



Multilateral Trade Rules

Governing Environmental and Health Requirements: The TBT and SPS Agreements

National Policy Dialogue on Environmental Requirements, Market Access and Export Competitiveness for Horticultural Products
Phnom Penh, 23-24 November 2004
Presented by: Ulrich HOFFMANN, UNCTAD secretariat

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Abstract

WTO Agreement on Technical Barriers to Trade (TBT Agreement)

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Definitions - Annex 1

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

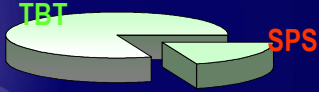
Standard ? → Document approved by a recognized body, that provides, *for common and repeated use*, rules, guidelines or characteristics for products or related processes and production methods, with which compliance **is not mandatory**...

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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)
Article 2.1

National Treatment
Article 5.1.1

Annex 3.D
Annex 3.D

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Main Principles of the TBT Agreement

1. Non - Discrimination
2. Avoidance of unnecessary obstacles to trade

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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


UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

13

Main Principles of the TBT Agreement



1. Non - Discrimination
2. Avoidance of unnecessary obstacles to trade
3. Harmonization



UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

14


3. Harmonization (a)

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

- climatic factors
- geographical factors
- technological problems




UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

15

3. Harmonization (b)

“... 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



UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

16

3. Harmonization (c)

International Standardizing Bodies

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

They are not explicitly recognized




UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

17

3. Harmonization (d)

Principles for the Development of International Standards, Guides and Recommendations



Transparency


Coherence

Openness

Development Dimension

Impartiality and consensus


Effectiveness and relevance




UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

18

Main Principles of the TBT Agreement



1. Non - Discrimination
2. Avoidance of unnecessary obstacles to trade
3. Harmonization
4. Equivalence



UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

4. Equivalence

19

even when they differ

Acceptance of other regulations as equivalent

Article 2.7

provided that they fulfil the objectives of their own regulation

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Main Principles of the TBT Agreement

20

1. Non - Discrimination

2. Avoidance of unnecessary obstacles to trade

3. Harmonization

4. Equivalence

5. Mutual Recognition

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

5. Mutual Recognition

21

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Main Principles of the TBT Agreement

22

1. Non - Discrimination

2. Avoidance of unnecessary obstacles to trade

3. Harmonization

4. Equivalence

5. Mutual Recognition

6. Transparency

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

6. Transparency

23

Notifications

Enquiry Points

TBT Committee

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

6. Transparency: Notification (what?)

24

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

6. Transparency: Notification (when?)

25

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

6. Transparency: Notification (how?)

26

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

6. Transparency: Enquiry Points

27

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

6. Transparency: TBT Committee

28

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

29

Special and Differential Treatment

Technical Assistance

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Provisions for developing countries: Special and Differential Treatment

30

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

31

Provisions for developing countries: Special and Differential Treatment 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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

32

Provisions for developing countries: Technical Assistance Article 11

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

- Preparation of technical regulations
- Facilitate access to systems for CA
- Establishment of standardizing bodies, regulatory bodies or bodies for CA
- Priority to the needs of least-developed country Members
- Facilitate participation in international system for CA

TRADE AND DEVELOPMENT

33

Abstract

WTO Agreement on Technical Barriers to Trade (TBT Agreement)

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

34

Definition of an SPS Measure

<u>to protect:</u>	<u>from:</u>
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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

35

Not covered by SPS Agreement

Measures intended to protect, for example

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

are NOT covered by the SPS Agreement

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

36

Examples of TBT and SPS Measures

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**

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

SPS: Basis

37

- 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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

SPS: Scientific Justification

38

Ensure that SPS measures are applied

- only to the extent **necessary** to protect health
- based on **scientific principles**
- **not maintained without sufficient scientific evidence**
- **precautionary use is possible**, but subject to **regular review**, based on sufficient scientific evidence

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

SPS: Scientific Justification

39

Scientific justification can be based on


Risk Assessment

International Standard

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

International Standard Setting Bodies

40

- FAO/WHO Codex Alimentarius Commission (CODEX) 
- International Office of Epizootics 
- FAO International Plant Protection Convention (IPPC) 

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Risk Assessment

41

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Precautionary Principle

42

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.

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Other Provisions

43

- 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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Transparency Provisions

44

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

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

Current discussions

45

- SPS and TBT Agreements not open for negotiations (there is a regular review of the TBT Agreement every 3 years; SPS only as the need arises)
- Implementing concerns identified by developing countries:
 - Early notification on planned regulations
 - time between publication and entry into force of the regulation
 - participation in standard setting
 - technical assistance

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

On-line Reference Sources

46

WTO Website
www.wto.org

UNCTAD's Trade, Environment and Development
Website

www.unctad.org/trade_env

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT