The WTO SPS and TBT Agreements

Marième Fall
Agriculture and Commodities Division
Outline

• WTO Structure
• Use of Non-Tariff Measures (NTMs)
• Why the SPS Agreement?
  – What is its objective? What does it cover? Current issues
• Why the TBT Agreement?
  – What is its objective? What does it cover? Current issues
Overall, import weighted tariff on industrial products ≈ 40%

Use of Non-Tariff Measures
Use of Non-Tariff Measures

![Graph showing the use of non-tariff measures over time. The x-axis represents years (1947 to 1995), and the y-axis represents percent. The graph indicates a decrease in tariffs and an increase in non-tariff barriers (NTBs).]
Non-Tariff Measures

- Trade-related intellectual Property rights
- Technical barriers to trade
- Sanitary and phytosanitary measures
- Subsidies
- Quantitative restrictions
- Government purchase
- Trade in services
What is the **objective** of the SPS Agreement?

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

Avoid unnecessary barriers to trade
“Members **have the right** to take sanitary and phytosanitary measures **necessary** for the protection of human, animal or plant life or health, provided that such measures are **not inconsistent** with the provisions of this Agreement”

Applies to SPS measures which may, directly or indirectly, **affect international trade**
SPS Measures
Definition – Annex A

A measure taken to protect:

Human or animal health from risks arising from additives, contaminants, toxins or disease organisms in food, drink, feedstuff

- limits on residues in fish & shellfish
- limits on aflatoxin residues in nuts
**SPS Measures**
**Definition – Annex A**

A measure taken to protect:

- Human life from plant- or animal-carried diseases

requirement that susceptible animals be vaccinated against rabies

BSE-related restrictions
A measure taken to protect:

Animal or plant life from pests, diseases, disease-causing organisms

- measure to prevent introduction of FMD
- measure to prevent introduction of fruit flies
A measure taken to protect:

Territory of Member from other damage caused by entry, establishment or spread of pests

- measure to prevent introduction of zebra mussels through ballast water of ships
- seed regulation to avoid introduction of exotic weeds
All types of measures with these purposes, including:

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

It is not the type of measure that counts, nor the products involved, but rather its objective!
Key Provisions of the SPS Agreement

1. Non-discrimination
2. Scientific justification
   - harmonization
   - risk assessment
   - consistency
   - least trade-restrictiveness
3. Equivalence
4. Regionalization
5. Transparency
6. Technical assistance/special treatment
7. Control, inspection and approval procedures
Non-discrimination
Article 2.3
Members shall ensure that any SPS measure is:

- Scientific justification
  - Article 2.2
  - 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
Measures must be based on:

- International standards
- Risk assessment
Scientific justification
International Standards & Harmonization
- Article 3

Standard-setting organizations

Food safety
- CODEX

Animal health
- OIE

Plant health
- IPPC

Codex = Joint FAO/WHO Codex Alimentarius Commission
OIE = World Organisation for Animal Health
IPPC = International Plant Protection Convention (FAO)
SPS Agreement and Codex
Legal Provisions

- Annex A – Codex as “relevant international organization for food safety”
- Art. 3.1 – measures “based on” Codex
- Art. 3.2 – measures that “conform to” Codex
- Art. 5.1 – Risk Assessment – “taking into account” Codex methodologies
- Art. 5.7 – Emergency actions – on the basis of information from Codex
- Art. 7 & Annex B – notify deviations from Codex
- Art. 5.6 & 12 – procedure to monitor use of
Role of Codex at WTO

- Develops relevant international standards (explicitly under SPS, by implication under TBT)
- Develops risk assessment techniques (SPS)
- Exhortations for WTO Members to participate
- Coordinate re: monitoring use of international standards (SPS)
- Identifies relevant scientific experts for WTO dispute cases (especially SPS)
- Secretariat – to – Secretariat relationship
- Coordination in technical assistance
Members shall ensure that their SPS measures are based on

- an assessment, as appropriate, of the risks to human, animal or plant life or health,

- taking into account risk assessment techniques developed by the relevant international organizations.
Risk Assessment
Definition - Annex A

**Food borne risk**
- evaluation of the potential for adverse effects on human or animal health

**Disease or pest risk**
- evaluation of likelihood of entry, spread, and establishment
- according to the SPS measures which might be applied
- associated biological and economic consequences
In risk assessment, take into account:

