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# **WTO AGREEMENTS ON TECHNICAL BARRIERS TO TRADE AND SPS MEASURES**

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# Product standards and societies

- All countries in the world have standards; some have many more than others
- Some standards are mandatory, others are voluntary but often followed in practice
- Societies and firms find standards useful for many reasons

# The role of standards

- Standards can serve as a “public good”
  - Transparency and interchangeability
  - Economies of scale
  - Technology transfer
  - Consumer confidence
  - Protecting human, animal, plant health and safety

**Standards are often measures aimed to correct market distortions**

# The role of standards

- Lower cost to producers (value-added chain)
- Lower cost to consumers (same batteries, many gadgets)
- Increased information (will a spare part match my machine?)
- Increased confidence (mark of quality)
- Built-in protection (avoiding harm to human, animal, plant health and safety)

# Standards and international trade

- How do standards fit into trade policy?
  - Positive effects on trade
  - Negative effects on trade
  - Increasing role of standards in trade

The OECD estimates that 80% of goods traded are subject to some standards-related measure

# Standards: impact on trade

- Despite their beneficial role, standards can adversely affect international trade if:
  - Used in too restrictive a manner
  - Governments regulate for means other than social protection (i.e. protection of domestic producers)

## Standards: impact on trade

- Study by World Bank (2000) estimated that the implementation of a new aflatoxin standard in the EU, designed to reduce health risks by 1.4/billion deaths/year would decrease African exports by more than 60% (\$670 million).

## Standards: impact on trade

- Study by Unter (1998) showed that redundant testing and conformity procedures faced by the Hewlett-Packard company increased six-fold between 1990 and 1997.

# Standards: impact on trade

- Some standards prohibit trade from some countries:  
EU regulations require that dairy products be manufactured from milk produced by cows kept on farms and milked mechanically  
  
(effectively blocks imports of Mauritanian camel cheese)

## Increasing effect on trade

- As tariffs continue to fall, domestic regulations such as standards have a stronger impact on trade
- Globalization of production:
  - “slicing up the value-added chain”
  - This increases the importance of standards: globalization of production increases need for interchangeable parts and processes

## Increasing effect on trade

- **Standards and technical regulations are increasingly affecting trade**
- **Standards and technical regulations are increasingly prominent in trade disputes**
- **Due to their nature, they must be addressed differently than traditional trade barriers, i.e. tariffs, quotas**

**USDOC: \$300 of \$465 billion 1993 exports subject to some type of technical barrier.**

# Standards and the multilateral trade agenda

## The WTO TBT and SPS Agreements:

- recognize countries' right to establish technical regulations or health and safety standards and apply them to imported products
- set out a framework governing the development and application of such regulations

# TBT Agreement: Scope

## Disciplines on regulations

- Applies to
  - all goods (industrial and agricultural) except:
    - government procurement
    - those covered by the SPS Agreement

**As per EC-Sardines Appellate body decision, TBT Agreement applies to measures adopted prior to 1995 if measure still in force**

# SPS Agreement: Scope

## SPS Agreement ANNEX A Paragraph 1

- (a) to protect animal or plant life or health ... from pests and disease
- (b) to protect human or animal life or health ... from food-related risks;
- (c) to protect human life or health ... from risks arising from diseases carried by animals, plants or products thereof, or from pests; or
- (d) to prevent or limit other damage within the territory of the Member from the entry, establishment or spread of pests.

# TBT Agreement: STANDARD

- **Specification relating to some characteristic of a product or its manufacture**
  - **voluntary**
  - **by industry consensus**
  - **developed at national or international level**

**Beta/VHS; A-4 paper; ISO 9000 and 14000; Windows**

# TBT Agreement: TECHNICAL REGULATION

- **Mandatory standard**
- **Established by government**
- **Developed at the national level**
- **Obligatory for producers**

**Flameproof baby clothing; emissions levels;  
labelling for tyres**

# Egypt : Standards and Regulations

- Standards set by Egyptian Organization for Standardization and Quality Control (EOS)
- Draft standards developed by technical committees
- Around 1,000 standards in Egypt
  - 107 mandatory, mainly on food products, engineering goods and textiles & clothing

