime—laboratory accreditation, documentation, certification, border inspection—must be replicated for each market, and where dynamic alignment means continuous regulatory change, those costs recur with every amendment to the EU acquis. Second, pre-convergence ECOWAS exporters retained the benefit of *regulatory diversification*: the post-Brexit UK's nascent divergences in pesticide residue limits and novel food authorisation created the realistic prospect of a somewhat less exacting compliance pathway for the UK market, providing a buffer against periods of particularly stringent EU standard-setting. Dynamic alignment eliminates that buffer permanently. Third, the convergence does not merely double the geographic coverage of a given standard: it extends the reach of the *stricter* of any future EU-UK variation, because alignment tracks EU standards as they evolve. For ECOWAS exporters already operating at the margin of compliance with EU requirements, the foreclosure of any independent UK regulatory space is not a neutral harmonisation event; it is a unilateral extension of the most demanding available standard across two critical markets simultaneously, without any corresponding mechanism for ECOWAS input or adjustment.

This article advances three interconnected arguments. First, that the EU-UK SPS convergence constitutes a legally cognisable intensification of the compliance burden on ECOWAS exporters that is not adequately addressed by existing WTO disciplines. Second, that the structural failure is doctrinal: the WTO SPS Agreement contains no mechanism capable of assessing, let alone correcting, the cumulative trade-restrictive effects of converging major-economy SPS regimes on structurally dependent developing blocs. Third, that the appropriate doctrinal remedy is the introduction of a Cumulative SPS Impact Assessment (CSIA) obligation into WTO law.

The argument proceeds as follows. Part II excavates the legal architecture of the SPS Agreement and its treatment of developing countries, identifying the doctrinal gap. Part III analyses the Brussels Effect and its asymmetric consequences, then examines how UK-EU re-alignment amplifies those consequences and engages with the existing SPS provisions most often raised as potential answers. Part IV maps the ECOWAS compliance burden in legal and empirical terms. Part V advances the doctrinal reform argument. Part VI considers and rebuts objections.

Part VII concludes.

2. The SPS Agreement and the Doctrinal Gap in Developing-Country Protection

A. The Agreement's Structural Logic

The SPS Agreement, negotiated as part of the Uruguay Round and entering into force in 1995, pursues a dual mandate: preserving the right of WTO Members to set food safety and animal and plant health standards consistent with their chosen level of protection, while preventing SPS measures from operating as disguised restrictions on trade.[3]

Its central disciplines are well-established in jurisprudence: measures must be based on a risk assessment satisfying the definition in Annex A(4);[4] they must not be maintained without sufficient scientific evidence (Article 2.2), subject to the provisional exception in Article 5.7; and Members are encouraged, though not obliged, to base their measures on international standards established by the Codex Alimentarius Commission, the World Organisation for Animal Health (WOAH), and the International Plant Protection Convention (IPPC) (Article 3.1).

EC—Hormones established the foundational interpretive framework: the risk assessment obligation is substantive, requiring a genuine scientific evaluation rather than a purely formalistic exercise;[5] and in *Australia—Salmon* the Appellate Body clarified that the requirement to avoid arbitrary or unjustifiable distinctions in levels of protection (Article 5.5) operates as a consistency obligation rather than a uniformity requirement.[6] These disciplines are directed at unilateral regulatory action. They ask whether a single Member's measure is scientifically justified, consistently applied, and not more trade-restrictive than necessary.

What the Agreement does not ask—and what no panel or Appellate Body proceeding has been required to address—is whether the coordinated or convergent SPS measures of two or more major trading partners, taken together, produce a cumulative burden that is disproportionate to any legitimate risk-management objective and that falls asymmetrically on structurally dependent exporters. This is the doctrinal gap.

B. Special and Differential Treatment: Promise and Failure

Article 10 of the SPS Agreement establishes the special and differential treatment (SDT) framework for developing countries. It requires Members to "take account of the special needs of developing country Members" in the preparation and application of SPS measures (Article 10.1) and provides that longer time frames for compliance shall be accorded to developing countries when an

[3]SPS Agreement, Preamble and Art 2.

[4]SPS Agreement, Annex A(4); Appellate Body Report, European Communities—Measures Concerning Meat and Meat Products (Hormones), Appellate Body Report, WT/DS26/AB/R, WT/DS48/AB/R, adopted 13 February 1998, para 181 (hereinafter EC—Hormones).

