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Facilitating trade through regulatory cooperation

The case of the WTO's TBT/SPS Agreements and Committees









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At the OECD, work on regulatory policy is conducted under the supervision of the Regulatory Policy Committee whose mandate is to assist both members and non-members in building and strengthening capacity for regulatory quality and regulatory reform. The Regulatory Policy Committee is supported by staff within the Regulatory Policy Division of the Public Governance Directorate. The directorate's mission is to help governments at all levels design and implement strategic, evidence-based and innovative policies to strengthen public governance, respond effectively to diverse and disruptive economic, social and environmental challenges and deliver on governments' commitments to citizens.

Foreword



Roberto Azevêdo
Director-General of the WTO



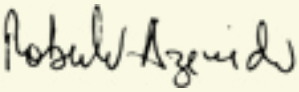
Angel Gurría
Secretary-General of the OECD

Addressing global challenges in an increasingly complex and interconnected world demands greater international cooperation. It is also crucial to have in place a stable and predictable rules-based international trade system. This is embodied by the WTO and is further supported by fora such as the OECD Regulatory Policy Committee, which focuses on good regulatory practices and international regulatory cooperation.

Unnecessary regulatory differences can impose costs that prevent businesses from engaging in trade. Moreover, the diversity in product requirements, while sometimes resulting from legitimate differences in societal preferences and priorities, can also be the undesirable and unintended result of regulatory systems working in silos. As such, international regulatory cooperation between members can help reduce trade costs while respecting differences in regulatory objectives. This cooperation may take several forms and depths of engagement, many of which are directly relevant to trade outcomes.

"Facilitating trade through regulatory cooperation: The case of the WTO's TBT/SPS Agreements and Committees" highlights how the WTO Agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS), and their related Committees, promote opportunities for regulatory cooperation between governments easing trade frictions. It demonstrates how specific disciplines of the Agreements and practices of the Committees promote cooperation. These include the notification of draft measures, harmonisation with international standards, and discussion of specific trade concerns, among others. The study also makes recommendations on how to better leverage the transparency and cooperation opportunities provided by the TBT and SPS Agreements.

This publication was prepared jointly by the OECD and the WTO Secretariats as part of a series of case studies on the functioning and international rule-making activities of international organizations. It aims to help authorities make greater use of existing cooperation tools within the WTO's TBT and SPS Agreements.



Roberto Azevêdo
Director-General of the WTO



Angel Gurría
Secretary-General of the OECD

Executive summary

This publication explores how the World Trade Organization (WTO) Agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS) and their related Committees promote opportunities for international regulatory cooperation (IRC) between WTO members.

Policy makers can draw from a variety of approaches to achieve their policy objectives and address the trade costs of regulatory divergence, including unilaterally, bilaterally and multilaterally. International organizations serve as institutional fora within which governments can engage in IRC.

The WTO plays an important role in supporting members' IRC efforts, through two key activities. First, the WTO provides a multilateral framework for the conduct of trade relations among its 164 members, with a view to ensuring that trade flows as smoothly, predictably and freely as possible. In particular, the WTO provides a forum for its members with respect to: (i) negotiations of trade agreements; (ii) the implementation, administration and operation of existing trade agreements; (iii) trade-related capacity building; and (iv) a dispute settlement system. Second, the WTO Agreements set important legal disciplines, the implementation of which promotes good regulatory practice (GRP) and IRC at the domestic level with the aim of reducing unnecessary barriers to trade.

This is particularly the case for the SPS and TBT Agreements, which establish obligations on WTO members for the preparation, adoption and application of technical regulations, conformity assessment procedures and standards, as well as SPS measures, in order to facilitate the conduct of international trade in goods. The Agreements provide a unique multilateral transparency framework that contributes to cooperation, by setting notification requirements for proposed regulatory measures with potentially significant trade effects. The Agreements strongly encourage WTO members to use relevant international standards as the basis for their measures. In addition, disciplines on equivalence and recognition of foreign conformity

The SPS and TBT Agreements provide a unique multilateral transparency framework that contributes to cooperation.

assessment results help ensure that traders do not face duplicative requirements or procedures when regulations differ across markets. These disciplines encourage the reduction of regulatory diversity and associated trade costs.

To support implementation and operation of these disciplines, the SPS and TBT Committees provide a forum for countries to learn about each other's regulatory systems, discuss draft and implemented regulations affecting international trade and collaborate bilaterally and multilaterally to achieve less trade-restrictive regulations. In particular, members use the Committees to raise "specific trade concerns" (STCs) to provide feedback on draft measures of other members that may create unnecessary obstacles to trade, which contributes to peer learning. Moreover, the Committees periodically adopt guidance tools (e.g. decisions and recommendations) to help members to better and more efficiently implement specific provisions of the SPS and TBT Agreements.

This publication highlights how the legal disciplines of the SPS and TBT Agreements, and practices of their related Committees, can be used to support WTO members' efforts to conduct and deepen IRC. It also identifies a number of opportunities WTO members could consider exploring for enhancing implementation, for example, with respect to the transparency provisions of the Agreements, the discussion of specific trade concerns, and monitoring the use of international standards.

In the past decades, both regulators and trade policy makers have paid increasing attention to the effectiveness and efficiency of regulation, through regulatory policy, or GRP and IRC. This publication aims to highlight how the disciplines of the SPS and TBT Agreements can help contribute to this goal. Differences may nevertheless remain in the practices of the trade and regulatory communities and the terminologies used. The study therefore provides background on the terminology and concepts used by the two communities in this area through a Readers' Guide available at the end of the publication.

Chapter 1

The importance of regulatory cooperation and the role of the WTO

- International regulatory cooperation (IRC) is an integral part of good regulatory practices in today's globalized world: regulators can no longer act in isolation.
- Countries may choose from various forms of IRC. International organizations provide a platform to support IRC.
- The disciplines of the WTO's TBT and SPS Agreements, and the operation and implementation of these disciplines through the TBT and SPS Committees, provide opportunities for IRC between members, with a view to facilitating trade.







The World Trade Organization's (WTO) Agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS) establish obligations on its members on the preparation, adoption and application of technical regulations, conformity assessment procedures and standards, as well as SPS measures, with a view to facilitating the conduct of international trade.[1] The Agreements give the TBT and SPS Committees the responsibility for the operation and implementation of the obligations contained in the Agreements. Against this backdrop, this publication explores how the disciplines of these Agreements and their implementation through the Committees, including on transparency and notification of draft measures, the use of international standards,[2] and promotion of equivalence or recognition of conformity assessment results, promote opportunities for international regulatory cooperation (IRC)[3] between WTO members. In addition, the WTO itself provides a multilateral forum for countries to set common rules for trade and settle disputes on the application of these rules.

This study is the result of cooperation between the OECD and the WTO Secretariats. It has been developed within the framework of OECD work on international regulatory cooperation, and as part of a series of case studies that provide detailed overviews of the structure, governance, instruments and processes of international organizations in support of international regulatory cooperation.[4] In order to provide further background on the terms and concepts referred to in this study, which may have different connotations in the OECD and WTO contexts, this study includes a Readers' Guide (see Annex).

Globalization has changed the domestic rule-making paradigm. Challenges have become increasingly global in nature and have implications on issues ranging from systemic risks, the environment, human health and safety, and even on the activities of multinational enterprises.[5] With increasing international flows and the fragmentation of global value chains,[6] diverging regulatory requirements may also create challenges for the protection of citizens and consumers, as well as unnecessary costs for businesses. For traders in particular, regulatory divergences

The WTO provides a multilateral forum for countries to set common rules for trade and settle disputes on the application of these rules.

and lack of coherence across jurisdictions may result in a number of costs and frictions.[7] The OECD focuses on three types of costs related to: (i) gathering information on regulatory requirements in target markets; (ii) adjusting the specification of goods and services to comply with different regulatory requirements; and (iii) undertaking various conformity assessment procedures to demonstrate compliance.[8]

Regulatory heterogeneity and associated costs may be justified by domestic public policy priorities and reflect variations in domestic conditions and preferences. There are legitimate reasons why members may regulate differently, including varying perceptions of risk, income levels, cultures, or political and legal systems, or practical differences in national situations (e.g. geographical, climatic, infrastructural, technological) and capacity.[9] Both the TBT and SPS Agreements take this into account and provide flexibility for members to set their own legitimate objectives and appropriate levels of sanitary or phytosanitary protection. Nevertheless, in some cases, these costs may be the result of rule-making processes working in isolation without sufficient consideration for the international environment. In this context, it is likely that some of the trade costs of regulatory heterogeneity are avoidable without compromising the quality of regulatory protection.[10]

The 2012 OECD Recommendation on Regulatory Policy and Governance (hereafter the "2012 OECD Recommendation") recognizes the need to establish institutions, governance and processes to ensure that regulations are fit for purpose and do not impose unnecessary costs on society. It therefore lays down a set of regulatory policy principles for ministries and regulatory agencies to follow as they design, develop, implement and enforce high-quality laws and regulations. In particular, regulatory policy, also referred to as good regulatory practices (GRPs), incorporates domestically applied mechanisms, e.g. internal coordination of regulation ("whole-of-government" approach), transparency and public consultations, and regulatory impact assessment (RIA).[11] Acknowledging the global context in which regulators operate, the 2012 OECD Recommendation also highlights IRC as an integral part of GRPs, as well as a critical dimension of regulatory quality and effectiveness. To develop quality regulations, regulators are encouraged to consider the impacts of their regulatory action beyond their domestic borders, take into account the international environment in their rule-making activity and cooperate with their foreign peers in bilateral, regional or multilateral contexts.[12]



In the WTO context, the TBT Committee has recognized that GRP can contribute to the improved and effective implementation of the substantive obligations under the TBT Agreement,[13] while the SPS Committee has recommended members share experiences on areas that contribute to GRP.[14] Members in the TBT Committee have also emphasized that regulatory cooperation enhances mutual understanding of regulatory systems between members and helps build confidence between trading partners.[15] Moreover, it can promote regulatory convergence, harmonization, mutual recognition and equivalence, thereby contributing to the avoidance of unnecessary regulatory differences and to the reduction of unnecessary barriers to trade.[16] WTO members have further underlined that regulatory cooperation is an effective means of disseminating GRP across borders.[17]

Regulatory cooperation enhances mutual understanding of regulatory systems between members and helps build confidence between trading partners.

