Introduction to the TBT and SPS Agreements

Subregional workshop on non-tariff measures in Armenia and North and Central Asia

Organized by ESCAP and Food Safety Inspection Body by the Government of Republic of Armenia

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Figure C.26: Most-favoured nation (MFN) tariffs on parts and components by country group (per cent)

9%
Average tariff applied by WTO members in 2013

Note: Underlying data are simple averages of ad valorem rates.
Source: Calculations based on the TRAINS (Trade Analysis and Information System) database, WITS (World Integrated Trade Solution).
Growing prominence of Non-Tariff Measures (NTMs)

NTMs can include: **Technical Barriers to Trade (TBT)**, **Sanitary and Phytosanitary Measures (SPS)**, quotas, contingency measures (antidumping, countervailing duties, safeguards), subsidies, services measures (domestic regulation)
WTO rules on NTMs

Tariffs

GATT

NTMs

Legitimate

WTO Agreements (TBT, SPS, ...)

Illegitimate

... but should not be unnecessary or discriminatory barriers to trade

legitimate
Objectives of the SPS and TBT Agreements

Pursuit of trade liberalization...

Members’ right to regulate...

avoiding unnecessary barriers to international trade

right of Members to protect human, animal, plant life or health / to fulfill legitimate objectives at levels they consider appropriate

use of relevant international standards
TBT Agreement - Coverage

It applies to:

- technical regulations (mandatory)
- standards (voluntary)
- conformity assessment procedures

But: its provisions do not apply to SPS measures

For all products, industrial and agricultural
to protect:  

- human or animal life 
- animal or plant life 
- a country 

from:  

- risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs;  
- plant- or animal-carried diseases (zoonoses);  
- pests, diseases, or disease-causing organisms;  
- damage caused by the entry, establishment or spread of pests
Food standards and regulations

TBT – food quality, information, and labelling (not safety)

SPS – food safety (e.g. pesticide residues, additives, contaminants)
SPS Agreement vs. TBT Agreement

**SPS**
- Right to restrain trade when necessary to protect health
- Measures based on scientific principles
- Non-discriminatory
- No disguised restrictions
- Transparency
- Harmonization to international standards

**TBT**
- Right to restrain trade when necessary to fulfil legitimate objectives (including health)
- Technical regulations take into consideration *inter alia* available scientific and technical information
- Non-discriminatory
- No disguised restrictions
- Transparency
- Use of “relevant” international standards
Non-discrimination: SPS
Article 2.3 (SPS)

Country A
FMD-free

Country B
FMD-free

Country C
FMD

...identical or similar conditions
Non-discrimination: TBT
Articles 2.1 (TBT)

...like products
(in a comparable situation)
Treating “characterizing flavours” differently
SPS: Scientific justification
Articles 3 & 5

Measures must be based on:

International standards  OR  Risk assessment
**Harmonization** – The establishment, recognition and application of common sanitary and phytosanitary measures by different Members.
• **Art. 3.1:** Members “shall base” SPS measures on the relevant international standards

• **Art. 3.2:** Measures which “conform to” the international standards are “deemed necessary to protect ... health” and “presumed to be consistent” with SPS Agreement and GATT

• **Art. 3.3:** Members may have measures with higher ALOP than international standards – but ... in accordance with Art.5 (risk assessment)
SPS Agreement - Harmonization
Article 3 and Annex A:3

Standard-setting organizations

food safety
CODEX

animal health
OIE

plant health
IPPC

Codex = Joint FAO/WHO Codex Alimentarius Commission
OIE = World Organization for Animal Health
IPPC = International Plant Protection Convention (FAO)
SPS: Scientific justification
Articles 3 & 5

Measures must be based on:

- International standards
- Risk assessment

OR
Necessity (TBT)

- Avoiding unnecessary barriers to international trade
- Members’ right to regulate for legitimate objectives (including for human health)
Article 2.2 of the TBT Agreement:

“... Such *legitimate objectives* are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. ...”
NOTE:
The warning statement, graphic and explanatory message must:
• cover at least 90% of the back surface
• join without space between them

PACK FORMAT:
• made of rigid cardboard
• no embellishments
• flip top lid

INFORMATION MESSAGE:
• background extends to edges of surface
• text fills background
• in Helvetica font
• in specified size, capitalisation and weighting
• black text on yellow background

WARNING STATEMENT:
• background fills area above fold line of lid – extends to edges of surface
• text fills background
• in bold uppercase Helvetica font
• white text on red background

GRAPHIC:
• not distorted
• extends to edges of surface
• includes Quitline logo

EXPLANATORY MESSAGE:
• background extends to edges of surface
• text fills background
• in Helvetica, font
• in specified capitalisation and weighting
• white text on black background

PACK SURFACE:
• colour is Pantone 445C (a drab dark brown)
• matt finish

BRAND AND VARIANT NAME:
• horizontal and centred
• no larger than maximum sizes
• in Lucida Sans font
• in Pantone Cool Gray 20 colour
• in specified capitalisation

FIRE RISK STATEMENT:
• below health warning
• no larger than 10 points in size
• in uppercase Lucida Sans font
• in Pantone Cool Gray 20 colour

SMOKING CAUSES PERIPHERAL VASCULAR DISEASE

GANGRENE

Smoking narrows and blocks your blood vessels, reducing blood and oxygen supply to your extremities. Over time this can cause gangrene – that doesn’t heal and gangrene.

