WTO Framework

Marlynne Hopper

Trade Facilitation Workshop: Sanitary / Phytosanitary and Technical Barriers to Trade

South Asia Subregional Economic Cooperation (SASEC)

Bangkok, 1-3 December 2014
Outline

• Sanitary and Phytosanitary (SPS) and Technical Barriers to Trade (TBT) Agreements
  – Scope, selected key principles and important differences
  – International standards
  – Implementation (notifications, specific trade concerns, institutional frameworks, capacity building, etc.)

• Trade Facilitation Agreement (TFA)
  – Scope and linkages to the SPS Agreement (SPS-Plus)
Non-tariff measures

Technical barriers to trade

- Sanitary and phytosanitary measures
- Trade-related intellectual property rights

Quantitative restrictions

Subsidies

Government purchase

Trade in services
Purpose of the SPS Agreement

Recognizing the right to protect human, animal, plant life or health

Avoiding unnecessary barriers to trade

Multilateral framework of rules and disciplines to guide the development, adoption and enforcement of SPS measures which may (directly or indirectly) affect international trade
SPS measures include:

- product criteria
- quarantine measures
- processing methods
- certification
- inspection
- testing
- packaging, labelling (food safety)

*It’s not the type of measure that counts, or the products involved, but its objective!*
Some examples of SPS measures

- Limits of aflatoxin residues in nuts
- Limits of residues in fish and shellfish
- BSE-related measures
- Measure to prevent introduction of fruit flies
- Measure to prevent introduction of zebra mussels through ballast water of ships
- Seed regulation to avoid introduction of exotic weeds
TBT Agreement has a wider scope

Applies to all:
- Technical regulations *(mandatory)*
- Standards *(voluntary)*
- Conformity assessment procedures *(mandatory or voluntary measures)*

Applies to all products *(industrial and agricultural)*

But its provisions do **not** apply to SPS measures
Objective of TBT Agreement

Recognizing the right to regulate to protect legitimate interests

Avoiding unnecessary barriers to trade

to strike a balance between trade liberalization and the right to regulate
TBT Agreement: 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

...Inter alia...
SPS or TBT?

SPS Measures

- human or animal health from food-borne risks
- human health from animal- or plant-carried diseases
- animals and plants from pests or diseases
- examples:
  - pesticide residues
  - food additives

TBT Measures

- human disease control (unless it’s food safety)
- nutritional claims
- food packaging and quality examples:
  - labelling (unless related to food safety)
  - pesticide handling
  - seat belts
A measure may have more than one objective, so:

- parts of the regulation (i.e. some provisions) could fall under the **SPS Agreement**; and
- other parts of the regulation (i.e. some provisions) could fall under the **TBT Agreement**.

E.g. A regulation which defines the quality, safety, packaging and labelling requirements for fresh domestic and imported oranges for consumption
Minimum size of fruit?

Use of anti-pest sprays?

Packaging?

SPS or TBT?
Key provisions of SPS and TBT Agreements and trade facilitation
<table>
<thead>
<tr>
<th>SPS</th>
<th>TBT</th>
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<tr>
<td>• Right to restrict trade to protect health</td>
<td>• Right to restrict trade based on legitimate objective (<em>illustrative list</em>)</td>
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<tr>
<td>• Measures based on science</td>
<td>• Technical regulations take into consideration <em>inter alia</em> available scientific and technical information</td>
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<td>• Non-discriminatory</td>
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<td>• No disguised restrictions</td>
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Non-Discrimination

- Treatment no Less Favourable to Like Products
  - Originating
    - Of national origin: National Treatment
    - From any other country: Most-Favoured Nation (MFN)
Members shall ensure that any SPS measure is:

- based on scientific principles
- applied only to the extent necessary to protect human, animal or plant life or health (least trade restrictive)
- not maintained without sufficient scientific evidence
- except as provided for in Article 5.7

SPS Agreement, Scientific Justification, Article 2.2
SPS Agreement: Scientific justification Articles 3 & 5

Measures must be based on:

- International standards
- Risk assessment

International standards OR Risk assessment
No “recommended” list of standards

Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3)
- Guidance on how central government standardizing bodies should set standards
- Accepted by standardizing bodies in **Bangladesh**, India, Sri Lanka
SPS: Least trade-restrictive Article 5.6

• SPS measures not to be more trade restrictive than required to achieve the appropriate level of protection

• Alternative measure...
  – reasonably available
  – technically and economically feasible
  – significantly less trade restrictive
SPS Agreement: Control, Inspection and Approval Procedures (Art. 8 and Annex C)

Procedures to check and ensure fulfilment of SPS measures, including sampling, testing and certification

- No undue delays
- Information requirements limited to what is necessary
- No less favourable treatment for imports:
  - Fees: no discrimination, only to cover costs
  - Non-discrimination in siting of facilities, selection of samples
- Procedure to review complaints, take corrective action
Transparency is a key provision of both the SPS and TBT Agreements.
SPS and TBT: What to notify?