Policy makers can draw from a variety of IRC approaches to achieve their policy objectives and address the trade costs of regulatory divergence, including unilaterally, bilaterally, regionally and multilaterally.[18] At the domestic level, the adoption of good regulatory practices fosters evidence-based rule-making, which helps reduce unnecessary regulations and takes into account approaches adopted in other jurisdictions. Through bilateral, regional or multilateral settings, countries may join efforts to develop common regulatory approaches or instruments with other countries, which can differ in scope, setting, mechanisms applied, and level of ambition.[19]



Mutual recognition, regulatory provisions in trade agreements, formal cooperation partnerships, or regulatory harmonization, for example, can be relevant to lower trade barriers with specific trading partners, either bilaterally or regionally. The development of international standards, negotiation of international agreements, or participation in international organizations, offer opportunities to address regulatory divergences among a wider range of countries.[20] The most appropriate approaches in any given situation will differ based on a number of factors, including, for example, the compatibility of regulatory environments and systems, the sector, type and degree of regulation already in place, or the level of technical and institutional capacity of the members involved.[21]





Amongst this range of approaches, international organizations (IOs) serve as institutional fora in which countries can engage in IRC. Indeed, they enable countries to share practices in specific fields and develop common language and joint approaches. As platforms for continuous dialogue, IOs provide an institutional framework and can catalyze relevant technical expertise to help countries develop joint normative instruments and guidance, align their regulatory approaches, and build capacity in countries with a less-developed regulatory culture, in line with their respective mandates. A comparison of rule-making and governance in 50 IOs highlights the role of IOs in data/information exchange, data collection and development of normative instruments.[22]

The WTO plays a unique role in supporting countries' efforts to conduct IRC, while ensuring that trade flows smoothly, predictably and freely. Two key aspects of WTO activities are that, as an intergovernmental organization with 164 members, it offers a multilateral platform for dialogue among governments on trade rules, and throughout the full rule-making cycle. Indeed, countries actively engage in the WTO from the negotiation and design of international trade agreements, to monitoring the implementation of rules and settling disputes. On the other hand, the implementation of WTO Agreements sets important legal disciplines which, when implemented, promote GRP and IRC at the domestic level, in view of reducing unnecessary barriers to trade.

This is particularly the case for the SPS and TBT Agreements, which lay down specific legal disciplines, which directly address the preparation, adoption and application of domestic regulations on goods. In particular, these two agreements provide a unique multilateral transparency framework for regulations affecting the trade in goods. For instance, they set notification requirements for proposed regulatory measures with potentially significant trade effects and provide opportunities for submitting comments on such proposed measures.

Beyond transparency, both the SPS and TBT Agreements strongly encourage WTO members to use relevant international standards, guidelines and recommendations as the basis for their measures. Crucially, and underpinning all the above disciplines, these two agreements require regulations not to be discriminatory, nor more trade-restrictive than necessary. To implement these disciplines, the SPS and TBT Committees provide a forum for members to learn about each other's regulatory systems, discuss proposed (and sometimes adopted) regulations affecting international trade, and collaborate multilaterally (and on their margins, bilaterally or regionally) to achieve the least trade-restrictive regulations possible, without affecting their capacity to fulfil their legitimate objectives. In the context of WTO reform, some members are exploring how the practices developed by these two Committees could be relevant to efforts to revitalize the work of other WTO bodies.[23]



This report highlights the role that the WTO SPS and TBT Agreements and their related Committees play in support of IRC; it further identifies challenges and suggests possible means of strengthening these frameworks. Chapter 2 presents some of the areas where the WTO broadly supports cooperation on trade policy, including as: (i) a forum for negotiations of new trade agreements; (ii) a platform for dialogue on how best to implement existing agreements; (iii) a dispute settlement system; and (iv) a means to provide technical assistance and capacity building. Chapter 3 identifies how the SPS and TBT Agreements' disciplines promote GRP and regulatory cooperation at the domestic level, including through: transparency and notification; harmonization and the use of international standards; and equivalence and recognition of conformity assessment results. Chapter 4 explores how the TBT and SPS Committees serve as fora for cooperation through the exchange of information on nascent regulation, addressing specific trade concerns (STCs), and developing guidance to improve implementation. Chapter 5 illustrates how the Agreement provisions are implemented in practice, and possible opportunities for improving the TBT and SPS frameworks.





Endnotes

1 Agreement on Technical Barriers to Trade, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 168; Agreement on the Application of Sanitary and Phytosanitary Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1867 U.N.T.S. 493. See, for example, TBT Agreement, Article 2: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies.

2 In this publication, we use the terms "international standards" and "relevant international standards" as these terms are used and understood under the SPS and TBT Agreements. Unless otherwise indicated, and for simplicity, any references to "international standards" or "relevant international standards" also mean references to other related terms used in the TBT and SPS Agreements, such as "guides or recommendations" and "guidelines and recommendations", respectively.

3 The OECD's working definition of international regulatory cooperation (IRC) refers broadly to any agreement, formal or informal, between countries to promote some form of cooperation in the design, monitoring, enforcement, or ex-post management of regulation. See OECD (2013a), International Regulatory Co-operation: Addressing Global Challenges, OECD Publishing, Paris, https://doi.org/10.1787/9789264200463-en. The WTO does not have a definition of international regulatory cooperation.

4 These case studies were launched in 2014 to complement the overview of governance modalities and rule-making processes across 50 different IOs provided in OECD (2016), International regulatory co-operation: the role of international organisations in fostering better rules of globalisation, OECD Publishing, Paris, https://doi.org/10.1787/9789264244047-en.

5 OECD (2018), OECD Regulatory Policy Outlook 2018, OECD Publishing, Paris, https://doi.org/10.1787/9789264303072-en., pp. 29 et seq.; pp.125 et seq.

6 OECD (2013b), Interconnected Economies: Benefitting from global value chains, OECD Publishing, Paris, https://doi.org/10.1787/9789264189560-en.

7 OECD (2017), International Regulatory Co-operation and Trade: Understanding the Trade Costs of Regulatory Divergence and the Remedies, OECD Publishing, Paris, https://doi.org/10.1787/9789264275942-en. p. 14.

8 OECD (2017), Op. cit.

9 G/TBT/W/340, para. 3.

10 OECD (2017), Op. cit.

11 For a detailed account on the scope and terminology of regulatory policy, see Readers' Guide.

12 Principle 12 recommends that countries "in developing regulatory measures, give consideration to all relevant international standards and frameworks for co-operation in the same field and, where appropriate, their likely effects on parties outside the jurisdiction".

13 G/TBT/26, para. 5, p. 2.

14 G/SPS/62, paras. 13.1-13.2, p. 22.

15 G/TBT/26, para. 14, p. 4.

16 G/TBT/19, para.8.

17 G/TBT/26, para.14.

18 OECD (2017), Op. cit.

19 G/TBT/W/340.

20 OECD (2013a), Op. cit.

21 G/TBT/26, para. 15.

22 OECD (2016), Op. cit.

23 See, for example: Joint Communiqué of the Ottawa Group on WTO Reform - Communication from Canada, WT/L/1057, 25 January 2019.

Chapter 2

Broader context for cooperation on trade policy within the WTO

- The WTO is the only global international organization setting the rules of trade between its 164 members.
- The WTO's functions include negotiating new trade agreements, implementing, operating and administering existing agreements under its framework, and solving disputes among members regarding the implementation of these agreements.
- The WTO coordinates with other international organizations to promote coherence in global economic policy making.




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ORGANISATION MONDIALE DU COMMERCE
ORGANIZACIÓN MUNDIAL DEL COMERCIO



The WTO provides a multilateral framework for the conduct of trade relations among its 164 members, with a view to ensuring that trade flows as smoothly, predictably and freely as possible. It is the only global international organization setting the rules of trade between nations. The WTO's founding and guiding principles include the elimination of arbitrary and unjustifiable discriminatory treatment by – and among – members, as well as a commitment to transparency, certainty and predictability in the conduct of international trade. WTO members recognize that expanding trade in goods and services and protecting intellectual property can encourage and contribute to sustainable development, raise people's welfare, reduce poverty, and foster peace and stability. At the same time, WTO members also recognize that such market opening must be accompanied by other policies and be commensurate with each member's policy objectives and aspirations.

The WTO is the only global international organization setting the rules of trade between nations.

