Introduction to the TBT and SPS Agreements

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

Organized by ESCAP and Food Safety Agency of the Republic of Azerbaijan

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The World Trade Organization (WTO)
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- **Location**: Geneva, Switzerland
- **Established**: 1 January 1995
- **Membership**: 164 members representing 98 per cent of world trade
- **Budget**: 197 million Swiss francs for 2018
- **Secretariat staff**: 625
- **Head**: Roberto Azevêdo (Director-General)

[https://www.wto.org/](https://www.wto.org/)
The World Trade Organization (WTO) - Functions

- Administering WTO trade agreements
- Forum for trade negotiations
- Handling trade disputes
- Monitoring national trade policies
- Technical assistance and training for developing countries
An introduction to Non-Tariff Measures
Figure C.26: Most-favoured nation (MFN) tariffs on parts and components by country group (per cent)

- Developed
- G-20 developing
- Other developing

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).
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

NTMs
  - Legitimate
  - Illegitimate

GATT

WTO Agreements (TBT, SPS, ...)

... but should not be unnecessary or discriminatory barriers to trade
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
- human 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;

SPS
Examples:

A measure to protect:

Human or animal health from risks from additives, contaminants, toxins or disease causing organisms in food or feedstuffs

Residue limits seafood

Aflatoxin limits in nuts

HACCP to reduce Salmonella
Examples:

A measure to protect

Human health from diseases spread by plants or animals (zoonoses)

Requirement for rabies vaccination

Avian influenza
Examples:

A measure to protect:

Animal or plant health from pests, diseases, disease-carrying or disease-causing organisms

Foot-and-mouth disease measures

Prevent spread of fruit fly
Examples:

A measure to protect:

The territory of a country from other damage from entry or spread of pests

Prevent entry of Zebra mussels via ballast water

regulate seeds to avoid entry of weeds
SPS or TBT Measures?

Use of non-toxic materials for manufacture of bottle?

Nutritional values (mineral content)?

Shape?
SPS or TBT measure?

Minimum size of fruit?

Use of anti-pest sprays?

Packaging?
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

SPS Agreement vs. TBT Agreement
SPS: Scientific justification
Articles 3 & 5

Measures must be based on:

International standards OR Risk assessment
SPS Agreement - Harmonization
Article 3 and Annex A:3

• 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  OR  Risk assessment
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)

Presumption of not creating an unnecessary barrier to trade when requirements are in accordance with “relevant” international standards (Art. 2.5)

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

**except!**
Which international standards to use/reference?
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
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

The graph shows the trend of notifications and STCs from 1995 to 2016. The blue line represents Total TBT Notifications, the red line represents Total SPS Notifications, the blue dashed line represents New TBT STCs, and the red dashed line represents New SPS STCs.
Review of specific trade concerns by the TBT and SPS Committee (figures as of March 2019)

- **TBT**
  - ≈ 34,000 TBT notifications
  - 583 “STCs”
  - 6 Disputes (with Panel and AB reports)

- **SPS**
  - ≈ 24,000 SPS notifications
  - 456 “STCs”
  - 14 Disputes (with Panel or Panel and AB reports)

- Request clarification from Enquiry Point
- Bilateral consultations
- Raised in the Committee

(not raised formally)
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