



Multilateral Trade Rules

Governing Environmental and Health Requirements: The TBT and SPS Agreements

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Abstract

WTO Agreement on Technical Barriers to Trade
(TBT Agreement)

The Agreement on the Application of Sanitary and
Phyto-sanitary Measures
(SPS Agreement)

Why an Agreement on TBT ?

The impact of technical regulations
and standards on free trade

The Costs !!

- Loss of economy of scale
- Information costs
- Adjustment costs to divergent technical regulations
- Costs resulting from uncertainty

General Objective of the TBT Agreement

Recognises

The right of WTO Members to adopt
Technical Regulations, Standards and
Conformity Assessment Procedures

However

Ensures that such measures do not create
unnecessary obstacles to trade

Definitions - Annex 1

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 by producers, suppliers, clients, regulatory bodies and third parties to determine that relevant requirements in technical regulations and standards are fulfilled

Definitions - Annex 1

Technical requirements

Technical regulations

Mandatory

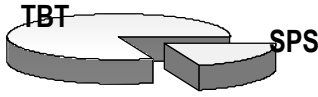
Standards

Voluntary

"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. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method."

Scope of the TBT Agreement

All products, including industrial and agricultural products



except,

- sanitary and phytosanitary measures
- regulations and standards related to services
- purchasing specifications for production or consumption of governments

Main Principles of the TBT Agreement



1. Non - Discrimination
2. Avoidance of unnecessary obstacles to trade
3. Harmonization
4. Equivalence
5. Mutual Recognition
6. Transparency

1. Non-Discrimination (a)

Article 2.1

Members shall ensure that ... products imported from the territory of any Member shall be accorded **treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.**

applies in the **preparation, adoption, and application** of Technical Regulations, Standards and Conformity Assessment Procedures

Most-Favoured Nation (MFN)

National Treatment

Article 2.1

Article 5.1.1

Annex 3.D

1. Non-Discrimination (b)

What is a "like product" for purposes of the TBT Agreement?

Likeness is determined on a case by case basis

4 criteria

Physical characteristics

Tariff Classification

Consumers' tastes and habits

Product end uses

2. Avoid unnecessary obstacles to trade (a)

The measure shall be

- No more trade restrictive than necessary
- to fulfil a **legitimate objective**, taking account of the risks non-fulfilment would create

Article 2.2

Annex 3.E

Article 5.1.2

2. Avoid unnecessary obstacles to trade (b)

Legitimate objectives

National security requirements

Protection of human health or safety

Protection of animal or plant life or health

Protection of the environment

Prevention of deceptive practices

.....

Article 2.2

Article 5.1.2

3. Harmonization (a)

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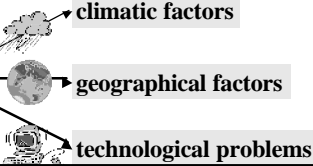
Members shall *participate* in the appropriate standardizing bodies

Article 5.5

Members shall use relevant international standards

Articles 2.4; 2.5; 2.6

Except when *inappropriate or ineffective* for



3. Harmonization (b)

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"... Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade"

Article 2.5

3. Harmonization (c)

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International Standardizing Bodies

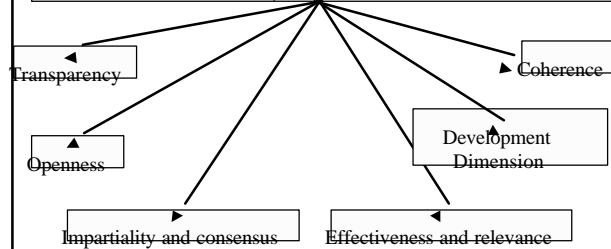
- International Organization for Standardization (ISO)
- International Telecommunications Union (ITU)
- International Electrotechnical Commission (IEC)
- Codex Alimentarius Commission

They are not explicitly recognized

3. Harmonization (d)

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Principles for the Development of International Standards, Guides and Recommendations



4. Equivalence

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Acceptance of other regulations as equivalent

even when they differ

Article 2.7

provided that they fulfil the objectives of their own regulation

5. Mutual Recognition

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Acceptance of each other's conformity assessment results



Encouragement to enter into negotiations for the conclusions of Mutual Recognition Agreements (MRAs)

Articles 6.1 and 6.3

6. Transparency

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Notifications

Enquiry Points

TBT Committee



6. Transparency: Notification (what?)

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Members
have to
notify
what?

Implementation and administration of the Agreement

Draft technical regulations, and adopted urgent measures

Bilateral and multilateral agreements

Adherence or withdrawal to the Code of Good Practice and work programme

6. Transparency: Notification (when?)

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Members
have to
notify when:

Whenever a relevant international standard does not exist, or a new requirement is not in accordance with the technical content of relevant international standards, guides or recommendations

If the technical regulation or conformity assessment procedure may have a significant effect on trade of other Members

6. Transparency: Notification (how?)

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Publish a notice in a publication at an early stage

Notify the WTO Secretariat of the regulation or procedure and the products covered, indicating the objective & rationale, at an early stage when amendments can be introduced

Upon request, provide copies of regulations or procedures

Without discrimination, allow reasonable time for Members to comment in and take new regulation into account

6. Transparency: Enquiry Points

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WTO Members must set up a national enquiry point

Art. 10.1, 10.2, 10.3

Enquiry Points must respond to enquiries and provide relevant documents regarding:

Technical regulations, standards and conformity assessment procedures

Membership and participation in international and regional standardizing bodies and conformity assessment systems / bilateral and multilateral arrangements

Location of notices published

Location of other Enquiry Points

6. Transparency: TBT Committee

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Composition

Representatives of each Member

Objective

Consulting on any matters relating to the operation of the Agreement

Chairperson

Elected by the Committee

Meetings

As necessary, but not less than once a year

Articles 13;
15.3 - 15.4

Reviews

The Committee shall review annually the operation and implementation of the Agreement.
Every 3 years, the Committee shall review the implementation and operation of the Agreement..., with a view to recommending an adjustment of the rights and obligations of this Agreement where necessary to ensure mutual economic advance and balance of rights

Provisions for developing countries

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Special and Differential Treatment

Technical Assistance

Provisions for developing countries: Special and Differential Treatment

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Article 12

All Members shall

Take into account the special needs of developing country Members

Avoid creating unnecessary obstacles to exports of developing country Members (through regulatory activities)

Facilitate active and representative participation of developing country Members in international standardizing bodies

Facilitate preparation of international standards concerning products of special interest to developing country Members

Provisions for developing countries: Special and Differential Treatment

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Article 12

Developing country Members

Shall only use international norms appropriate to their needs

Can be granted specified, time-limited exceptions from obligations of the Agreement

Provisions for developing countries: Technical Assistance

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Article 11

... if requested and ...
on mutually agreed terms

Preparation of technical regulations

Priority to the needs of least-developed country Members

Facilitate access to systems for CA

Facilitate participation in international system for CA

Establishment of standardizing bodies, regulatory bodies or bodies for CA

Abstract

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WTO Agreement on Technical Barriers to Trade (TBT Agreement)

The Agreement on the Application of Sanitary and Phyto-sanitary Measures (SPS Agreement)

Definition of an SPS Measure

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to protect:

from:

human or animal life

{ risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs;

human life

{ plant- or animal-carried diseases (zoonoses);

animal or plant life

{ pests, diseases, or disease-causing organisms;

a country

{ damage caused by the entry, establishment or spread of pests

Not covered by SPS Agreement

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Measures intended to protect, for example

- the environment, per se
- consumer interests (not health)
- animal welfare



are **NOT** covered by the SPS Agreement

Examples of TBT and SPS Measures

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Fruit

Regulation of treatment of imported fruit to prevent pests spreading

→ SPS

Regulation on quality, grading and labelling of imported fruit

→ TBT

Bottled Water: Specification for Bottles

Materials that can be used because safe for human health

→ SPS

Requirement: no residues of disinfectant, so water not contaminated

→ SPS

Permitted size to ensure standard volume → TBT

Permitted shape to allow stacking and displaying → TBT

SPS: Basis

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- Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal and plant life or health...
- BUT:
 - no unjustifiable discrimination
 - no disguised restrictions on international trade

SPS: Scientific Justification

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Ensure that SPS measures are applied

- only to the extent necessary to protect health
- based on scientific principles
- not maintained without sufficient scientific evidence

SPS: Scientific Justification

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Two options:

Base measures on

- a risk assessment
- an international standard

International Standard Setting Bodies

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- FAO/WHO Codex Alimentarius Commission (CODEX)



- International Office of Epizootics



- FAO International Plant Protection Convention (IPPC)



Risk Assessment

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Countries must base SPS measures on an assessment of the risks involved, and, if requested, made known

1. the factors which they took into consideration
2. the procedures they used
3. the level of risk determined to be acceptable

Precautionary Principle

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In cases where relevant scientific evidence is **insufficient**, a Member may provisionally adopt SPS measures on the basis of available pertinent information.

In such circumstances, a Member must try to obtain the **additional information** necessary for a more objective assessment of risk within a **reasonable period of time**.

Other Provisions

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- Equivalence
 - accepting other Members' measures if they achieve the same level of health protection
- Regionalization
 - recognizing pest - or disease - free areas
- Transparency
 - publication, notification requirements

Transparency Provisions

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1) Enquiry Points

- Respond to questions
- Provide documents



2) Notifications

- SPS measures that differ substantially from existing international standards, or for which international standards do not exist
- SPS measures that may have a significant effect on trade

Current discussions

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- SPS and TBT Agreements not open for negotiations
- Implementing concerns identified by developing countries:
 - time between publication and entry into force of the regulation
 - participation in standard setting
 - technical assistance

On-line Reference Sources

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WTO Website

www.wto.org

UNCTAD's Trade, Environment and Development Website

www.unctad.org/trade_env