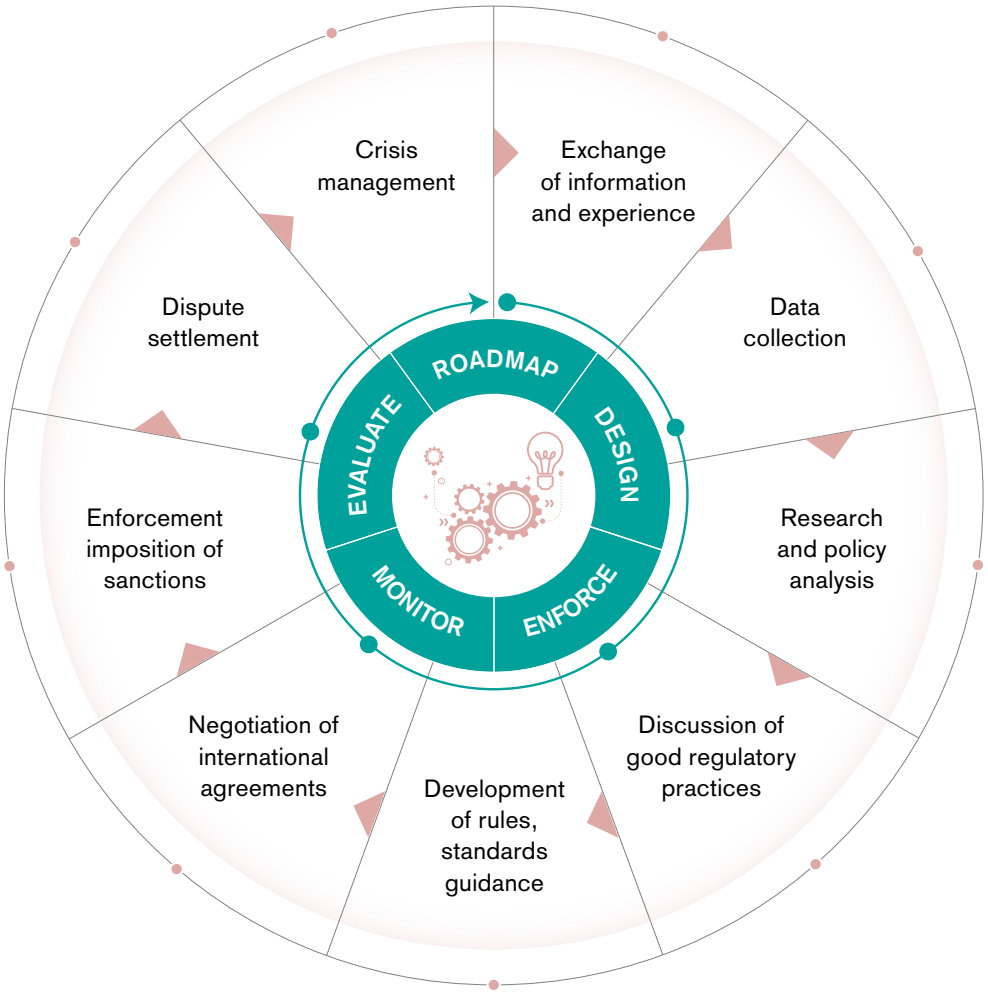
The WTO Agreements provide an important basis for IRC amongst its members. Under the TBT and SPS Agreements, members agree to be guided by certain principles when they regulate. For instance, under the TBT and SPS Agreements these principles include: non-discrimination, no more trade restrictive than necessary, harmonization with international standards, ensuring a scientific basis for measures, and transparency (in particular notification of draft measures and opportunity to provide comments) (as explored in Chapter 3).

OECD identifies areas where IOs contribute to IRC amongst members.[1] These areas can be mapped against the cycle of regulatory governance as provided by OECD and range from the design phase of rules to monitoring, evaluation and then

feedback into the rule-making process.[2] There are nine areas where IOs can provide their members, and include: (i) platforms and opportunities for cooperation; (ii) exchange of information and experience; (iii) data collection, research and policy analysis; (iv) discussion of GRP; (v) development of rules, standards and guidance; (vi) negotiation of international agreements; (vii) enforcement activities, including the imposition of sanctions; (viii) dispute settlement; and (ix) crisis management (see Figure 2.1).

Against this OECD framework, the WTO provides a forum for cooperation among its members with respect to: (i) negotiations of trade agreements; (ii) the implementation, administration and operation of existing trade agreements; (iii) trade-related capacity building; and (iv) a dispute settlement system. The WTO also coordinates with other international organizations to promote coherence in their respective areas of work.

Figure 2.1: Areas of regulatory cooperation and the rule-making cycle



Source: OECD (2016), International Regulatory Cooperation: The Role of International Organisations in Fostering Better Rules of Globalisation.

The WTO: the multilateral framework for cooperation on the rules of conduct of international trade

A brief profile of the WTO is provided in Box 2.1. The WTO offers various functions to members in their efforts to establish cooperation on trade policy, as described below.

Negotiation of trade agreements

Box 2.1

Brief profile of the WTO
(as of March 2019)

Location: Geneva, Switzerland
Established: 1 January 1995
Created by: Uruguay Round negotiations (1986-94)
Membership: 164 members, representing 98 per cent of world trade
Budget: 197 million Swiss francs (2018)
Secretariat staff: 625
Head: Roberto Azevêdo (Director-General)

Source: WTO in Brief, www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm.

The WTO provides a forum for negotiations amongst its members concerning their multilateral trade relations. The objectives of the organization include the substantial reduction of tariffs and other barriers to trade, and the establishment of rules governing the conduct of international trade.[3]

The WTO, and its predecessor, the General Agreement on Tariffs and Trade (GATT), was born out of the recognition that the establishment of a multilateral rules-based system to govern trade relations would be mutually advantageous. The WTO system was developed through a series of trade negotiations, or rounds, held under the GATT. The first rounds dealt mainly with tariff reductions, but later negotiations included other areas such as non-tariff measures (NTMs) (see Table 2.1). Tariff reductions during the GATT rounds increased the relative importance and visibility of NTMs and regulatory barriers in international trade. The 1986-94 round – the Uruguay Round – led to the WTO's creation and brought into force a number of new agreements addressing NTMs and other areas, including the TBT and SPS Agreements.

The WTO Agreements cover goods, services and intellectual property, and spell out the principles of liberalization and permitted exceptions. They include individual members' commitments to lower customs tariffs and other trade barriers, and to open services' markets. The Agreements also set procedures for settling disputes.



Table 2.1: GATT trade rounds

Year	Place/name	Subjects covered	Countries
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13
1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-1961	Geneva, Dillon Round	Tariffs	26
1964-1967	Geneva, Kennedy Round	Tariffs and anti-dumping measures	62
1973-1979	Geneva, Tokyo Round	Tariffs, non-tariff measures,"framework" agreements	102
1986-1994	Geneva, Uruguay Round	Tariffs, non-tariff measures, rules, services, intellectual property, dispute settlement, textiles, agriculture, creation of the WTO, etc.	123

These agreements are not completely static; they can be renegotiated, and new agreements can be added. However, changes to the rules of trade require the agreement of all 164 WTO members, who must reach consensus through negotiations.

The WTO's topmost decision-making body is the Ministerial Conference, which usually meets every two years and brings together all WTO members (see Figure 2.2). The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements. At the Fourth Ministerial Conference in November 2001, the WTO launched the Doha Round, covering all major areas of trade. In 2017, the new Trade Facilitation Agreement (TFA) entered into force, following a successful conclusion of negotiations at the Ninth Ministerial Conference in Bali (2013). The TFA aims to reduce border delays by slashing red tape.

The WTO's TBT and SPS Agreements emerged from the Uruguay Round negotiations but trace their origins back to a GATT-era Agreement: the 1979 Agreement on Technical Barriers to Trade (also known as the "Standards Code"), which was adopted at the conclusion of the subsequent GATT Tokyo Round. The Standards Code, a plurilateral agreement amongst a sub-set of GATT 1947 contracting parties, in turn owes its existence to a growing realization in the mid-1960s that the multilateral trading system at the time was ill-equipped to address NTMs, including in particular standards and regulations, and that more specific trade disciplines on such measures were needed. The disciplines of the Standards Code formed the inspiration and basis for a negotiation during the Uruguay Round, which led to the adoption in 1994 of the WTO's TBT and SPS Agreements that apply to all WTO members.

The WTO's TBT and SPS Agreements emerged from the Uruguay Round negotiations but trace their origins back to a GATT-era Agreement: the 1979 "Standards Code".



Figure 2.2: WTO organizational structure



Source: WTO Annual Report 2019.



Implementation, administration and operation of WTO Agreements

Through its various specialized bodies, the WTO provides a legal and institutional framework for the implementation and monitoring of its existing agreements, including the TBT and SPS Agreements. Implementation comprises transparency, monitoring and review. A core principle of the WTO Agreements is the promotion of transparency of trade policies.[4] The transparency provisions set out in the WTO Agreements require governments to make their trade policies transparent through the notification to the WTO of proposed and enacted laws and implemented measures. All members also undergo a periodic review of their trade policies and practices, under the Trade Policy Review Mechanism (TPRM), which contributes to transparency.