# TBT Agreement: CONFORMITY ASSESSMENT PROCEDURES

- Procedures by which products and processes are evaluated and determined to conform to particular standards
  - Standards would be unable to fulfill their purposes without confidence that claims for conformity are justified
- Done by exporters, governments, third parties, importers

**Sampling, testing and inspection, evaluation, verification and assurance of conformity, registration, accreditation**

# TBT Agreement: Application

Applies to government bodies at various levels and to non-governmental bodies

Applies to international and regional bodies

Application depends on regulatory level:

- central government bodies: obligation
- local governmental and nongovernmental: reasonable measures

**No obligation for local or nongovernmental bodies to notify technical regulations**

# TBT and SPS Agreements: Non-discrimination Principles

Nondiscrimination: obligation not to discriminate between imported and domestic “like products”

- National Treatment
- Most-Favored Nation Treatment

Definition of “like products” key

**“Likeness”**: case-by-case basis (physical characteristics, HS #, end-use)

# Aim of both WTO TBT and SPS Agreements

To ensure that standards, technical regulations and SPS measures are not used by governments as disguised trade barriers

- Technical Regulations and SPS
  - Not more trade restrictive than *necessary* to fulfill a legitimate objective, taking into account risk of non-fulfillment
- Standards: Annex 3
  - Can be voluntarily accepted by private standardizing bodies

# SPS Agreement

- Allows countries to impose trade controls “to protect human, animal or plant life or health”, if the measure is based on scientific principles and is applied on a nondiscriminatory basis.
- Agreed interpretation of and elaboration of the exceptions to WTO obligations contained in GATT Article XX

# TBT / SPS: What are considered to be Legitimate Objectives?

Listing of “legitimate objectives” (non-exhaustive)  
*inter alia*

- National security requirements
- Prevention of deceptive practices
- Protection of human health or safety, animal or plant life or health, or the environment

# Technical Regulations and SPS Measures must meet a test

## “NECESSITY TEST”

*Necessity defined as “not more trade restrictive than necessary to fulfill a legitimate objective”*

*Additional criteria:*

*- no alternative WTO/GATT-consistent measure that a party could “reasonably” be expected to employ*

# Technical Regulations and SPS: Changed Circumstances

- If the situation giving rise to the regulation or SPS measure changes, then the regulation or measure should be reviewed and changed accordingly.

# TBT / SPS Agreements: International Standards

- WTO Members are exhorted – but not required - to base their regulations on international standards (or parts thereof) except
  - where ineffective or inappropriate
    - fundamental climatic or geographic factor (ship hulls)
    - fundamental technological problem

# TBT / SPS Agreements: International Standards

- “International Standardizing Body” not defined in TBT Agreement
- SPS Agreement makes reference to CODEX Alimentarius Commission, International Office of Epizootics and the bodies working within the framework of the International Plant Protection Convention

**EC- sardines case: Codex Stan 94 *not ineffective or inappropriate***

## Egypt and International Standards

- 1994 Decree: ISO/IEC standards can be used in Egypt, as well as national standards from: France, Germany, Japan, U.K. and U.S.
- Only 25% of Egyptian standards conform with international standards; the majority of standards have no relation with international standards

# SPS Agreement

- Use of stricter standards possible

When?

If there is a “scientific justification” for the higher standard or if the country feels that there is a risk to human, animal or plant health.

When this is the case, country is allowed to set its own risk levels, unless challenged.

# Major trade disputes over SPS measures and risk evaluation

- US-EU Beef Hormones Case
- US-EU Dispute over Genetically Modified Food

Examples where scientific tests and risk assessments are open to varying interpretation

# TBT/ SPS Agreements: Justification of Regulation

- Upon request, a WTO Member must justify a new regulation adopted
- IF prepared, adopted or applied for one of the legitimate objectives, or in accordance with relevant international standards, then the new regulation can be presumed not to create an unnecessary obstacle to trade.

# TBT / SPS Agreements: Harmonization

- Harmonization is seen as an objective
- International standards and participation in the preparation of international standards seen as a vehicle for achieving harmonization
- Members encouraged to play a full part in the above activity

# TBT / SPS Agreements: Equivalence Principle

- WTO Members encouraged to accept other Members' regulations and SPS measures as equivalent if they offer the same degree of protection for consumers/ plants/ animals/ env't.
- Regulations / measures may differ but must fulfill same objective
- Unilateral, not Mutual Recognition

# TBT Agreement: Performance Based

- “Wherever appropriate” technical regulations shall be based on performance rather than design or descriptive characteristics

# TBT / SPS Agreements: Transparency - Notifications

- Draft technical regulations / SPS measures **MUST BE NOTIFIED** to the WTO if
  - not in accordance with international standards
  - may have significant impact on the trade of another WTO member

# TBT/ SPS Agreements: Transparency - Notifications

WTO Members must:

- Publish a notice that they intend to develop a regulation/ SPS measure “at an early appropriate stage”
- Notify other members of the product coverage
- Provide copies of the draft regulation
- Allow time for comments and take them into account

# TBT/ SPS Agreements: Transparency - Notifications

BUT

- ✓ These steps are not necessary when and if “urgent problems of safety, health, environmental protection or national security” exist.
- ✓ In these cases, a WTO Member may go ahead and act on his own to put into force a new regulation or measure at once.

# TBT/ SPS Agreements: Transparency - Publication

- WTO Members shall ensure that all technical regulations/ SPS measures that have been adopted shall be published promptly and are available to other Members
- ✓ Asks countries to provide WTO Members, especially developing countries, adequate time to adapt to a changed regulation

# TBT Agreement: Adopting Standards

- Standardizing body accepting the Annex must publish a work programme every 6 months, containing standards it is preparing and those it has adopted
- Before adopting a standard, 60 day comment period

# **TBT/ SPS Agreements :**

## **Enquiry Points**

Every WTO Member must have an enquiry point that can answer questions from other Members regarding standards, technical regulations and conformity assessment procedures or SPS measures.

# TBT/ SPS Agreements: Technical Assistance

- Upon request, Members shall provide advice on preparation of technical regulations (11.1), on establishment of national standardizing bodies (11.2), on conformity assessment bodies and procedures (11.3-11.5), on the establishment of institutions and legal framework (11.6) and on participation in international or regional conformity assessment organizations.

# TBT/ SPS Agreements: Special & Differential Treatment

- Development, financial and trade needs of developing country WTO Members are to be taken into account in the implementation of the Agreements
- International standards need not be used if not compatible with development needs
- Indigenous technology preserved

# TBT/ SPS Agreements: Special & Differential Treatment

- International standardization bodies should be operated in such a way to facilitate active participation by developing countries and should pay particular attention to developing standards / SPS measures of interest to developing countries

# What about Trade Disputes over Standards?

- Dispute settlement mechanism invoked when WTO Member finds another to not comply and when trade interests significantly affected
- Technical expert group established to look at scientific evidence in case

# Egypt's experience with EU SPS requirements

- Ban in 1998 on all Egyptian exports of potatoes by a WTO Member, the EU, because of “Brown Rot”
- **Exception:** Commission Decision 1998/503/EC of 11 August 1998 established that potatoes coming from “Pest-Free-Areas” (PFA) in which Brown Rot was known not to occur, as established by official surveys and monitoring procedures in accordance with the “FAO International Standard for Phytosanitary Measures Part 4” were permitted, provided that measures applicable to potatoes grown in these areas were complied with.

# Egypt's experience with EU SPS requirements

- Egypt has been able to continue exporting potatoes grown in PFAs to EU
- The PFAs system has been yearly confirmed by the EU through 2005/2006 (latest information available)
- Egypt: Ministry of Agriculture and the Ministry of Foreign Trade and Industry have jointly issued Decree 757/2005 establishing stricter rules for the production, preparation, exportation of potatoes for the 2005/2006 season
- Egypt has taken measures to comply with stricter SPS regulations