Want advice on quitting? Call Quitline 13 7848, talk to your doctor or pharmacist, or visit www.quitnow.gov.au

AUSTRALIAN FIRE RISK STANDARD COMPLIANT
USC LABEL IN DISPLAY
Type 1 “Drinking alcohol causes the hypertension liver cirrhosis”

Type 2 “Drunk driving causes disability or death”

Type 3 “Drinking alcohol leads to unconsciousness and even death”

Type 4 “Drinking alcohol leads to sexual impotency”

Type 5 “Drinking alcohol leads to adverse health effect and family problems”

Type 6 “Drinking alcohol is a bad role model for children and young people”
Nutrition Facts
8 servings per container

Serving size 2/3 cup (55g)

Amount per 3/4 cup

Calories 230

% DV*
12% Total Fat 8g
5% Saturated Fat 1g
0% Cholesterol 0mg
7% Sodium 160mg
12% Total Carbs 37g
14% Dietary Fiber 4g
1% Sugars 1g
0% Added Sugars 0g
0% Protein 5g

10% Vitamin D 2mcg
20% Calcium 200mg
40% Iron 8mg
5% Potassium 235mg

* Footnote on Daily Values (DV) and calories reference to be inserted here.

Each 1/2 pack serving contains

<table>
<thead>
<tr>
<th>MED</th>
<th>LOW</th>
<th>MED</th>
<th>HIGH</th>
<th>MED</th>
</tr>
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<tbody>
<tr>
<td>Calories</td>
<td>353</td>
<td>0.9g</td>
<td>20.3g</td>
<td>10.8g</td>
</tr>
<tr>
<td>Sugar</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
<td>1%</td>
</tr>
<tr>
<td>Fat</td>
<td>29%</td>
<td>54%</td>
<td>18%</td>
<td>29%</td>
</tr>
<tr>
<td>Sat Fat</td>
<td>18%</td>
<td>18%</td>
<td>18%</td>
<td>18%</td>
</tr>
<tr>
<td>Salt</td>
<td>18%</td>
<td>18%</td>
<td>18%</td>
<td>18%</td>
</tr>
</tbody>
</table>

Source: Food Standards Agency

* Footnote on Daily Values (DV) and calories reference to be inserted here.
TBT Agreement: using international standards

Members **shall** use...

“**relevant**” international standards

... as a **basis** for

- technical regulations (Art. 2.4)
- conformity assessment procedures (Art. 5.4)

**except!**

when **ineffective** or **inappropriate** for policy objectives (e.g. fundamental climatic or geographical factors, or technological problems)

Presumption of not creating an unnecessary barrier to trade when requirements are in accordance with “relevant” international standards (Art. 2.5)
The Use of International Standards... 
... as a basis for regulation

Obligation        Flexibility

“shall use”
(international standards)

“shall play a full part ... in preparation”
(within resource limitations)

“relevant”, “as a basis”, “appropriate”, “effective”, special and differential treatment...
Which international standards to use/reference?

FAO/WHO Food Standards
CODEX alimentarius

ISO
International Organization for Standardization

ASTM
INTERNATIONAL Standards Worldwide

IEC

IEEE

ITU

OIML

SPS
TBT Committee Decision on *Principles for the Development of International Standards, Guides and Recommendations* (November 2000, G/TBT/9)

“Six Principles”

- Transparency
- Openness
- Impartiality and consensus
- Relevance and effectiveness
- Coherence
- Development dimension
Work of the SPS and TBT Committees
Two main themes of Committee work

1. Review of measures "specific trade concerns" (mostly based on notifications)

2. Information exchange on cross-cutting issues (harmonization, transparency, ...): leading to decisions and recommendations
THE IMPORTANCE OF TRANSPARENCY AND NOTIFICATION

• Regulatory developments affect market access
• Reduce trade disruptions/problems through advance warning/consultations
• Enhance clarity, predictability; facilitate trade
• Promote regulatory cooperation among members
• Signal for a functioning system; builds trust
WHAT TO NOTIFY?

New or modified technical regulation or conformity assessment procedure or SPS measure

+ No existing international standard or Different than the international standard

+ Significant impact on trade (restricting or facilitating)

NOTIFY
Transparency and Notification Timeline (TBT)

1. Publication of notice
2. Drafting of measure
3. Publication of notice
4. Notification to other Members (Art. 2.9.2, 5.6.2)
5. Provision of copies (Art. 2.9.3, 5.6.3)
6. Discussion of the comments (Art. 2.9.4, 5.6.4)
7. End of comment period
8. Adoption of the measure
9. Publication of the measure (Art. 2.11, 5.8)
10. Entry into force of the measure (Art. 2.12)

Exceptions for urgent reasons... (Art. 2.10, 5.7)
STCs and Notifications – TBT and SPS
Review of specific trade concerns by the TBT and SPS Committee (figures as of March 2019)

- TBT notifications: ≈ 34,000
- SPS notifications: ≈ 24,000
- Request clarification from Enquiry Point
- Bilateral consultations
- Disputes raised in the Committee: 583 “STCs”
- Disputes (with Panel and AB reports): 6
- Disputes (with Panel or Panel and AB reports): 14
- SPS Disputes: 456 “STCs”
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