The SPS and TBT Agreements and Public Health

Training Course on the Public Health Implications of Multilateral Trade Agreements

University of Lausanne (UNIL), 14-18 June 2004
WTO rules governing technical barriers to trade applied for human health protection are covered by:

SPS Agreement:
- Negotiated in parallel to UR negotiations (1986-94) on AoA
- Concern countries might turn to the use of NTBs to protect domestic agricultural sectors that would negate benefits from reducing tariffs and subsidies

TBT Agreement:
- New TBT Agreement binding on all Members and contains more stringent obligations

Health is considered a legitimate objective for restricting trade but both Agreements require that such measures do not unnecessarily restrict trade.
SPS Agreement: a carefully crafted balance

Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal and plant life or health..... (Article 2.1)

Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal and plant life or health (Article 2.2)

Science provides the balance
TBT Agreement: Creation of a Framework for the use of technical regulations & standards

- Increasing number of technical regulations and standards
- Proliferation of conformity assessment procedures
- Evolution in consumer demand
- Impact on trade

Balance between legitimate political imperatives and trade facilitation
Rights and Obligations:

SPS Agreement:
• Right to restrain trade to protect health
• Measures based on scientific principles
• Non-discriminatory
• No disguised restrictions

TBT Agreement:
• Right to restrain trade when legitimate objective (+illustrative list)
• Technical regulations take into consideration inter alia available scientific and technical information
• Non-discriminatory
• No disguised restrictions
Definition of an SPS Measure:

To Protect

- human or animal life or health
- human life or health
- animal or plant life or health
- 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
Important Footnote:

- “animal” includes wild fauna and fish
- “plants” include forests and wild flora
- “parasites” includes weeds
- “contaminants” include pesticide residues, veterinary drug residues and extraneous matter
SPS measures: laws, decrees, regulations... including:

- end product criteria
- processes and production methods
- testing, inspection, certification approval procedures, etc.
- quarantine treatments
- animal transport
- packaging and labelling requirements directly related to food safety
Legitimate Objectives under the TBT Agreement:

- Protection of human health or safety
- The protection of animal or plant life or health
- The protection of the environment

- National security interests
- Prevention of deceptive practices
- Etc...
The TBT Agreement has a wider scope

• It applies to all:
  – technical regulations
  – standards
  – conformity assessment procedures

but...

• its provisions do not apply to SPS measures
TBT Agreement some definitions:

**Technical Regulation**
- "Document which lays down product characteristics or their related processes and production methods...with which compliance is mandatory."

**Standard**
- Document, approved by a recognized body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory.

**Conformity assessment procedure**
- Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.
TECHNICAL BARRIERS TO TRADE (TBT)

TBT Applies To:
All Industrial And Agricultural Products

SANITARY AND PHYTOSANITARY MEASURES (SPS) SPS does not Apply only To Agricultural products but may also apply to industrial products

TBT Does Not Apply To:
SPS Measures
Health protection measures

• Cigarette package labelling signalling health risks:
  • SPS Measure?
  • No! TBT Measure!
Health protection measures

- Regulation requiring that all milk products, with the exception of cheese, be pasteurized.
- TBT Measure?
  No! SPS measure!
Methods of production & inspection - Codex Code of Hygiene for meat (SPS)

Packaging in direct contact with the meat (SPS)

Product description
Codex standards (TBT)

Contaminants - Codex standards for:
- pesticides residues
- veterinary medicines
- contaminants (SPS)

Quality specifications (age, % fat, colour, species) (TBT)

NOT CONTAMINATED BY BSE
SPS or TBT?

- additives, contaminants or poisonous substances in food or drink
- residues of veterinary drugs or pesticides in food or drink
- certification: food safety, animal or plant health
- processing methods with implications for food safety
- labelling requirements directly related to food safety
- plant/animal quarantine
- declaring areas free from pests or disease
- etc ...

- labelling of food, drink & drugs
- quality & packaging requirements for fresh food
- packaging & labelling for dangerous chemicals and toxic substances
- regulations for electrical appliances
- textiles & garments labelling
- testing vehicles & accessories
- regulations for ships & ship equipment
- safety regulations for toys
- etc...
Other types of measures...