- Scientific evidence
- Processes and production methods
- Inspection, sampling, and testing methods
- Pest or disease prevalence
- Ecological and environmental conditions
- Quarantine and other treatment
Members shall avoid arbitrary distinctions in appropriate level of SPS protection (ALOP) considered in different situations if distinctions result in discrimination or disguised restrictions on trade.
Once have determined the NEED for an SPS measure

AND

Have determined the LEVEL of protection needed

must select

Least-trade restrictive measure
(technically and economically feasible)

to achieve level of health protection
Members may provisionally adopt SPS measures

- when relevant scientific information is insufficient
- on the basis of available information

In such circumstances, Members shall

- seeks to obtain additional information to assess risk
- review the measure within a reasonable period of time
Equivalence
Article 4

If the exporting country objectively demonstrates that its measures achieve the ALOP of the importing country, Members shall accept SPS measures of other Members as equivalent.
Members shall ensure that their SPS measures are adapted to the SPS characteristics of an “area”

- all of a country
- part of a country
- all or parts of several countries
Members shall establish an Enquiry Point and designate a Notification Authority.

They shall notify other Members of new or changed SPS regulations when:

- no international standard exists
- the new regulation is different than the international standard
- regulation may have significant effect on trade
Transparency - Food safety notifications

- Total of 1,326 notifications (regular and emergency) of new or proposed SPS measures (Jan. 2011 - May 2012)

- 792 regular notifications and 45 emergency notifications identified food safety as the objective of the measure being taken.

- 271 of the regular and 22 of the emergency notifications identified a Codex standard as relevant, with 76 per cent and 55 per cent respectively indicating conformity to a Codex standard.

- Unfortunately, where conformity was not claimed, the deviation from the standard was not described.
Technical Assistance
Article 9

Members agree to facilitate provision of TA...
- help countries comply with SPS measures
  • technology, research, infrastructure
  • advice, credits, donations, grants
  • technical expertise, training, equipment
- help countries maintain and expand market access

The Standards Trade and Development Facility (STDF)
• Members shall take account of the special needs of developing countries
• Members should accord longer time frames for compliance
• The Committee can grant specified, time-limited exceptions
• Members should encourage participation in international organizations
SPS Committee

SPS Trade concerns
Specific Trade Concerns – SPS (1995-2011) 328 Total

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<th>Year</th>
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<td>2010</td>
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<td>2011</td>
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Specific Trade Concerns by Subject (1995-2011)

- Animal Health: 40%
- Food Safety: 29%
- Plant Health: 25%
- Other: 6%
Recent Concern on SPS measures maintained by Thailand (Oct 2011)

<table>
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<tr>
<th>STC # 326</th>
<th>Restrictions on table grapes, apples and pears</th>
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<td>Raised by:</td>
<td>South Africa</td>
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<tr>
<td>Supported by:</td>
<td></td>
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<td>Dates raised:</td>
<td>October 2011 (G/SPS/R/64, paras. 42-43)</td>
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<td>Relevant document(s):</td>
<td>Raised orally.</td>
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<td>Solution:</td>
<td>Not reported</td>
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<td>Status:</td>
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SPS Committee

Current Issues
Private Standards in International Trade – Why and How

- Food safety concerns (BSE, E-coli, Salmonella, dioxin)
- Private companies liability for food safety risks
- "Corporate Social Responsibility" and "Reputation Risks"
- Vertical integration between suppliers and retailers
- Consumer increasing expectations, better informed, more health conscious and organized
- Globalization of retail and production / more global sourcing / Large food retailers
- Estimation of over 400 private schemes
Governments food safety requirements and some SPS principles

- Separate food safety from quality requirements
- Based on Codex standards or on a risk assessment
- Consistent level of health protection
- Least restrictive of trade
- Recognize equivalence of other measures
- Notified in advance, with comment period
- Published, with reasonable interval before entry into force
- No unjustified costs in testing, certification, approval
1. Market access implications
2. Developmental implications
3. Legal aspects
Market Access – Possible Implications

- Private Standards going beyond international standards (e.g., very low or zero Maximum Residue Levels – MRLs)

- Private Standards going beyond official requirements (e.g., Good Agricultural Practices, Labour requirements, Environment requirements)