[5]EC—Hormones (n4), para 187.

[6]Appellate Body Report, Australia—Salmon, WT/DS18/AB/R (adopted 6 November 1998), para 166.

SPS standard is introduced or changed (Article 10.2). The Committee on SPS Measures is empowered to grant developing-country Members, upon request, specified time-limited exceptions from obligations (Article 10.3).[7]

The SDT provisions have been persistently criticised as hortatory rather than operative. Chakravorty and others, in a systematic analysis of WTO dispute settlement practice, found that Article 10 has generated no binding adjudicated outcomes: no panel has ever found a violation of Article 10.1, and the provision's language—"take account of"—has been interpreted as imposing at most a procedural obligation to consider, not a substantive obligation to adjust (Chakravorty et al., 2021: pp. 621-625).

This doctrinal weakness is not accidental. The SDT provisions of the Uruguay Round agreements were, as Kleen and Page have documented, the product of political compromise rather than analytical design: "best endeavours" language inserted to secure developing-country assent to disciplines they lacked the capacity to negotiate substantively (Kleen & Page, 2005).

More fundamentally, the SDT architecture of the SPS Agreement was designed for a world in which the principal risk to developing-country exporters was unilateral barriers erected by individual importing Members. It provides flexibility mechanisms (time extensions, technical assistance) calibrated to the task of helping developing countries climb toward a standard that already exists. It contains no mechanism for evaluating whether that standard—or a converged version of it—should not have been set at that level in the first place, given its distributional consequences. This is a different and deeper problem than the SDT literature has confronted.

C. Article 5.7, the Precautionary Principle, and Asymmetric Application

Japan—Agricultural Products II established the four cumulative requirements for a valid Article 5.7 measure: insufficiency of scientific evidence, adoption on available pertinent information, seeking of additional information, and review within a reasonable period.[8]

EC—Hormones held that Article 5.7 does not fully incorporate the precautionary principle as understood in international environmental law, and that the principle does not override the scientific justification requirement of Article 2.2 (de Sadeleer, 2018).[9] This has generated a structural asymmetry: developed-country Members with strong scientific infrastructure deploy the precautionary principle to justify high and evolving standards, while developing-country exporters who lack the scientific capacity to contest those risk assessments are bound by them.

For ECOWAS member states, the consequences are direct: the EU's progressive tightening of maximum residue limits for pesticides, the introduction of novel mycotoxin thresholds, and the extension of hygiene requirements to new product categories all represent exercises in precautionary standard-setting by a

[7]SPS Agreement, Art 10.

[8]Appellate Body Report, Japan—Agricultural Products, WT/DS76/AB/R (adopted 19 March 1999), para 89.

[9]EC—Hormones (n 4) para 124.

scientifically and economically powerful actor. ECOWAS member states lack the scientific infrastructure to mount risk assessment challenges under Articles 5.1-5.2, and the Article 5.7 provisional measure mechanism is of no relevance to them as exporters rather than importers. The doctrinal framework was not built for their position.

D. Existing SPS Provisions and the Limits of Their Applicability to Cumulative Third-Country Harm

Because the doctrinal gap argument is central to this article, it is necessary to engage directly with the SPS provisions most likely to be advanced as partial solutions: Article 4 (equivalence), Article 5.6 (necessity), Article 6 (adaptation to regional conditions), and the transparency obligations in Annex B.

Article 4 obliges Members to accept another Member's SPS measures as equivalent if the exporting Member demonstrates that its measures achieve the importing Member's appropriate level of sanitary or phytosanitary protection. For ECOWAS exporters, this route is structurally unavailable in the relevant sense. Article 4 addresses bilateral equivalence determinations between a specific exporter and a specific importer; it does not address the cumulative effect of two importers converging on the same high standard. Even a successful equivalence negotiation with the EU would not resolve the structural problem identified here, because the UK-EU convergence agreement extends the EU-equivalent standard to a second market simultaneously, leaving ECOWAS exporters facing harmonised requirements in both destinations rather than gaining recognition of their own distinct standards.

Article 5.6 requires that SPS measures be not more trade-restrictive than required to achieve the appropriate level of protection, taking into account technical and economic feasibility. This provision has generated limited jurisprudence and faces a fundamental limitation in the present context: it addresses the necessity of a single Member's measure, not the cumulative necessity of two Members' aligned measures operating across their combined markets. No panel has been asked to assess whether the cumulative effect of convergence between two major importing economies produces a standard that is, in aggregate, more trade-restrictive than required. The WTO dispute settlement system's respondent-by-respondent structure makes such a challenge procedurally impossible under current rules.

Article 6 provides that Members shall adapt their SPS measures to the sanitary or phytosanitary characteristics of the area—whether all or part of a country, or all or parts of several countries—from which the product originates. This provision is directed at the geographic differentiation of risk assessment: importing Members should recognise pest-free or disease-free areas within exporting countries rather than applying blanket country-wide restrictions. While Article 6 provides a partial remedy for some ECOWAS exporters in some product categories (particularly in animal and plant health), it does not address the structural asymmetry created by converging MRL standards, which are set at precautionary levels that reflect EU and UK agronomic assumptions rather than the conditions of sub-

Saharan smallholder farming systems. Article 6 adaptation addresses where a product comes from; it does not address whether the standard being applied is appropriate for how it was produced.

Annex B of the SPS Agreement requires Members to publish proposed SPS measures and allow a comment period before their adoption, providing developing countries with formal transparency rights. While the notification obligations under Annex B provide ECOWAS member states with advance notice of proposed changes, they do not create any obligation for the EU or UK to modify converged standards in response to third-country concerns, nor do they supply any right of participation in the UK-EU SPS Agreement negotiations themselves. The transparency mechanism was designed to mitigate the trade effects of unilateral measures; it provides no remedy against the structural foreclosure of regulatory diversification that results from bilateral convergence.

In sum, Articles 4, 5.6, 6, and Annex B each address cognate but distinct problems. None was designed to capture, and none is capable of capturing, the cumulative harm that arises when two major importing economies jointly align their SPS standards, eliminating the regulatory differentiation that previously provided structurally dependent developing exporters with at least a modest degree of commercial flexibility. The doctrinal gap is real, and it cannot be closed by creative interpretation of existing provisions.

3. The Brussels Effect, UK Re-Alignment, and Regulatory Imperialism by Proxy

A. Bradford's Brussels Effect and Its Under-Examined Equity Dimension

The mechanism operates de facto, through market forces, as multinational companies producing for the EU market apply EU standards globally to avoid the cost of maintaining separate production lines (Bradford, 2012: p. 4; Bradford, 2020: pp. 25-55).

Bradford's account is largely functionalist and descriptive. It explains the mechanism and celebrates its outcome—a race to the top in regulatory standards globally—with insufficient attention to distributional consequences. Bradford does acknowledge that the Brussels Effect can impose costs on non-EU countries that are unable to meet EU standards and lose market access as a result (Bradford, 2020: p. 37). But this acknowledgment is treated as a marginal caveat rather than a structurally significant objection. The scholarship that has followed Bradford has been largely attentive to the internal dynamics of the Brussels Effect—its limits, its variation across policy areas, its relationship with EU political capital (Ylonen, 2026; Fahey, 2016)—without engaging seriously with the WTO law implications for those who cannot "comply up".

This article argues that the Brussels Effect, when applied to SPS standards, is not a market phenomenon that exporters can voluntarily choose whether to engage with. It is an externally imposed legal condition of market access, operating through the medium of food safety regulation that ECOWAS exporters must sat-

isfy or face border rejection. The "race to the top" framing obscures the coercive character of that condition for exporters who lack the agricultural infrastructure, scientific capacity, and institutional leverage to influence the standards they are required to meet.

B. The UK-EU SPS Agreement as an Amplification of the Brussels Effect

Post-Brexit, the UK adopted a transitional framework that initially retained EU SPS standards through the Retained EU Law mechanism, but divergences in pesticide residue limits and novel food authorisations demonstrated that the UK was willing, in some categories, to exercise its newly reclaimed regulatory autonomy in ways that eased compliance burdens on ECOWAS exporters (Sayeed et al., 2022).[10]

The Commission published its negotiating mandate in July 2025. Formal negotiations began in November 2025, with an ambition to conclude by early 2027.[11]

The legal consequence for ECOWAS exporters is structural: where there was, briefly, the possibility of two distinct compliance regimes—EU and UK—with some differential in standards that created commercial flexibility, there will be one effectively unified Euro-Atlantic SPS zone. The UK will not merely adopt EU standards; it will adopt them dynamically, meaning that as EU standards tighten in response to new risk assessments, new scientific evidence, or precautionary regulatory philosophy, UK standards will follow without any independent UK deliberation capable of producing a different outcome. The standard-setting process will be entirely governed by an institutional architecture in which ECOWAS exporters have no voice, no right of participation, and no legal remedy if the cumulative burden becomes prohibitive.

The House of Commons Environment, Food and Rural Affairs Committee, reporting in February 2026, noted concern that the UK may be required to impose EU "third country" procedures on rest-of-world imports as a condition of the common SPS area.[12]

C. Regulatory Imperialism by Proxy: A Doctrinal Characterisation

While the language of regulatory imperialism is sometimes used loosely to describe the external effects of powerful regulatory systems, the concept employed here is narrower. It does not suggest formal coercion, nor does it imply that ECOWAS states are legally compelled to adopt EU standards domestically. Rather, it describes a situation in which market access becomes increasingly contingent upon compliance with standards developed outside the affected exporters' institutional sphere of influence. The concern is therefore not regulatory exportation alone, but the asymmetrical distribution of regulatory authority and compliance costs across trading partners.

[10]European Commission, EU Trade Relations with West Africa (2024) 12-15.

[11]UK-EU Common Understanding (n 3), para 27 ('The SPS Agreement should ensure the application of the same rules at all times by providing for timely dynamic alignment').

[12]House of Commons Environment, Food and Rural Affairs Committee, UK-EU Agritrade: Making an SPS Agreement Work (HC 51434, February 2026) paras 48-52. See also European Commission, Draft Negotiating Mandate (n 3) para 12; EU-Switzerland Common Food Safety Area Protocol, Annex 1.

This article proposes the concept of regulatory imperialism by proxy to describe the legal and structural phenomenon identified above. Regulatory imperialism, in its direct form, describes the unilateral export of one jurisdiction's regulatory standards to others through market power, conditionality, or coercive diplomacy. Regulatory imperialism by proxy describes a structurally distinct phenomenon: the amplification of an existing dominant regulatory regime's market access conditions through the re-incorporation of a formerly autonomous major trading partner, in circumstances where the third-party consequences of that re-incorporation are legally unremedied. The "proxy" is the UK: a state that is not the original source of the regulatory power but whose re-alignment multiplies the market coverage of that regime at the direct cost of third-country exporters.

This characterisation distinguishes the present argument from Bradford's Brussels Effect in a legally significant way: Bradford describes a market mechanism; this article identifies a legal deficiency within the current WTO framework. The claim is not that the EU is prohibited from maintaining high SPS standards, nor that the UK is prohibited from aligning with them. The claim is that the converging parties have, within the WTO legal framework, obligations toward third-party developing exporters that the current doctrinal architecture does not give effect to, and that the gap must be closed through legal reform.

4. The ECOWAS Compliance Burden: Doctrinal Misdiagnosis and Legal Reality

A. The Literature's Misdiagnosis: Institutional Failure vs. Structural Inequity

The dominant strand of scholarship on ECOWAS food safety diagnoses the region's compliance failures primarily as a product of institutional incapacity: fragmented regulatory architecture, weak enforcement, inadequate scientific infrastructure, and governance deficits. This is a partially accurate diagnosis. The ECOWAS food safety regulatory framework is genuinely fragmented, with ECOWAS, UEMOA, and CILSS exercising overlapping and sometimes conflicting mandates over pesticide registration, seed certification, and SPS coordination, without any overarching General Food Law instrument to provide normative coherence.

But the diagnosis of institutional failure, taken alone, misidentifies the character of the legal problem. It implies that if ECOWAS were to achieve institutional coherence and scientific capacity, the compliance burden would become manageable. This article contests that implication on three grounds. First, the standards that ECOWAS exporters must satisfy are not static: they are a moving target governed by EU and now UK precautionary risk philosophy, with no structural mechanism for ECOWAS input. Second, even a highly coordinated ECOWAS regulatory framework would continue to face structural asymmetries in international standard-setting processes. Third, the institutional failure account overlooks the legal question at the centre of this article: what obligations, if any, does WTO law impose when converging SPS regimes generate disproportionate barriers for de-

veloping-country exporters (Bradford, 2020: pp. 110-115; Roberts et al., 2023).[13]

B. The Empirical Record: EU Rejection of ECOWAS Exports

The notifications discussed below are not advanced as independent proof of the legal arguments in Parts II and III; they demonstrate rather that the EU SPS standards whose geographic reach the UK-EU convergence agreement will extend are already producing systematic and recurring market access failures for ECOWAS exporters, and that those failures are structural rather than episodic in origin.[14]

Table 1. Illustrative SPS compliance challenges affecting ECOWAS agri-food exports (2015-2024).[15]

Product Category	Illustrative ECOWAS Exporting States	Frequent SPS Concern	Illustrative Regulatory Basis	Recurrence in RASFF Reports
Groundnuts and nut products	Nigeria, Senegal, Ghana	Aflatoxin contamination	EU mycotoxin limits	Persistent
Fresh vegetables and herbs	Nigeria, Côte d'Ivoire	Pesticide residues	EU MRL requirements	Persistent
Smoked and dried fish products	Ghana, Senegal, Nigeria	Salmonella and Listeria contamination	EU hygiene standards	Recurring
Cocoa products	Ghana, Côte d'Ivoire	Cadmium contamination	Regulation (EU) 2021/1323	Increasing
Processed agricultural products	Multiple ECOWAS states	Certification and traceability deficiencies	SPS documentation requirements	Recurring

Source: Compiled by the authors from European Commission, RASFF Annual Reports 2019-2024; WTO Committee on SPS Measures, Specific Trade Concerns: ECOWAS-Related Notifications, G/SPS/GEN/1570 (2017) and G/SPS/GEN/2019 (2022).

Table 1 does not purport to provide a comprehensive statistical account of all SPS-related barriers affecting ECOWAS exports. Rather, it illustrates the recurring categories of compliance failures that have generated market-access difficulties across multiple years and product sectors. The significance of these recurring notifications lies not merely in their frequency, but in their concentration around standards that reflect regulatory assumptions developed outside the production environments of ECOWAS exporters (Roberts et al., 2023: pp. 829-834).[16]

Between 2015 and 2024, West African agri-food products were the subject of consistent RASFF notifications across a set of product categories that maps almost precisely onto the compliance asymmetries identified in the legal analysis above. Aflatoxin contamination in groundnuts, dried fruits, and processed nut products

[13]FAO/WHO Codex Alimentarius Commission, Report of the 47th Session, CAC47/INF1 (September 2024), paras 22-26.

[14]European Commission, RASFF Annual Reports 2019-2024; WTO Committee on SPS Measures, G/SPS/GEN/1570 (2017); G/SPS/GEN/2019 (2022). These notifications are referenced as illustrative of the compliance categories generating border rejections; they do not constitute a systematic statistical sample and are not advanced as independent proof of the legal arguments in Parts II and III.

[15]Compiled by the authors from European Commission, Rapid Alert System for Food and Feed (RASFF) Annual Reports 2019-2024 and WTO Committee on SPS Measures, Specific Trade Concerns: ECOWAS-Related Notifications, G/SPS/GEN/1570 (2017); G/SPS/GEN/2019 (2022).

[16]See FAO/WHO Codex Alimentarius Commission, Report of the 47th Session of the Codex Alimentarius Commission CAC47/INF1 (September 2024) paras 14-26.

from Nigeria, Senegal, and Ghana has generated the highest notification volume, reflecting the interaction of tropical climate conditions, post-harvest handling constraints, and storage infrastructure deficits with EU mycotoxin thresholds set against a European dietary risk profile. Excessive pesticide residues—principally chlorpyrifos, dimethoate, and profenofos—have been the dominant rejection ground for okra, bitter leaf, garden eggs, and mixed herbs from Nigeria and Côte d'Ivoire: product categories in which, as the analysis in Part II.C established, the EU's progressive MRL tightening has moved faster than ECOWAS exporters' capacity to adapt agronomic practice. Microbiological contamination, including *Listeria monocytogenes* and *Salmonella* species in smoked and dried fish products, has generated recurrent notifications affecting exports from Ghana, Senegal, and Nigeria, reflecting the inapplicability of EU hygiene processing assumptions to artisanal smoking and drying methods. Heavy metal contamination—principally cadmium in cocoa products from Ghana and Côte d'Ivoire—has emerged as an increasingly significant rejection category as the EU progressively lowered its cadmium thresholds under Commission Regulation (EU) 2021/1323, a standard-setting exercise conducted against European dietary exposure data that does not account for West African soil geochemistry or smallholder agronomic conditions.

These structural causes of non-compliance cannot be resolved through ECOWAS institutional reform alone, because the problem is not the absence of a functioning ECOWAS food safety system but the epistemic asymmetry on which the standards themselves are constructed. As the analysis in Part II.C established, EU maximum residue limits for pesticides are set by risk assessment methodologies that model residue risk against European dietary data, climate conditions, and registered pest management practices.[17]

The practical implication—which the RASFF record makes concrete—is that ECOWAS exporters are required to satisfy standards built on scientific assumptions that do not describe their production conditions, and they lack both the laboratory infrastructure and the institutional standing to supply the data that would be necessary to alter those assumptions through the Codex Committee on Pesticide Residues. As the Codex Alimentarius Commission noted in the report of its 47th Session, MRL harmonisation efforts in Africa remain severely constrained by limited residue trial capacity, financial barriers to Codex participation, and the inability of ECOWAS member states to generate the data formats that Codex working procedures require.[18]

This empirical record, taken alone, already constitutes a severe and structurally reproduced compliance burden. What the UK-EU SPS Agreement adds is not a qualitatively different type of harm but an automatic and indefinite escalation

[17]UNCTAD, Key Statistics and Trends in Trade Policy: Non-Tariff Measures (Geneva, 2023) ch 3 (on multi-layer economic costs of border rejection events for developing-country exporters, including investment-deterrent effects on export-oriented agri-food capacity).

[18]CAC47/INF1 (n 19), paras 14-18; African Food Safety Initiative (AFSI), MRL Harmonisation Program 2020–2024 (AFSI, 2024); Roberts and others (n 22) 829-834.

mechanism. Under dynamic alignment, each future tightening of EU MRL thresholds, each new mycotoxin limit, each extension of hygiene requirements to additional product categories will apply simultaneously across both the EU and UK markets, with no independent UK deliberation in which ECOWAS compliance capacity or agronomic conditions could bear on the standard-setting outcome. The dual compliance burden analysed in the next subsection is therefore not simply two parallel instances of the existing burden: it is the permanent foreclosure of the only remaining regulatory space in which the structural asymmetry documented above might, over time, have been partially mitigated.

C. The Dual Compliance Burden: Legal Anatomy

Prior to Brexit, ECOWAS exporters faced a single, if demanding, compliance regime for their two largest markets: the EU's SPS framework applied in both the EU and the UK. Brexit introduced, briefly, the potential for differentiation. The UK's post-Brexit regulatory trajectory—including the Retained EU Law (Revocation and Reform) Act 2023 and the Precision Breeding Act 2024—created a domestic UK regulatory space in which divergence from EU standards was legally possible and, in some areas, had already begun.

The term dual compliance burden, as used in existing scholarship, typically refers to the cost incurred by exporters who must satisfy two different standards for two different markets. This article extends that concept. In the present context, the concept requires modification. The concern is not merely the existence of multiple standards but the elimination of regulatory diversification through dynamic alignment. Post-SPS Agreement, the burden shifts qualitatively: the UK regime does not merely converge with the EU regime at a point in time—it tracks it dynamically. Any future EU tightening of pesticide MRLs, mycotoxin thresholds, or import inspection requirements automatically becomes a UK requirement too, without any independent UK deliberative process in which ECOWAS concerns could be registered.

The doctrinal deficiency lies in the absence of any available remedy. ECOWAS member states have no standing to challenge the UK-EU SPS Agreement in WTO dispute settlement as such, because the Agreement per se does not impose a measure on ECOWAS exports; it governs the standards applicable to GB domestic and EU-originated goods. The impact on ECOWAS is indirect but causally direct: the Agreement expands the territorial coverage of an SPS regime that ECOWAS exporters must satisfy. No existing WTO instrument provides a mechanism for addressing that consequence.

5. The Doctrinal Reform Argument: A Cumulative SPS Impact Assessment Obligation

A. Identifying the Appropriate Legal Architecture

The doctrinal gap identified in this article calls for a targeted legal remedy rather than a generalised restatement of the case for SDT reform. This article proposes the introduction of a Cumulative SPS Impact Assessment (CSIA) obligation as a manda-

tory procedural requirement within the WTO SPS Agreement framework.

The CSIA would be triggered by the satisfaction of an objective threshold: two or more WTO Members entering into a regulatory convergence agreement affecting SPS standards must conduct a CSIA where, cumulatively, they account for 25 per cent or more of the total agri-food export revenue of any developing WTO Member or recognised regional bloc, or where the relevant developing country or bloc derives 15 per cent or more of its total agri-food export earnings from markets subject to the proposed convergence. An alternative or supplementary trigger would apply where the converging parties together constitute more than 20 per cent of global import volumes in one or more SPS-sensitive product categories—including fresh fruit and vegetables, cocoa products, groundnuts, fish products, and tropical spices—in which the affected developing exporter holds a significant export concentration. These thresholds are calibrated to capture the UK-EU convergence in respect of ECOWAS, while remaining sufficiently general to apply to future convergence agreements between other major importers. The SPS Committee would maintain and publish the relevant market-share and export-concentration data annually to facilitate self-assessment.

The CSIA would require the converging parties to assess: (i) the extent to which the converged SPS standards exceed those required by international standards (Codex, WOAH, IPPC) in respect of product categories of significance to the affected developing exporters; (ii) the likely trade-restrictive effects of the converged standards on those exporters; and (iii) whether those effects are disproportionate to any legitimate risk-management objective pursued by the convergence.

B. Legal Foundations and Analogies

The CSIA proposal asks for a cognate recognition in SPS law: (Pauwelyn, 2014: pp. 28-34)[19] that the cumulative effect of converging SPS regimes can constitute a form of serious prejudice to developing-country exporters.[20]

The legal basis for the proposal can be located within existing WTO jurisprudential practice. WTO law already recognises that the effects of government action may be assessed cumulatively rather than solely in isolation. The serious prejudice provisions of the SCM Agreement provide an instructive analogy because they focus not merely on the existence of a subsidy but on the market effects generated by that subsidy. The proposal therefore extends an established WTO concern with market effects into a context where cumulative regulatory effects currently escape legal scrutiny. The proposed CSIA obligation adopts a similar logic: the issue is not the legality of SPS convergence as such, but the aggregate trade consequences that convergence may generate for vulnerable exporters.

The CSIA proposal adapts this logic to the trade context: where regulatory convergence between major trading partners will produce significant and asymmetric trade effects on developing-country exporters, a procedural obligation of assess-

[19]SPS Agreement, Art 5.4.

[20]Agreement on Subsidies and Countervailing Measures, Arts 5-6; Appellate Body Report, US—Subsidies on Upland Cotton, WT/DS267/AB/R (adopted 21 March 2005), paras 424-428.

ment is legally appropriate.[21]

C. The Mitigation Obligation

The CSIA, as proposed, is a procedural rather than substantive instrument: it requires assessment, not a particular outcome. The article does not argue that the EU and UK are required to lower their SPS standards in response to ECOWAS compliance difficulties; health protection is a legitimate regulatory objective and the SPS Agreement properly preserves Members' rights in this respect. The claim is narrower: where the converging parties' assessment identifies disproportionate trade harm to developing-country exporters that exceeds what is strictly necessary to achieve the joint level of protection, those parties must take mitigation measures.

Mitigation could take several forms: extended transition periods for developing-country exporters to adapt to converged standards; targeted technical assistance and capacity-building programs funded by the converging parties as a condition of the convergence agreement; differential MRL application for product categories produced predominantly by smallholder systems; and structured participation rights for affected developing regional blocs in the standard-setting processes that govern the converged regime.

D. Operationalisation Through WTO Institutional Mechanisms

This could require Members entering into regulatory convergence agreements to notify the SPS Committee of: (i) the scope of the convergence and its likely application to product categories of significance to developing-country exporters; (ii) the CSIA conducted; and (iii) the mitigation measures proposed or adopted (Fartusova & Laborde, 2021: pp. 18-22).[22]

The WTO's 2024 MC14 process in Yaoundé, which adopted a declaration on Agriculture, Trade and Food Security, provides a political moment for advancing this argument. The declaration's commitment to revitalise agricultural trade negotiations in ways that benefit the most vulnerable developing countries explicitly encompasses SPS-related market access barriers. The CSIA proposal is properly advanced as a concrete legal mechanism for giving effect to that political commitment.

6. Objections and Responses

A. The Sovereignty Objection

The most immediate objection to the CSIA proposal is that it infringes the regulatory sovereignty of the EU and UK to set their own food safety standards and to conclude bilateral convergence agreements. This objection has force within the existing legal framework but does not undermine the reform argument. The WTO SPS Agreement already imposes significant constraints on Members' regulatory autonomy: the scientific justification requirement, the non-arbitrariness obligation, and the necessity test all limit how Members may exercise their SPS sover-

[21]Pulp Mills on the River Uruguay (Argentina v Uruguay) [2010] ICJ Rep 14, para 204; International Law Commission, Draft Articles on Prevention of Transboundary Harm from Hazardous Activities, (2001) art 7.

[22]SPS Agreement, Art 12.4;

eignty. The CSIA obligation adds a procedural assessment requirement. It does not prescribe a substantive outcome. Regulatory sovereignty within the WTO framework has never been absolute; it has always been exercised within disciplines designed to ensure that national regulation does not produce unnecessary barriers to international trade.

B. The Capacity Objection

A second objection holds that the proposed CSIA would be administratively burdensome and technically complex. This is true, but proportionate. The UK-EU SPS Agreement is itself an immense regulatory undertaking. Requiring the negotiating parties to produce an assessment of the trade effects of that convergence on developing-country agri-food exporters is not disproportionate to the scale and significance of the agreement. The Standards and Trade Development Facility (STDF)—the joint WTO, WHO, World Bank, WOAH, and FAO initiative for SPS capacity development—provides existing institutional infrastructure that could host and support CSIA development.

C. The Attribution Objection

A third objection is that the UK-EU SPS Agreement does not impose any measure on ECOWAS exporters; it governs the standards applicable within a bilateral zone. ECOWAS's compliance burden arises from the requirements of the EU and UK import regimes, not from the convergence agreement itself. This objection correctly identifies the indirect character of the harm but misconceives the legal significance of indirectness. The convergence agreement is the cause of the amplification: absent UK-EU SPS re-alignment, ECOWAS exporters would face two distinct compliance regimes with the possibility of differential treatment, transition, or adaptation. The convergence agreement eliminates that possibility. The causal connection between the agreement and the amplified burden is direct enough to ground a procedural assessment obligation, as analogous doctrines in environmental impact assessment law confirm.

7. Conclusion: The Invisible Third Party and the Limits of Existing Law

The UK-EU SPS Agreement, if concluded on the terms presently being negotiated, will create a dynamically aligned Euro-Atlantic SPS zone that is the most significant expansion of EU food safety law's geographic reach since the Union's eastern enlargements. For ECOWAS agri-food exporters—already structurally disadvantaged by an EU SPS regime they had no role in shaping and lack the institutional capacity to contest—this represents a legally unremedied intensification of their market access burden.

This article has argued that the legal failure is doctrinal, not merely institutional. The WTO SPS Agreement's disciplines were designed for unilateral barriers, not for the cumulative effects of converging major-economy SPS regimes. The special and differential treatment provisions of Article 10 are hortatory at best. The precautionary principle under Article 5.7, which developed countries deploy to justify progres-

sive standard-tightening, is structurally unavailable as a remedy for the developing-country exporters who bear its costs. And the provisions most commonly invoked as partial solutions—Articles 4, 5.6, 6, and Annex B—each address cognate but categorically distinct problems, and none is capable of capturing the cumulative harm that arises from bilateral convergence across two critical markets simultaneously.

The proposed Cumulative SPS Impact Assessment obligation offers a doctrinal remedy that is calibrated, grounded in existing WTO legal architecture, and capable of operationalisation through the SPS Committee and, ultimately, through treaty amendment. It does not ask the EU or UK to lower their legitimate food safety standards. It asks them, when multiplying the market coverage of those standards through bilateral convergence, to assess and mitigate the disproportionate harm that multiplication inflicts on developing-country exporters who have no voice in the process.

The invisible third party in the UK-EU SPS Agreement negotiations is not invisible because it lacks interests. It is invisible because the law, as currently constituted, does not compel those negotiating to look for it. This article has argued that the law should be reformed so that it does.

Conflicts of Interest

The authors declare no conflict of interest.

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