Equivalence from a TBT perspective

SPS Committee Thematic Session on Equivalence (Part I)
Tuesday, 30 October, 2018
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Outline

1. The TBT Agreement and Equivalence
2. The TBT Committee discussions on equivalence
3. Relevant transparency provisions
SPS and TBT Agreements

Recognizing Members’ right to regulate…

- to protect human, animal, plant life or health
- to fulfil legitimate objectives

Facilitating trade…

- Avoiding unnecessary barriers to international trade

Use of international standards, equivalence are tools for striking the balance
TBT Agreement: Equivalence of Technical Regulations

• Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations (Art. 2.7)

Separate equivalence provisions for technical regulations and conformity assessment procedures
TBT Agreement:
Equivalence of Conformity Assessment Procedures

• …Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those differ from their own, provided they are satisfied that these procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedure… (Article 6.1)

  • prior consultation regarding technical competence; accreditation based on international guidelines an indication of competence

Possibility to accept results of CAP in other Members as equivalent even if underlying technical regulations are not equivalent
TBT Agreement: Mutual Recognition

• Conformity assessment procedures
  • Members are encouraged, at the request of other Members, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other’s conformity assessment procedures… (Article 6.3)

*Two-way equivalence?, not explicitly mentioned in SPS Agr. or Equivalence Decision*
TBT Committee: Relevant work

- All decisions/recommendations of TBT Committee in G/TBT/1/Rev.13.
- No separate decision or document on Equivalence as under SPS Com.
- Members encouraged to share experiences in reaching equivalence.
- No reference to specific international standards related to Equivalence.
- Annex 1 on Indicative List of Approaches to Facilitate Acceptance of Results of Conformity Assessment (adopted in 2000) makes reference to equivalence.
TBT Committee: Relevant work

Indicative List of approaches to Facilitate Acceptance of the Results of Conformity Assessment

- Unilateral Recognition: on basis of equivalent competence
- Mutual Recognition Agreements (MRAs)
- Multilateral recognition agreements/arrangements among accreditation bodies: parties to recognize each other's accreditation/certification as equivalent
- ...

Draft 8th Triennial Review Report (scheduled for adoption in November 2018):
proposal to hold thematic session on case studies on acceptance of conformity assessment results
TBT Committee: Relevant work

- No standing agenda item on equivalence. Sharing of experiences mainly during thematic sessions on regulatory cooperation and conformity assessment procedures. Example shared:
  - New Zealand – Australia Trans-Tasman Mutual Recognition Agreement: mutual recognition of equivalence of regulatory regimes
TBT transparency elements

- Notification of draft regulations (similar to SPS)
- Publication of regulations (similar to SPS)
- Establishment of enquiry point/designation of notification authority (similar to SPS)
- Statement of implementation (15.2) – TBT only
- Notification of bilateral/plurilateral agreements – TBT only
- Notifications related to standardization – TBT only
Notification of bilateral/plurilateral agreements

• Obligation to notify bilateral/plurilateral agreements, which may have a significant effect on trade (Article 10.7)
• 149 notifications circulated under Article 10.7 since 1995 (79 of these from Ukraine)
• Some with references to equivalence
Notification of bilateral/plurilateral agreements

G/TBT/10.7/N/XX series

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Notification of bilateral/plurilateral agreements

Examples from Article 10.7 notifications

• EU – Chile: mutual recognition of equivalence of organic production rules and control systems (2017)

• Ukraine – Korea: Mutual recognition of conformity assessment in selected products (2018)
Regional Trade Agreements

• Some recently concluded RTAs building on equivalence provisions contained in the TBT Agreement
  • equivalence in specific sectors/products
  • further procedural guidance, for example providing reasons for not accepting equivalence
To conclude:

• Under TBT Agreement, one can consider equivalence as relevant to both technical regulations and conformity assessment procedures
• Limited TBT Committee discussion on equivalence of technical regulations; more emphasis on acceptance of conformity assessment results as equivalent
• Article 10.7 notifications provide some examples of equivalence
• No jurisprudence
• On-going Triennial Review may lead to sharing of concrete case studies