- Becoming *de facto* market access requirements
  - “Blurring” of private and official requirements

- Multiplication of different schemes
  - Overlap and/or contradictions
  - Lack of harmonization
  - No equivalence

ACCESS TO HIGHER-PRICED MARKETS
LESS COMPETITION IN MARKETS
Developmental Implications

- Costs associated with private standards
  - Costs of compliance
  - Certification costs
  - Lack of price premium
- Impact on small- and medium-sized farmers and enterprises
- Driving supply chain modernization and investments
- Faster upgrading
- Correcting underlying hygienic problems
Legal Aspects

- **Applicability of SPS Agreement**
  - Art. 1.1 and Annex A(1)
  - Art. 13
  - Scientific basis, Equivalence, Transparency

- **Mechanism/forum to address concerns**

- **Mechanism/forum to resolve disputes**
Actions on Private Standards adopted by the SPS Committee (G/SPS/55)

• **Action 1:** SPS Committee to develop a working definition of private SPS standards

  → Committee will revert to draft definition prepared by Secretariat W/265/rev.3 at the October 2012 meeting

• **Action 2:** SPS Committee should regularly inform the three sisters on relevant developments

• **Action 3:** the Secretariat to inform the Committee on developments in other WTO fora

• **Action 4:** Members are encouraged to communicate with private standard entities in their territories to sensitize them to the issues raised in the SPS Committee

• **Action 5:** SPS Committee, Codex, the OIE, and the IPPC to support the development and/or dissemination of informative materials
Outline

• Introduction to WTO
• Use of Non-Tariff Measures (NTMs)
• Why the SPS Agreement?
  – What is its objective? What does it cover? Current issues
• Why the TBT Agreement?
  – What is its objective? What does it cover? Current issues
What is the **objective** of the TBT Agreement?

avoidance of unnecessary obstacles to international trade

allowing for regulatory autonomy to protect legitimate interests
Objectives of the TBT Agreement

“inter alia”

• National security requirements
• Prevent deceptive practices
• Protect human health and safety
• Protect animal and plant health
• Protect the environment
“All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.”
Technical regulation (Annex 1.1)

• “Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory.”
Standards (Annex 1, para 2)

• “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.”
TBT Agreement – Coverage

Technical Regulations & Standards

- May also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”
• Procedures for sampling, testing and inspection;

• Evaluation, verification and assurance of conformity;

• Registration, accreditation and approval.”

(Annex 1, para 3)
TBT Agreement – Coverage

It applies to all
- technical regulations (mandatory)
- standards (voluntary)
- conformity assessment procedures

But: its provisions do **not** apply to SPS measures
TBT Article 2.4

**Technical Regulations are required**

+ **Relevant international standards (IS) exist**

**Then**

**Members shall use them as a basis for their measures**

**Except**

If these IS are ineffective or inappropriate

**Achieve the legitimate objective pursued**

**Because of**

For instance, fundamental climatic or geographical factors or fundamental technological problems
Which standards? 

SPS

TBT???
Recognized international standards

- Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3)

- The TBT Committee adopted on November 2000 a decision on the principles considered important for the development of international standards (G/TBT/9).
Specific Trade Concerns by subject (1995–2011)

- Further information, clarification: 224
- Unnecessary barrier to trade: 196
- Transparency: 165
- Other Issues: 129
- Rationale, legitimacy: 121
- International standards: 111
- Discrimination: 86
- Time to adapt, "reasonable interval": 60
- PPM: 42
- Special and differential treatment: 13
- Technical assistance: 7

PPM - Production and processing methods
Some similar key provisions of the SPS and TBT Agreements

1. Non-discrimination

2. Avoidance of unnecessary obstacles to trade
   a. Legitimate Objectives
   b. Necessity

3. Harmonization

4. Transparency

5. Equivalency

6. Recognition of Control Approval Procedures

7. Technical assistance/special treatment
SPS & TBT implementation issues

- Lack of awareness
- Inappropriate legislation (or no existing legislation)
- Capacity limitations
- Failure to use international standards
- Undue delays – in risk assessment, approval decisions, etc.
- Over-reactions in emergency situations
- Political pressures – hazard-based measures
SPS and TBT Emerging Issues

- Private standards
- Conformity assessment
- Climate change
- Invasive species
- Food losses and waste
Thank you!

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