Transparency provisions are found in a wide range of the WTO Agreements on trade in goods, services and intellectual property.[5] Amongst these, the TBT and SPS Agreements and their respective Committees stand out because they require notification of proposed draft measures to promote cooperation on implementation (and as explored in Chapter 3),[6] and constitute "the two most far-reaching examples of regulatory cooperation in the WTO".[7]

The WTO's various councils and committees work to ensure that the Agreements are being implemented effectively, and that transparency provisions are being followed. These WTO bodies also provide members with fora to consult on any matters relating to the administration of their respective agreements or issues. Within this context, discussion of members' experiences, challenges and best practices can support cooperation to further enhance implementation.

In addition, all WTO members undertake a periodic review of their trade policies and practices, under the TPRM. Trade Policy Reviews are meant to: (i) increase the transparency and understanding of members' trade policies and practices through regular monitoring; (ii) improve the quality of public and intergovernmental debate on relevant issues; and (iii) enable a multilateral assessment of the effects of these policies on the world trading system.



Assistance for implementation of the WTO Agreements through capacity building

The WTO Agreements recognize the importance of technical assistance (TA) between members to support their implementation. Capacity building and TA activities between WTO members can enable developing members to participate more effectively in international trade. This type of soft assistance or training, which is based on the sharing of information and knowledge, can build human and institutional capacity in exporting members to support their private sector to meet applicable standards or to demonstrate that they do.[8] Both the TBT and SPS Agreements contain specific provisions on the provision of TA between members, and on special and differential treatment (S&D) of developing members.[9]

Members confirmed in their 2001 Doha Ministerial Declaration that technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system. In this connection, the WTO Secretariat was instructed, in coordination with other relevant agencies, to support domestic efforts for mainstreaming trade into national plans for economic development and poverty reduction strategies.[10]

The WTO Secretariat organizes nearly 300 TA activities every year, and trains over 14,000 government officials. TA is provided through face-to-face and web-based courses. In 2017, the WTO Secretariat undertook 261 TA activities, both in Geneva and in the territories of various members or observers and participated in 54 other TA-related activities (e.g. conferences or activities of partner institutions). Overall, 18,200 participants were trained in 2017, with more than two-thirds of participants trained online. Other means of delivering technical assistance include trainee programs, internship opportunities and academic partnerships.

The WTO also helps to build trade capacity in developing and least-developed countries through partnerships with other organizations. These include Aid for Trade,[11] the Enhanced Integrated Framework (EIF),[12] and the Standards and Trade Development Facility (STDF)[13] (see Box 2.2).

Box 2.2

Standards and Trade Development Facility (STDF)

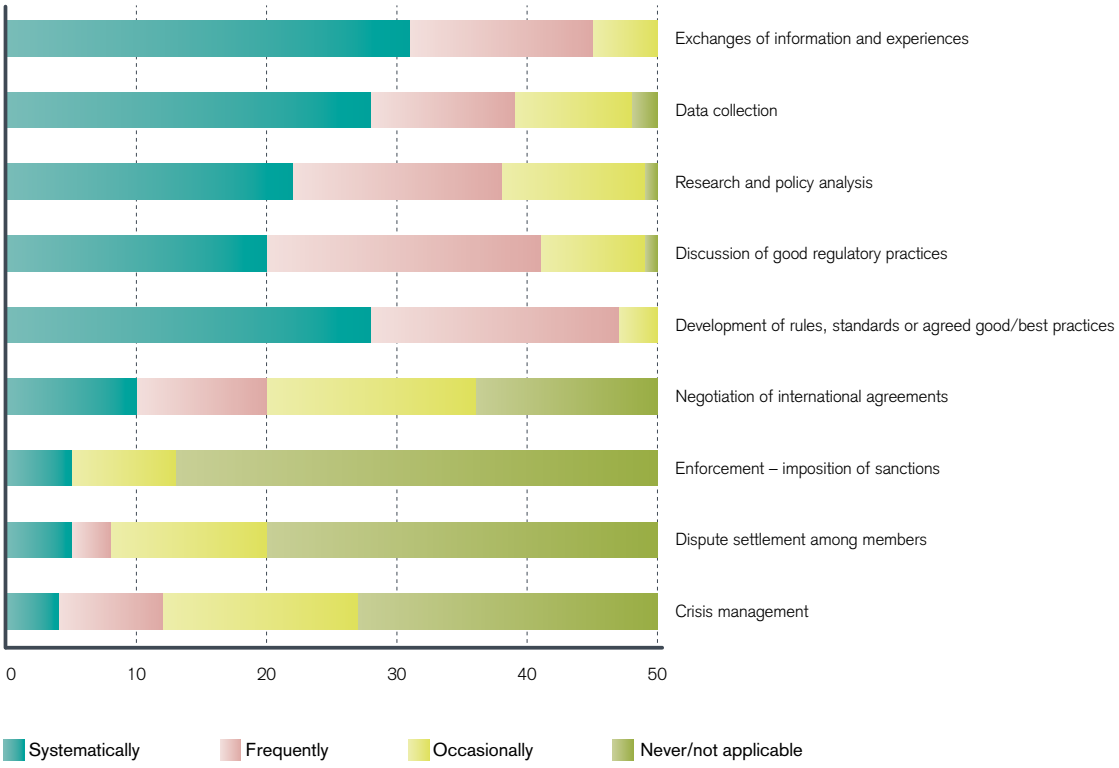
The STDF is a global partnership that supports developing countries in building their capacity to implement international SPS standards, guidelines and recommendations as a means to improve their human, animal and plant health status, and their ability to gain or maintain access to markets. The STDF is a good example of cooperation between the WTO and other international organizations as its founding partners: the Food and Agriculture Organization of the United Nations (FAO), the World Bank, the World Health Organization (WHO) and the World Organisation for Animal Health (OIE). The STDF provides project grants, as well as project preparation grants, to strengthen SPS capacity in developing countries. The STDF also carries out work on how GRP can be used to improve the quality and effectiveness of SPS measures in developing countries. Their work aims to provide guidance to ensure that SPS measures are "fit for purpose" and that they avoid the creation of non-tariff barriers. They have conducted relevant research and surveys and produced briefing notes and practical manuals.

The WTO dispute settlement system

One of the WTO's core activities is dispute settlement. The WTO dispute settlement system allows members to resolve trade conflicts in an efficient and rule-oriented manner. While the system provides for adjudication of disputes by independent, quasi-judicial bodies, its priority is to encourage disputing members to reach a mutually agreed solution that is consistent with the WTO Agreements. The WTO is one of the few international organizations with binding third-party adjudication available to settle disputes among its members,[14] and provides one of the most active dispute settlement systems in the world (see Figure 2.3).

Figure 2.3: International rule-making processes within international organizations

(Survey answers from 50 respondents)



Source: OECD (2016), International Regulatory Cooperation: The Role of International Organisations in Fostering Better Rules of Globalisation, Paris.
Note: Answers of 50 responding IOs to OECD Survey of International Organizations, 2015.

Dispute settlement is a fundamental pillar of the WTO and "a central element in providing security and predictability to the multilateral trading system".[15] The Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) applies to all disputes arising under the WTO Agreements, hence also to disputes that arise under the TBT and SPS Agreements. One of the distinct characteristics of the WTO dispute settlement mechanism is the availability of independent and quasi-judicial bodies, the dispute settlement panels[16] and the

Dispute settlement is a fundamental pillar of the WTO and "a central element in providing security and predictability to the multilateral trading system".

Appellate Body,[17] tasked with making findings in respect of alleged breaches by a member of its WTO obligations. Once adopted by the Dispute Settlement Body (DSB),[18] the recommendations and rulings contained in panel and Appellate Body reports are binding upon the parties to the dispute and must be implemented. Importantly, the WTO dispute settlement system provides for detailed procedures and timeframes for the various stages of a dispute. In short, this system is based on the conviction that "timely and structured dispute resolution helps to reduce the detrimental impact of unresolved international trade conflicts".[19]

The WTO dispute settlement system aims "to secure a positive solution to a dispute" and expressly states a preference towards a solution that is mutually acceptable to the parties.[20] Hence, the system encourages cooperation between the parties which should attempt to obtain satisfactory adjustment of the matter before resorting to the adjudicatory process.[21] In practice, this translates into a first mandatory phase of "consultations" between the parties, which seeks to promote the settlement of the matter through dialogue and negotiations. Even when parties fail to resolve the dispute during those bilateral consultations, it remains always possible for them to suspend or terminate the proceedings, at every stage, if they reach a mutually agreed solution.[22] In this respect, the DSU also provides the parties with the possibility to request at any time "good offices", "conciliation" and "mediation".[23] When a ruling has been issued, its implementation may again require dialogue and negotiations between the parties; and when this is not possible, the DSU provides for specific adjudicatory procedures, which seek to promote the prompt resolution of the matter and avoid a new dispute.[24]



The WTO dispute settlement system also provides for the participation of other WTO members which are not parties to the dispute but may nevertheless be interested in the matter at issue in the proceeding. Already at the initial stage, a member may request to join consultations, as long as certain conditions are met,[25] and be involved in the parties' discussions. If consultations fail to resolve the dispute and a panel is established, members having a "substantial interest" in the matter before the panel can notify their interest to the DSB and participate as a third party in the proceedings.[26] The member participating as a third party may have a trade interest (for instance, because it is affected by the challenged measure, benefits from it or maintains a similar measure) or a systemic interest in the matter.

Under the DSU, a third party is granted certain limited rights, namely the right to be heard by the panel, to make written submissions to the panel and to receive the parties' submissions to the first meeting of the panel.[27] On certain occasions, panels may also grant third parties additional rights, upon request and after consulting the parties to the dispute. One recent TBT-related case attracted almost 40 third parties in all.[28]

In disputes involving complex technical or scientific issues, experts in specialized fields may be called upon by panels to provide information and technical advice. While, pursuant to the DSU, any panel may seek the advisory opinion of experts, panels adjudicating disputes with TBT-related technical issues are explicitly authorized to consult experts[29] and, in disputes involving SPS-related scientific or technical issues, panels should seek the advice of experts.[30] Hence, experts have frequently been consulted in disputes involving complex scientific issues under the SPS Agreement. Panels may also seek – and have done so in a number of cases – information from international organizations whose expertise is relevant to the subject matter at issue in the dispute.[31] The ability to select and consult experts ensures that "panels' understanding of the scientific issues before them are not dependent solely on the arguments put forward by the respective parties to a dispute".[32]

Finally, in some cases, non-state actors (NGOs, industry associations or academics) have filed *amicus curiae* briefs. While the DSU is silent on *amicus curiae* briefs, a few panels have accepted and considered them under their comprehensive authority to seek information.[33]

Up to the end of January 2019, over 570 disputes (i.e. consultation requests) have been filed at the WTO. Since 1995, members invoked provisions of the TBT and SPS Agreements in 54 and 50[34] disputes, respectively.[35] Most of these disputes did not proceed beyond the DSU mandatory consultation phase, which means that only a handful of panel and Appellate Body reports have dealt substantively with TBT or SPS matters.

Out of the 104 TBT and SPS disputes filed to date, 34 (32.6 per cent) are categorized as "in consultations".[36] While the DSU requires that consultations have a minimum period of time of 60 days, "parties to a dispute often allow themselves significantly more time".[37] In fact, in various cases, consultations were initiated but no mutually agreed solution was notified to the WTO Secretariat and no panel was requested by the complainant, which leaves us with a question as to whether and how these disputes were resolved. The fact that such disputes have not been taken to the adjudication phase may indicate that a settlement was reached in some way.

So far, 34 SPS and TBT disputes have been settled or terminated through a mutually agreed solution notified to the WTO;[38] and in ten[39] disputes, parties reached mutually acceptable solutions on the implementation of the findings.




Vilerm
Sporal
Enaril
5 mg
Tanzaril

Coordination with other organizations and fora



The WTO is the only international organization with a broad membership and comprehensive mandate to regulate the conduct of international trade relations through multilateral agreements. At the same time, countries do negotiate trade agreements and adopt international standards to facilitate trade in bilateral or regional contexts, thus creating a diverse landscape that complements and intersects with the work of the WTO.

Bilateral and regional trade agreements

A range of other agreements establish trade rules at the regional or bilateral level; these are referred to in WTO terminology as "regional trade agreements", or RTAs for short (irrespective of whether the parties are located in the same region or not). As of 25 January 2018, 284 RTAs were in force and all WTO members are party to at least one RTA.[40]

While at first glance RTAs may appear to compete with the WTO by creating different rules for trade between groups of members, they can in fact support the WTO's multilateral trading system; and are, in fact, often built upon the WTO Agreements. RTAs allow groups of willing members to agree on rules and commitments that go beyond what was possible multilaterally. Some of these ideas have later been brought back for discussion at the WTO, and the experience gained through RTAs provided a valuable basis for further discussions at the WTO.



As already mentioned, non-discrimination is one of the cornerstones of the WTO and the multilateral trading system. Typically, under the WTO Agreements, WTO members should give equal treatment to all their trading partners and not arbitrarily or unjustifiably discriminate among them (also known as the most-favored-nation (MFN) principle). Despite this rule, some exceptions are allowed, notably for the establishment of RTAs. More specifically, WTO members are permitted to enter into RTAs under specific conditions which are spelled out in three sets of rules. These rules cover the formation and operation of customs unions and free-trade areas covering trade in goods (Article XXIV of the General Agreement on Tariffs and Trade 1994), regional or global arrangements for trade in goods between developing country members (under the so-called "Enabling Clause"), as well as agreements covering trade in services (Article V of the General Agreement on Trade in Services). Generally speaking, RTAs must cover substantially all trade – unless they are under the Enabling Clause – and help trade flow more freely among the countries in the RTA without raising barriers to trade with the outside world.

Following a WTO General Council decision in December 2006,[41] and applied provisionally since then, all RTAs have been subject to the provisions and procedures of the Transparency Mechanism for Regional Trade Agreements. The mechanism provides specific guidelines on when a new RTA should be notified to the WTO and the related information and data to be provided, so that the RTA can then be considered by the WTO Committee on Regional Trade Agreements (CRTA). At the 2015 Nairobi Tenth Ministerial Conference, WTO members agreed to work towards the transformation of the current





provisional Transparency Mechanism into a permanent mechanism and instructed the CRTA to continue discussing the systemic implications of RTAs for the multilateral system and their relationship with WTO rules.[42]

As the number of RTAs has grown, their content and scope has become more detailed and complex.[43] While RTAs originally addressed classic trade barriers, they have increasingly addressed regulations and standards, and incorporated mechanisms to promote regulatory cooperation.[44] RTAs may contain provisions on, among others, technical regulations, standards, conformity assessment, SPS measures, or transparency.[45] According to a study of the 260 RTAs in force and notified to the WTO as of December 2017, 200 agreements include TBT provisions; of the 256 RTAs in force in 2015, 176 include SPS provisions.[46] In the majority of RTAs, parties reaffirm the rights and obligations under the TBT and SPS Agreements.[47] In addition, guidance to support implementation produced by the WTO's TBT and SPS Committees in the form of recommendations and decisions has served as a basis for obligations in certain RTAs, normally with respect to transparency and international standards.[48]

Other regional and multilateral fora

The WTO cooperates with a number of international organizations and institutions, including as observers to the General Council and WTO Committees.[49] The WTO participates in various partnerships with other international organizations to support capacity building in developing countries, for example, Aid for Trade, the Standards and Trade Development Facility (STDF), and the Enhanced Integrated Framework (EIF).

The WTO also interacts with international organizations to:

- develop joint instruments (e.g. the Agreement between the World Intellectual Property Organization and the World Trade Organization (1995));
- reach memorandums of understandings or other agreements (e.g. the Memorandum of Understanding between the International Trade Centre, the United Nations Department of Economic and Social Affairs and the World Trade Organization on an alert system for SPS/TBT notifications (ePing));
- participate in coordinating institutions (e.g. STDF);
- hold joint meetings on topics of common interest (e.g. the FAO/WHO/WTO International Forum on Food Safety and Trade);
- observe relevant actions of other bodies including, among others, Codex Alimentarius, the World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC);
- provide joint technical assistance with regional and international organizations;
- prepare joint publications (such as the 2017 FAO/WTO publication on Trade and Food Standards, or this OECD/WTO publication);
- and generally exchange information.[50]

The WTO Secretariat has working relations, ranging from informal contacts and information sharing to joint projects and programs, with some 200 organizations around the world.[51]

Endnotes

1 OECD (2014), International Regulatory Co-operation and International Organisations: The Cases of the OECD and the IMO, OECD Publishing. http://dx.doi.org/10.1787/9789264225756-en.

2 OECD (2016), Op. cit.

3 See: Marrakesh Agreement Establishing the World Trade Organization, Preamble third recital and Article III.2.

4 Transparency is understood as the "degree to which trade policies and practices, and the process by which they are established, are open and predictable", WTO Glossary, available at: www.wto.org/english/thewto_e/glossary_e/glossary_e.htm.

5 These include: the GATT 1994; the Agreement on Agriculture; the SPS and TBT Agreements; the Agreement on Trade-Related Investment Measures (TRIMs); the Anti-Dumping Agreement; the Agreement on Customs Valuation; the Agreement on Pre-shipment Inspection; the Agreement on Rules of Origin; the Agreement on Import Licensing; the Agreement on Subsidies and Countervailing Measures; the Agreement on Safeguards; the Trade Facilitation Agreement; the General Agreement on Trade in Services (GATS); the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS); and the Government Procurement Agreement (which unlike others listed here, is a plurilateral agreement).

6 Based on OECD (2013a), Op. cit., p.31.

7 Mavroidis, P. C. (2016), Regulatory Cooperation: Lessons from the WTO and the World Trade Regime, p. 9.

8 Lang A. and J. Scott, Joanne (2006), "Regulatory Convergence – A Role for the WTO?", p. 11.

9 Articles 11 and 12, TBT Agreement; Articles 9 and 10, SPS Agreement. A Secretariat compilation of "Special and Differential Treatment Provisions in WTO Agreements and Decisions" prepared at the request of the WTO Committee on Trade and Development, notes that the TBT Agreement "contains a total of twenty-five provisions relating to technical assistance and/or S&D, the majority of them contained in Articles 11 and 12", while the SPS Agreement "contains six specific S&D provisions" (WT/COMTD/W/239, 12 October 2018, pages 26 and 38).

10 WTO document WT/MIN(01)/DEC/1, 20 November 2001, paras. 38-41.

11 For information on Aid for Trade, see www.wto.org/english/tratop_e/devel_e/a4t_e/aid4trade_e.htm.

12 For information on the EIF, see https://www.enhancedif.org/ www.enhancedif.org/.

13 For information on the STDF, see https://www.standardsfacility.org/ www.standardsfacility.org/.

14 OECD (2016), Op. cit.

15 Article 3.2 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU).

16 "Panels are quasi-judicial bodies that adjudicate disputes between WTO members in the first instance (…) normally composed of three (…) experts selected on an ad hoc basis." (World Trade Organization (2017), A Handbook on the WTO Dispute Settlement System, p. 29.)

17 Permanent body of seven members tasked with hearing appeals on issues of law and legal interpretations covered by the panel and the panel report. DSU paragraphs 1 and 6 of Article 17.

18 The DSB is the WTO body established to administer the DSU (DSU Article 2.1). It is composed of representatives of all WTO members.

19 World Trade Organization (2017), Op. cit., p. 2.

20 DSU Article 3.7.

21 DSU Article 4.5.

22 DSU Articles 3.7 and 11.

23 DSU Article 5.

24 Appellate Body Report, US – Softwood Lumber IV (Article 21.5 – Canada), para. 72.

25 Those cumulative conditions are: (i) the complainant requested consultations under provisions that allow for joint consultations; (ii) the member requesting to join consultations has a "substantial trade interest" (a concept that remains undefined) in the matter; and (iii) the respondent accepts the request (Article 4.11 of the DSU).

26 DSU Article 10.

27 DSU Article 10, paragraphs 2 and 3.

28 Panel Report, Australia – Certain Measures Concerning Trademarks, Geographical Indications and Other Plain Packaging Requirements Applicable to Tobacco Products and Packaging WT/DS435/R (Cuba), WT/DS441/R (Dominican Republic), WT/DS458/R (Honduras), WT/DS467/R (Indonesia); paras. 1.11, 1.15, 1.19 and 1.23.

29 TBT Agreement paragraphs 2 and 3 of Article 14 and Annex 2.

30 SPS Agreement Article 11.2.

31 World Trade Organization (2017), Op. cit., pp. 3637.

32 World Trade Organization (2015), A History of Law and Lawyers in the

GATT/WTO – The Development of the Rule of Law in the Multilateral Trading System, p. 439.

33 DSU Article 13.

34 This number includes United States – Continued Suspension of Obligations in the EC – Hormones Dispute (WT/DS320) and Canada – Continued Suspension of Obligations in the EC – Hormones Dispute (WT/DS321) even though their requests for consultations did not include the SPS Agreement. However, one of the matters at issue was the EC implementation of the rulings in two previous SPS-related disputes, European Communities – Measures Concerning Meat and Meat Products (Hormones), Complaint by the United States, WT/DS26 and European Communities – Measures Concerning Meat and Meat Products (Hormones), WT/DS48 (Canada); hence, the SPS Agreement was relevant to these disputes.

35 In these disputes, the relative importance of claims made under the TBT or SPS Agreements varies: in some disputes, claims under those two agreements are the key, or even the only, claims raised in the consultation requests. In other disputes, they are only secondary to other claims invoked under another WTO Agreement. Most of these 104 consultation requests include alleged violations of both the TBT and SPS Agreements. Further, it is not uncommon for various separate WTO disputes to concern the same matter. This is statistically important as the number of disputes may vary depending on whether they are counted from the perspective of different "matters" (i.e. essentially, the measures at issue), or whether the benchmark is the number of separate consultation requests covering the same measure(s). For instance, while there have been to date 54 TBT- and 50 SPS-related disputes (i.e. 54 and 50 consultation requests with at least one claim on the TBT Agreement and SPS Agreement, respectively), these only covered 40 separate TBT matters and 43 separate SPS matters because some of the requests were lodged by different members against the same measure(s).

36 Half of these 34 cases in consultations are TBT and half are SPS cases. Note: the status of recent cases might still change.

37 World Trade Organization (2017), Op. cit., p. 55.

38 In practice, mutually agreed solutions have been reached at various stages of a proceeding, for instance after the establishment of the panel or even after the adoption of the panel report.

39 Six of which are SPS and four are TBT cases.

40 Following the notification of the RTA between Mongolia and Japan in June 2016, all WTO members now have at least one RTA in force. https://www.wto.org/english/tratop_e/region_e/region_e.htm.

41 WT/L/671, 18 December 2006.

42 WT/MIN(15)/DEC, 21 December 2015, para. 28.

43 McDaniels D., A. C. Molina, E. N. Wijkström (2018); "A Closer Look at WTO's Third Pillar: How WTO Committees Influence Regional Trade Agreements", Journal of International Economic Law, Vol. 21/4, 19 December 2018, pp. 815–843.

44 Mavroidis, P. C. (2016), Op. cit., p. 6.

45 OECD (2013a), Op. cit., pp. p.24 and 32.

46 WTO Secretariat (2015). Working Paper on Cross-Cutting Issues in Regional Trade Agreements: Sanitary and Phytosanitary Measures. McDaniels D., A. C. Molina, E. N. Wijkström (2018), Op. cit., pp. 815–843.

47 Molina, A.C. and V. Khoroshavina (2016), "TBT Provisions in Regional Trade Agreements: To what extent do they go beyond the WTO Agreement?" in "Regional Trade Agreements and the Multilateral Trading System", edited by R. Acharya.

48 McDaniels D., A. C. Molina, E. N. Wijkström (2018), Op. cit., pp. 815–843.

49 www.wto.org/english/thewto_e/igo_obs_e.htm.

50 OECD (2016), Op. cit., p. 205.

51 For a non-exhaustive list of organisations the WTO Secretariat divisions work with please see https://www.wto.org/english/thewto_e/coher_e/igo_divisions_e.htm.

Chapter 3

The role of the TBT and SPS Agreements in promoting IRC in members' domestic rule-making

- The TBT and SPS Agreements lay a legal framework aiming to reduce the excessive costs arising from unnecessary regulatory divergences, while preserving members' regulatory autonomy.
- The disciplines set in the TBT and SPS Agreements promote good regulatory practice (GRPs) and international regulatory cooperation (IRC), with key provisions that can be assimilated with GRPs, as described in the 2012 OECD Recommendation on Regulatory Policy and Governance.
- Obligations on transparency and adoption of international standards require regulators to embed international considerations within their domestic rule-making procedures, and to prevent regulations creating unnecessary barriers to trade.
- Disciplines on equivalence and recognition of foreign conformity assessment results help ensure that traders do not face duplicative requirements or procedures when regulations differ across markets.





The next two chapters explore how the TBT and SPS Agreements and their implementation, as overseen by the TBT and SPS Committees, promote opportunities for international regulatory cooperation between members. The analysis is divided into two parts: Chapter 3 covers the domestic dimension and highlights some of the disciplines of the Agreements that encourage opportunities for IRC; Chapter 4 presents the international dimension, focusing on how the work of the TBT and SPS Committees supports regulatory cooperation between members.

This chapter focuses specifically on how the legal disciplines of the TBT and SPS Agreements, together with the implementation guidance provided by their respective Committees, foster IRC between members by promoting a number of practices to be followed by domestic regulators in their rule-making activities. These include, for example, the consideration of the international environment and impacts on trading partners in the preparation, adoption and application of TBT and SPS measures. In addition, the disciplines in the TBT and SPS Agreements directly encourage cooperation between regulators to reduce regulatory divergences at bilateral, regional and multilateral levels.

The TBT and SPS Agreements directly encourage cooperation between regulators to reduce regulatory divergences at bilateral, regional and multilateral levels.

The TBT and SPS Agreements enshrine the right of members to regulate for legitimate policy objectives, even if this may restrict trade to some extent. Under these Agreements, members have the right to prepare, adopt and apply regulations necessary to achieve public policy objectives, such as protection of human health and safety, animal life and health, environmental protection or consumer information, at levels of protection they consider appropriate. However, under the Agreements, members have committed to be guided by certain principles, objectives and disciplines in their regulatory activities. These include, amongst others: non-discrimination; avoiding unnecessary trade barriers; ensuring a scientific basis for measures; consistency; transparency (including notification of draft measures); using relevant international standards as a basis for measures; basing measures on a risk-assessment; and promoting equivalence and acceptance of conformity assessment results. In addition, the Agreements contain provisions on technical assistance and special and differential treatment, which encourage cooperation between members to support implementation.

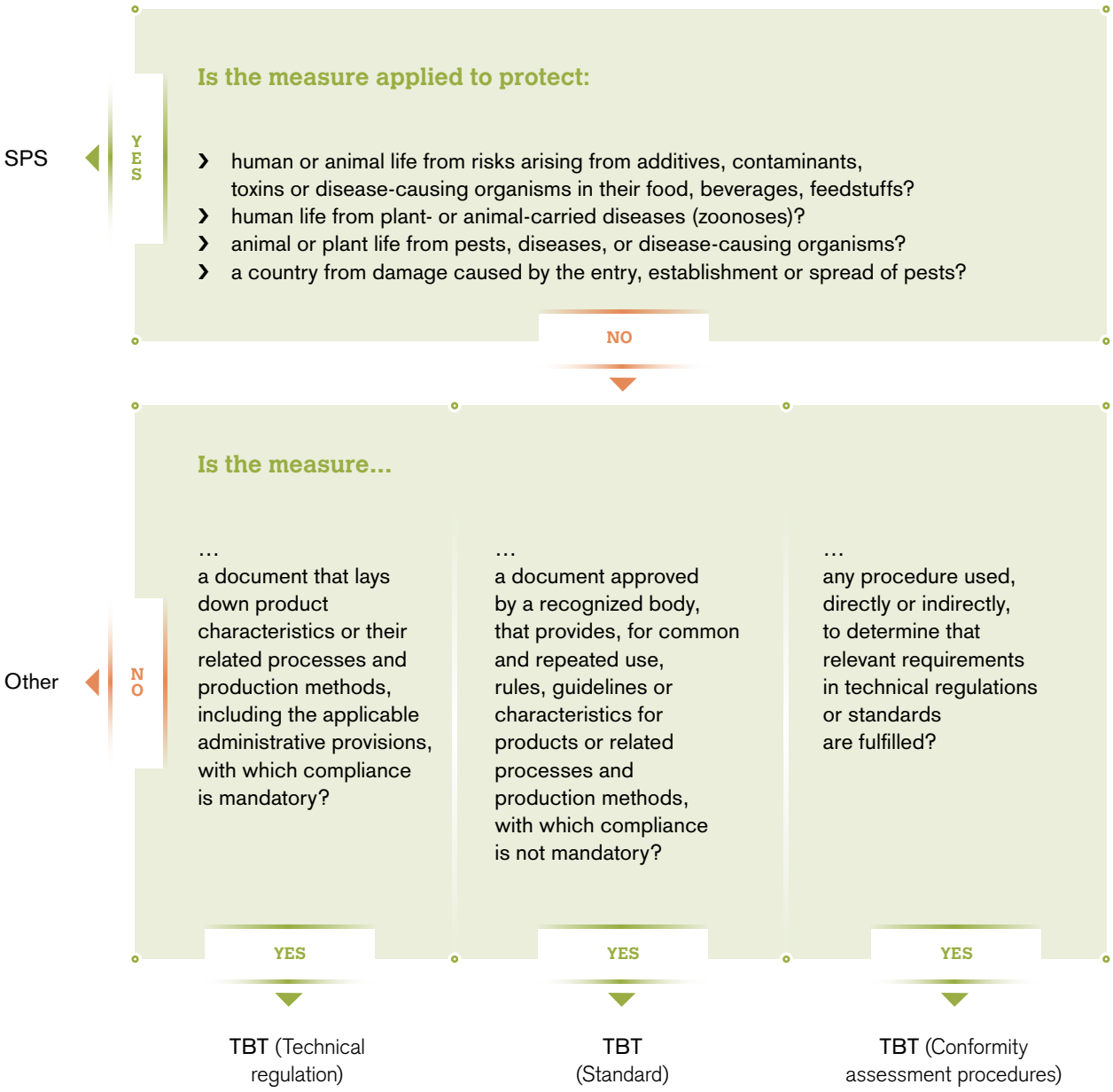
This chapter focuses on two key autonomous disciplines of the TBT and SPS Agreements, namely: transparency and the use of international standards. It explains how the application of these disciplines, which also represent core GRPs, encourages regulators to consider the international environment and impacts on trading partners when they prepare, adopt and apply TBT and SPS measures. It then considers how the obligations of the Agreements on equivalence and recognition of conformity assessment results can help underpin and encourage regulatory cooperation between members in different configurations (e.g. bilateral, regional, and international).[1] These, and other Agreement disciplines, give members a launch pad for IRC amongst themselves in order to reduce unnecessary regulatory diversity and barriers to trade.

There are many legitimate reasons why members may regulate differently, including different technological and socio-economic conditions, capacities, or risk preferences.[2] However, there may also be differences between national regulations and procedures that can create unnecessary obstacles to trade. The TBT and SPS Agreements promote IRC between members to lower the costs associated with regulatory diversity by reducing or eliminating unnecessary obstacles where possible.

The TBT Agreement covers mandatory technical regulations, voluntary standards and conformity assessment procedures in respect of all products (including industrial and agricultural products) prepared, adopted and applied by central governments, local governments and non-governmental bodies.[3] It covers a wide range of TBT measures taken for the protection of human health and safety, protection of the environment, the prevention of deceptive practices, and national security requirements, among other legitimate objectives.

The SPS Agreement covers all relevant laws, decrees, regulations, requirements and procedures[4] applied to: (i) protect animal or plant life or health within the territory of the member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms; (ii) protect human or animal life or health within the territory of the member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs; (iii) protect human life or health within the territory of the member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or (iv) prevent or limit other damage within the territory of the member from the entry, establishment or spread of pests (see Figure 3.1).

Figure 3.1: SPS and TBT measures



Transparency requirements: opening of dialogue with trading partners



Members commit to four main transparency obligations: (i) early notice of the intention to regulate (TBT only); (ii) notification and comment on draft regulations; (iii) notification (TBT only) and publication of final adopted regulations and providing a reasonable interval before entry into force; and (iv) institutional requirements relating to enquiry points. These transparency obligations of the TBT and SPS Agreements, most notably those related to notification, play an essential role in fostering opportunities for regulatory cooperation between members, and enable the private sector and other interested stakeholders to access this information. They enhance predictability and stability in the regulatory measures applied by members. Through these transparency procedures, members keep each other informed of their regulatory frameworks and measures affecting trade under the scope of these Agreements, allow for comments from their trading partners on draft regulations, and provide a transition period before implementation to give time for economic operators to adapt.[5] Members also must maintain TBT and SPS Enquiry Points and designate authorities responsible for submitting TBT and SPS notifications.

Transparency obligations apply throughout the initial stages of the regulatory lifecycle of a measure. This starts with the planning of a draft measure, the publication of a notice, and goes through to the design and drafting of measures and notification obligations, up to the measure's entry into force in accordance with the publication and reasonable interval obligation. These transparency obligations therefore provide opportunities for cooperation between regulators at various stages of the domestic regulatory process. By bringing proposed TBT and SPS measures under examination by other WTO members, they create opportunities for discussion and negotiation on the content of the measure, and for gathering a wider range of inputs to strengthen the evidence base upon which a regulation should be built. In turn, this creates a virtuous cycle, which ultimately can improve regulatory quality. Moreover, in the context of regulatory heterogeneity, the Agreements' transparency provisions lower the costs of finding and processing information relevant to accessing export markets.[6]

At the outset of the regulatory lifecycle, the TBT and SPS Agreements require members to publish a notice of their intention to introduce a TBT or SPS measure at an early stage,[7] also called **"early notice"**. This notice is an early signal for possible cooperation between members' regulators. Publication of an early notice is required for those proposed technical regulations, conformity assessment procedures and SPS measures which may create trade disruption (or which may be trade facilitating). In other words, if the proposed measure is not in accordance with the technical content of relevant international standards (or if relevant international standards do not exist) and may have a significant effect on the trade of other members (see Box 3.1).

The backbone of transparency under the SPS and TBT Agreements is the requirements relating to **notification**. In short, WTO members are required to inform other members through a "notification" of proposed SPS and TBT regulations and provide an opportunity for other members to submit comments on the proposed regulation. Notifications are submitted when a draft text of the proposed regulation is available.[8] Notifications contain basic information, including the proposed regulation's product coverage, content and scope, objectives and



The backbone of transparency under the SPS and TBT Agreements is the requirements relating to notification.

planned dates of adoption and entry into force, while also providing (electronic) access to the full draft text.

More specifically, if a proposed technical regulation, conformity assessment procedure, or SPS measure is not in accordance with or is not substantially the same as the content of relevant international standards (or if relevant international standards do not exist), and may have a significant effect on trade of other members, it must be notified to other members through the WTO Secretariat.[9] In this sense, the notification obligation flags those measures which are not aligned with relevant international standards, and where further cooperation may be needed to avoid trade frictions. Moreover, an upswing of notifications in a certain product area (for instance, in novel products or technologies) could indicate the absence of relevant international standards, or the inadequacy of existing international standards, which could also serve as an indicator for the need for greater cooperation.

The TBT and SPS Committees have provided guidance on the meaning of "significant effect on trade" and encouraged members to notify if they are unsure whether the trade effects of a measure may be significant (see Box 3.1). Moreover, significant effects on trade include both import-enhancing and import-reducing effects.[10] For greater transparency, the SPS Committee has encouraged members to notify SPS measures even if they are based on, conform to, or are substantially the same as international standards;[11] the TBT Committee has also endorsed this practice.[12]

Box 3.1

Significant effect on trade

The TBT and SPS Committees have established criteria for assessing whether a proposed measure may have a significant effect on trade of other members:

1. It may refer to the effect on trade:
   - of one technical regulation, conformity assessment procedure, or sanitary or phytosanitary regulation only, or various technical regulations or conformity assessment procedures, or sanitary or phytosanitary regulations in combination;
   - in a specific product, group of products or products in general;
   - and between two or more members.
2. When assessing the significance of the effect on trade of technical regulations, the member concerned should take into consideration such elements as the following: the value or other importance of imports in respect of the importing and/or exporting members concerned, whether from other members individually or collectively; the potential growth of such imports; and difficulties for producers in other members to comply with the proposed technical regulations and sanitary or phytosanitary regulations.
3. The concept of a significant effect on trade of other members should include both import-enhancing and import-reducing effects on the trade of other members, as long as such effects are significant.

Source: G/TBT/1/Rev.13, Section 5.3.1.2, p. 23-24; G/SPS/7/Rev.4, Section 2.1 paras. 2.4-2.5.