- Protection of the environment per se
- Consumer interests other than health
- Animal welfare

...but may be TBT measures

- are not covered by the SPS Agreement...
Key Principles of the SPS and TBT Agreements:

1. Scientific Justification
2. Harmonization
3. Consistency
4. Equivalence
5. Disease-free areas-Regionalization
6. Transparency
7. Technical Assistance
8. S&D Treatment
9. Dispute Settlement

- Harmonization
- Equivalence/MRAs
- Transparency
- Recognition of CAPs
  - Technical Assistance
  - S&D Treatment
  - Dispute Settlement
Scientific Justification of SPS measures

- Measures conform to international standards (Art. 3)
- Measures based on a risk assessment (Art. 5 and Art. 2)
Scientific Justification
SPS measures must be based

• Risk assessment (Advanced work by 3 sister organizations)

  Scientific methodology
  
  Available scientific evidence;
  Processes & production methods;
  Inspection, sampling & testing methods etc.

• Economic factors (in assessing risk to animal or plant life or health & determining measure to be applied)

Raised often in SPS Committee Specific Trade Concerns (G/SPS/GEN/204/Rev.4) & major issue of SPS Disputes
Trade Concerns by Subject

- Plant Health: 29%
- Food Safety: 27%
- Animal Health & Zoonoses: 41%
- Other Concerns: 3%
SPS - Risk management

• Appropriate measure

• Minimize negative trade effects

• Not more trade-restrictive than required

• Technical and economic feasibility

Art.5.4- 5.6
Precaution in the SPS Agreement

Right to take provisional measures in case of insufficient scientific evidence

Obligation:
- Seek additional information
- review the measure accordingly
- within a reasonable period of time

Art. 5.7
International Harmonization
SPS & TBT

• Encouragement to use international standards
• Conformity presumption
• Right to be more stringent, but...
  • SPS requires scientific justification or risk assessment
  • Art. 3
  • Art. 2.4
  • TBT only requires indication that fundamental legitimate objectives cannot be met
International Harmonization

- Food safety  
  - CODEX

- Animal health  
  - OIE

- Plant protection  
  - IPPC

- Relevant international standards

- SPS
- TBT
SPS - Monitoring International Harmonization

Articles 3.5 and 12.4

11 issues raised in the SPS Committee since the implementation of the procedure

- WTO Member
  - Apply standard

- "Three sisters"
  - Review old
  - Create new

- Non-utilisation?
- Inappropriate?
- Non-existent?
Consistency

• Consistency (objective)

• Avoid distinctions ALOP if they result in discrimination or a disguised restriction on int. trade

• Guidelines adopted (G/SPS/15)

• No further work in Committee

• Often issue in disputes
Equivalence/MRAs

**SPS**
- Acceptance of equivalent measures
- Exporter to demonstrate
- Access to importer
- Bilateral and multilateral agreements
- Guidelines adopted and clarified (G/SPS/19/Rev.1)
- New format for notifications

**TBT**
- Acceptance of equivalent regulations
  - Art.2.7
- Condition: adequately fulfill the objective of the importer
- Agreements mutual recognition conformity assessment procedures
  - Art.6.3

- Art.4
SPS - Regionalization

• Adaptation of measures to risk profile

• Pest- or disease-free areas

• Art.6

• FMD;... BSE

• Exporter: burden of proof
  (...reasonable access)

• Proposal for development of Guidelines
  (Chile, EC, Canada)

• Advanced work in animal health and plant protection
SPS - Transparency - TBT

Notifications

- Normal
- Emergency

When?

- No international standard
- Deviation international standard
- Significant effect on trade

Enquiry Points

- **Developed countries**
- **Developing countries**
- **Least Developed Countries**
- **Total**

**Number of Members**

- **Not Notified**
- **Notified**

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- Asia: 29%
- North America: 28%
- Latin America: 25%
- Central and Eastern Europe: 4%
- Western Europe: 11%
- Africa: 2%
- Middle East: 1%
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SPS - Committee - TBT

Implementation of the Agreement
- Information by Members
- Trade problems

Discussion of notifications

SPS
- Monitoring
- Consistency
- Review Agreement
- Technical Assistance

TBT
- Standards
- Technical regulations
- Conformity assessment
- Technical Assistance
Technical assistance

- Reinforcement services
- Establishment regulatory bodies
- Advice, credits, donations, grants

ITC

- TBT
- Bilateral

FAO

- SPS
- “Three sisters”
Special and differential treatment

TBT & SPS

Take into account special needs of LDC
Specified, time-limited exceptions upon request
Facilitate active participation LDC in international organizations

TBT
Flexibility international standards

SPS
No flexibility international standards
Delayed application
Dispute settlement

- WTO unified dispute settlement procedures
- Possibility technical experts (group)
- SPS: right to resort to dispute settlement mechanisms of other IO
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