- New or modified regulation
- **No existing international standard or different than international standard**
- Significant impact on trade (restricting or facilitating)

**SPS / TBT Information Management Systems**

http://spsims.wto.org/
http://tbtims.wto.org/
## Enquiry Point and Notification Authority

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## Specific Trade Concerns (STC)

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Key Questions for SASEC

What are the implications of different types of measures?
- Voluntary (TBT standards) vs mandatory (SPS measures, TBT technical regulations)?

Opportunities to improve implementation of SPS and TBT Agreement to facilitate trade?
- More active Notification Authority, Enquiry Point?
- Better public-public, public-private dialogue?
- More transparency on SPS / TBT measures?
- Less paperwork?
- More use of equivalence, mutual recognition agreements?
- More effective participation in WTO Committees?
- Other?
Trade Facilitation Agreement
Trade Facilitation Agreement = simplification of trade procedures in order to move goods in cross-border trade more efficiently

It concern all border agencies – not just customs authorities!

Agreement structure:

Section I → sets out the substantive obligations on facilitating customs and other border procedures

Section II → contains special and differential treatment provisions for developing and least-developed country Members
Linkages between SPS and TF Agreements

Trade Facilitation Agreement seeks to reduce *trade-related transactions costs*

Implementation of SPS measures may result in trade-related transaction costs justified by need to protect human, animal or plant life and health.
SPS Agreement: Control, Inspection and Approval Procedures

Procedures to check and ensure fulfilment of SPS measures include sampling, testing and certification...

• *no undue delays*; no less favourable manner for imported products than for like domestic products

• information requirements limited to what is necessary

Annex C closely linked to TF
SPS Agreement:
Control, Inspection and Approval Procedures

• non-discriminatory fees
  not higher than actual cost of service (link to TFA Article 6)

• non-discrimination in siting of facilities and selection of samples

• procedure to review complaints, take corrective action (link to TFA Article 4.1)

Annex C closely linked to TF
Some specific trade concerns (STCs) in the SPS Committee already address TF issues, e.g.

- **Indonesia's port closures** – raised by China, NZ, EU, US

- **EU, Greece** - Inspection and testing procedures for imported wheat - raised by Canada

- **Japan** - Pesticide maximum residue level (MRL) enforcement system - raised by China, US
Linkages between SPS and TF Agreements

“nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the TBT and SPS Agreements.”

Final provisions, para. 6 TF

BUT…..
Some of the provisions in the TF Agreement may be considered as "**SPS-plus**" possibly resulting in obligations going beyond those contained in the SPS Agreement
"SPS-plus"

- Inform on detention of goods and facilitate test procedures (TF Art. 5)
- Review and publish fees and charges (TF Art. 6)
- Allow pre-arrival processing / Publish average release times (TF Art. 7)
- Border Agency Cooperation (TF Art. 8)
- Review and reduce import/export transit formalities (TF Art. 10)
- Freedom of transit: Limit formalities and documentation requirements (TF Art. 11)
- Provide advance rulings besides tariff classification and origin (TF Art. 3)
- Publish wide range of information related to import/export requirements and procedures (TF Art. 1)
Going forward in SASEC: Key questions

• Opportunities to improve implementation of the SPS and TBT Agreements to facilitate trade?

• Options to make better use of existing SPS / TBT transparency tools and coordination mechanisms?

• How to encourage equivalence, recognition of each other’s conformity assessment procedures?

• Opportunities to promote good regulatory practice, e.g.
  • consult the private sector
  • engage ISSOs (including to validate regional standards)
  • consider the economic aspects of regulations
  • review and appeals mechanism
Encouraging SPS-TBT-TF Linkages

• Scope to increase SPS-TBT-Customs dialogue, collaboration and coordinated approaches / systems
  • Is there a common understanding of rights / obligations under different WTO Agreements?
  • What are the implications of the new TF Agreement?
  • Are SPS/TBT officials engaged in TF needs assessments?
  • Do national SPS/TBT and TF committees/bodies talk to each other?
• Opportunities to leverage additional resources for SPS capacity building from new TF funding mechanisms?
Thank you. For more information, see the WTO website:

Technical Barriers to Trade
http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

Sanitary and Phytosanitary Measures
http://www.wto.org/english/tratop_e/sps_e/sps_e.htm

Trade Facilitation
http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm