SPS Workshop on Transparency and Coordination
15-16 July 2019
Session 1: Introduction

Overview of SPS/TBT Notifications

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Main transparency elements in the SPS & TBT Agreements

**OBLIGATIONS**

- Notification of draft regulations
- Publication of regulations
- Establishment of enquiry point
- Designation of notification authority
- Statement of implementation – TBT only
- Notifications from standardizing bodies – TBT only

**BROADER OBLIGATIONS**

- Taking advantage of transparency

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**SPS Article 7, Annex B**
- G/SPS/7/Rev.4

**TBT Articles 2.9 – 2.11, 5.6 – 5.8, 10, Annex C, para. J-O**
- (Code of Good Practice)
- G/TBT/1/Rev.12
Transparency timelines for SPS & TBT notifications

Initiation of a regulation ➔ Publication of a notice ➔ Notification to other Members ➔ Draft text upon request (or website)

Minimum 60 days

Receive & discuss comments ➔ End of comment period ➔ Adoption of the regulation ➔ Publication of the regulation

Minimum 6 months

Entry into force of the regulation

Minimum 60 days

Minimum 6 months
SPS & TBT Agreements - Objective

Pursuit of trade liberalization...

Members’ right to regulate...

- avoiding discrimination and unnecessary barriers to international trade
- to protect human, animal, plant life or health / to fulfill legitimate objectives at levels they consider appropriate

use of international standards
**SPS Agreement - Coverage Definition - Annex A**

- A measure taken to protect:

<table>
<thead>
<tr>
<th>Category</th>
<th>Protection Provided</th>
</tr>
</thead>
<tbody>
<tr>
<td>Human or animal health</td>
<td>from risks arising from additives, contaminants, toxins or disease-causing organisms in food, drink, feedstuff</td>
</tr>
<tr>
<td>Human life</td>
<td>from plant- or animal-carried disease</td>
</tr>
<tr>
<td>Animal or plant life</td>
<td>from pest, diseases, disease-causing organisms</td>
</tr>
<tr>
<td>Territory of Member</td>
<td>from other damage caused by entry, establishment or spread of pests</td>
</tr>
</tbody>
</table>
TBT Agreement – Coverage

It applies to all:

- technical regulations (mandatory)
- standards (voluntary)
- conformity assessment procedures

For all products, industrial and agricultural
TBT objectives

■ “inter alia”
■ National security requirements
■ Prevent deceptive practices
■ Protect human health and safety
■ Protect animal and plant health
■ Protect the environment
SPS vs. TBT – Coverage

■ Article 1.4. of the SPS Agreement:

Nothing in this Agreement shall affect the rights of Members under the TBT Agreement with respect to measures not within the scope of this Agreement.

■ Article 1.5. of the TBT Agreement:

The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.
SPS vs. TBT – Coverage – Committee discussions

- Issue discussed in both the SPS & TBT Committees since 1995
- Background notes G/SPS/W/17 and G/SPS/W/32 still relevant
- G/SPS/W/33: Joint SPS/TBT Meeting on Transparency Procedures - Report by the Chairman
“ [...] Members could submit a single notification to the Secretariat (either for SPS or TBT), to be distributed as both an SPS and TBT notification, which clearly indicated which elements of the proposed regulation were sanitary or phytosanitary measures, and which elements were subject to the TBT Agreement. Alternatively, Members could submit two separate notifications, one under the SPS Agreement and another under the TBT Agreement, each of which would contain only those elements of the proposed regulation covered by the respective Agreement.”

Para. 2.39 of G/SPS/7/Rev.4:

When a regulation contains both SPS and TBT measures, it should be notified according to both the SPS and TBT Agreements, preferably with an indication of which parts of the regulation fall under the SPS Agreement (e.g., a food safety measure) and which parts fall under the TBT Agreement (e.g., quality or compositional requirements)
EXERCISE: SPS VS. TBT

Go to the website: www.kahoot.it
NOTIFICATION UNDER SPS AND TBT IN PRACTICE
~90 measures identified as SPS and TBT notifications
Example of notifications under the **SPS** and **TBT** Agreements

- **Description (E):** Improvement of *sanitary* regulations for utensils, containers and *packaging* for food and food additives considering international consistency.

- **Teneur (F):** Renforcement des règles *sanitaires* relatives aux ustensiles, aux contenants et aux *emballages* pour aliments et additifs alimentaires, aux fins de la mise en conformité avec les normes internationales.

- **Descripción (S):** En el documento notificado se establecen disposiciones destinadas a mejorar la reglamentación *sanitaria* relativa a los utensilios, los recipientes y los *envases* para alimentos y aditivos alimentarios, a efectos de armonización con la normativa internacional.
Example of notifications under the SPS and TBT Agreements

- Description (E): A draft order sets hygienic requirements for primary and infant formula feeding and required composition, for children foods based on cereals and other children food, as well as requirements for labelling and advertising of these products.

- Teneur (F): Le projet de décret notifié définit des exigences en matière d'hygiène pour les préparations alimentaires primaires et pour jeunes enfants ainsi que la composition requise des aliments pour enfants à base de céréales et d'autres aliments pour enfants; il énonce aussi des prescriptions concernant l'étiquetage et la publicité de ces produits.

- Descripción (S): El proyecto de Orden notificado establece requisitos de higiene aplicables a: preparados para la primera edad o para lactantes y su composición; y alimentos infantiles a base de cereales y otros alimentos infantiles; se establecen también los requisitos de etiquetado y publicidad de estos productos.
Example of notifications under the **SPS** and **TBT** Agreements

- “For greater transparency, this amendment is also notified through SPS notification”
- “This measure will also be notified under the TBT Agreement.”
- “This measure is as notified to the Committee on Sanitary and Phytosanitary Measures as G/SPS/N/...”
Example of notifications under the SPS and TBT Agreements

- TBT notification on pesticides and other Agri-chemicals

- Description: This draft Regulation provides that the approval of the active substance chlorothalonil is not renewed. Existing authorised plant protection products containing chlorothalonil will be withdrawn from the market.

This decision only concerns the placing on the market of this substance and does not affect the MRLs for residues of the concerned pesticide. However, following non-approval, separate action may be taken on MRLs. Any subsequent action on MRLs will be subject to notification under SPS.
Notification under SPS or TBT?

- Genetically Modified Organisms (GMOs)
- Organic products
- Chewing gum
- Other?
GMOs - **SPS** or **TBT**?

- **Notifications***:
  - **SPS**: 43 (264 using GMOs keyword)
  - **TBT**: 74

- **STCs**:
  - **SPS**: 6
  - **TBT**: 4

*SPS/TBT IMSs: Document wide search for “genetically modified organisms”*
Organic products - SPS or TBT?

- Notifications*:
  - SPS: 11
  - TBT: 31

- STCs:
  - SPS: 1
  - TBT: 4

* SPS/TBT IMSs: Document wide search for “organic products”, and for SPS, elimination of 18 animal health related notifications.
Organic products - SPS or TBT?

- STC discussions about where to notify
- Secretariat’s note on organic product notification (G/SPS/GEN/1354/Rev.1)
Chewing gum - SPS or TBT?

- **Notifications***:
  - **SPS**: 31
  - **TBT**: 30

- **STCs**:
  - **SPS**: 0
  - **TBT**: 1

* SPS/TBT IMSs: Document wide search for “chewing gum”
**SPS or TBT? - Recap**

Figure 3: TBT or SPS?
Which agreement does a measure come under?

Is the measure applied to protect:

- human or animal life from risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs?
- human life from plant- or animal-carried diseases (zoonoses)?
- animal or plant life from pests, diseases, or disease-causing organisms?
- a country from damage caused by the entry, establishment or spread of pests?

YES → SPS

NO
# SPS or TBT? - Recap

<table>
<thead>
<tr>
<th>Is the measure...</th>
<th>Yes</th>
<th>Yes</th>
<th>Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>...a document that lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>...a 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?</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>...any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled?</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

- **TBT (Technical regulation)**
- **TBT (Standard)**
- **TBT (Conformity assessment procedures)**
THANK YOU!

SPS gateway
http://www.wto.org/sps

TBT gateway
http://www.wto.org/tbt