As part of the notification process, members are required to open their draft regulations to comments from other members. Reasonable time must be provided for other members to comment on the draft, and the regulating members must discuss and take these comments into account.[13] The TBT and SPS Committees recommend at least a 60 day comment period for notified measures, and where possible, a 90 day period especially to enable developing members to submit comments.[14] While the exchange of comments and replies typically occurs bilaterally between members, the private sector and other stakeholders may sometimes provide comments or add inputs to comments submitted by their government representatives. There is no structured avenue by which this information reaches the wider WTO membership or the public. However, in line with a recommendation of the SPS and TBT Committees, some members choose to make publicly available the comments received and responses given on their notifications.[15]



An exchange of comments can be the start of a cooperation process. The aim of this targeted interaction is to: (i) help affected members and stakeholders to better understand proposed measures; (ii) provide comments and recommendations that can help improve the quality of regulations; and (iii) work bilaterally through government channels to discuss and reach trade facilitating adjustments or clarifications to draft measures and, where possible, avoid future regulatory divergence.

The notification obligation creates opportunities for cooperation at various stages of the policy-making process, with different formats of notification envisaged for

Each notification presents an opportunity for trading partners to stimulate a range of interactions between regulators and other stakeholders.

different purposes. The original notification of draft measures should be submitted by members when "amendments can still be introduced and comments taken into account".[16] In addition, the Committees have recommended that members submit different types of follow-up notifications to track the progress of a measure through the regulatory lifecycle after the notification of the initial draft. These include situations when the comment period on a notification has been extended (addenda), if a measure has been withdrawn or revoked (addenda), or if a measure is substantially redrafted prior to adoption or entry into force (revision).[17] The Committees have recommended that the availability of the final adopted text should also be notified as a follow up to the original notification (addenda).[18]

Each notification therefore presents an opportunity for trading partners to stimulate a range of interactions between regulators and other stakeholders. These interactions may lead to the collection of important information for compliance purpose, exchange of comments and subsequent negotiations on the regulation and even amendments to the initial draft. As notifications are publicly available, the notification process is a useful way to gather inputs from private stakeholders that may lead to improvements in the quality or clarity of the proposed measures or facilitate compliance.[19]

Following the initial notification and end of the commenting period, if a decision is taken to adopt a regulation, both Agreements require members **to publish promptly**[20] these adopted regulations. Publication of regulations ensures predictability for stakeholders and helps to reduce the transaction costs of finding information and is an element of good regulatory practice. Some WTO members, as a good practice, choose to publish all their regulations in one place and make them available electronically for trading partners.

The Agreements require that members provide a reasonable interval before the entry into force of regulations.[21] This gives time for manufacturers, farmers and breeders to gather information and adapt their production to the new requirements. Through a decision of the WTO Ministerial Conference in 2001, Ministers decided that this transition period should be at least six months, except when this would be ineffective in fulfilling the legitimate objectives pursued, or if the measure contributes to trade liberalization, which was complemented by subsequent decisions of the TBT and SPS Committees that encourage members to provide more than six months when possible.[22]



In cases of emergency, members have the possibility to deviate from normal transparency procedures. The SPS Agreement provides for exceptions to transparency obligations "where … urgent problems of health protection arise or threaten to arise" for the member implementing an emergency measure. However, the obligation to notify remains, either before or immediately after the measures come into effect, "with an explanation of the reasons for resorting to emergency action".[23] Similar provisions exist in the TBT Agreement, where urgent problems of safety, health, environmental protection or national security arise, or threaten to arise for a member.[24]

Members are required to maintain **Enquiry Points**[25] under the TBT and SPS Agreements, which shall respond to questions and requests for information from other members (and their stakeholders in the case of TBT).[26] In the TBT context, Enquiry Points are the gateway through which incoming comments on notifications of domestic measures are funneled, and provide a link between regulators and those third parties affected by a regulation. In the context of SPS, National Notification Authorities have an obligation to ensure that incoming comments are taken into account.[27] Enquiry Points can help support IRC between members, by serving as intermediaries between different government agencies and stakeholders (especially the private sector) to facilitate cooperation and exchange of information – both at the initial stage of proposed measures and during implementation.[28]

Promotion of the use of international standards in support of regulatory alignment



The TBT and SPS Agreements contain obligations that strongly promote alignment of national regulations with international standards. More specifically, the Agreements: (i) require the use of relevant international standards as a basis for national regulations, except if the regulation would be ineffective or inappropriate to accomplish the member's legitimate objective (TBT Agreement), or the member has a scientific justification to deviate from the international standard and is based on a risk assessment (SPS Agreement); (ii) incentivize members to fully harmonize measures with international standards; and (iii) strongly encourage members to participate in the development of international standards.

First, through the requirement to use international standards, the TBT and SPS Agreements act as a catalyst for alignment of national product regulations based on voluntary international standards set by other non-WTO bodies. The use of international standards by governments brings regulatory requirements and systems closer to one another, thereby reducing the prevalence of unnecessary differences. Moreover, by providing a common reference point for regulation, and framework against which to judge divergence, this can support IRC between members. The use of international standards as the basis of national TBT or SPS measures is an impetus towards regulatory alignment on a global basis.[29] However, only governments can decide if and when to regulate. It is to be noted that, under the Agreements, international standards provide support to policy making but cannot and do not provide a substitute for government authority.[30]

The SPS Agreement recognizes the standards, guidelines and recommendations developed by the Codex Alimentarius Commission (Codex) for food safety, the World Organisation for Animal Health (OIE) for animal health and zoonoses and the International Plant Protection Convention (IPPC) for plant health as relevant international standards (colloquially known as "three sisters", and hereafter referred to as such). The international standards produced by the "three sisters", while voluntary, provide the basis for harmonization of the SPS measures adopted by WTO members, unless, as explained below, there is a scientific justification and based on a risk assessment, a member decides to introduce a measure that would result in a higher level of sanitary or phytosanitary protection.

By expressly identifying the "three sisters", the SPS Agreement enshrines the cooperation between these organizations and the WTO, while recognizing their distinct functions. Cooperation with the "three sisters" includes the possibility to participate as observers in each other's relevant meetings[31] and intervene in SPS Committee meetings under dedicated agenda items on exchange of information. The SPS Committee recommended a regular exchange of information on the interlinkages between SPS-related private standards and the standards developed by the "three sisters".[32] It also invited them "to keep the Committee informed of their activities relevant to the recognition of pest- or disease-free areas or areas of low pest or disease prevalence",[33] and recognized the relevant information they share with members[34] and their reporting of technical assistance activities.[35] Lastly, it invited them and all observer organizations to keep the Committee informed of their relevant capacity building activities,[36] as well as activities relating to equivalence.[37] SPS Committee meetings include an agenda item on monitoring the use of international standards.[38] Each of these instances can



The use of international standards by governments brings regulatory requirements and systems closer to one another, thereby reducing the prevalence of unnecessary differences.

entail meaningful exchanges and cross-feeding between the organizations which, in turn, promotes IRC.

The TBT Agreement does not contain a definition of international standards. Nor does it contain a list of recognized international standardizing bodies, as is the case under the SPS Agreement. Instead, it requires that members use "relevant international standards" as a basis for their national regulations and standards. The TBT Agreement also recognizes that in some cases, only certain parts of an international standard may be relevant for a member's regulation and policy objective (e.g. a test method), hence the requirement to use international standards, or relevant parts of them, as a basis for regulation.

There is some debate and tension in the WTO around the nature of the "relevant international standards" for the purposes of the TBT Agreement, and which has found expression in the work of the TBT Committee, the negotiations and dispute settlement.[39] In order to provide additional guidance, in 2000, the TBT Committee



took a decision on the Principles for the Development of International Standards, Guides and Recommendations, with Relation to Articles 2, 5 and Annex 3 of the TBT Agreement.[40] This decision encourages international standard-setting bodies to observe a set of principles and procedures when international standards, guides and recommendations are elaborated to ensure: (i) transparency; (ii) openness (iii) impartiality and consensus; (iv) effectiveness and relevance; (v) coherence; and (vi) the development dimension. Standards which are developed in accordance with these principles are more likely to be considered as relevant international standards for the purposes of the TBT Agreement. These principles have also been used to inform the understanding of certain terms and concepts in the Agreement in the context of WTO dispute settlement.[41]

Standards which are developed in accordance with the TBT Six Principles are more likely to be considered as relevant international standards for the purposes of the TBT Agreement.

The process of international harmonization set out in the Agreements gives members the space to deviate from international standards under certain conditions. Under the SPS Agreement, members may deviate from international standards and introduce measures which result in a higher level of health protection, provided there is a scientific justification and based on a risk assessment, as required by Article 5.[42] On the other hand, the TBT Agreement gives members the leeway not to use international standards as a basis for a regulation if they would be ineffective or inappropriate to accomplish the legitimate objective pursued by the member's measure.[43]

As explained above under transparency, if a member chooses not to use an international standard, and if that measure may have a significant trade effect, it must be notified to the WTO. This is designed to apply greater scrutiny to those measures that deviate from international standards, although in practice members are now encouraged to notify measures, even if they are based on, conform to, or are substantially the same as an international standard.[44] Members must accept comments from other members on notified draft measures. Moreover, under the SPS and TBT Agreements, members must, upon request, explain the justification



of any measure that significantly affects trade, in terms of the obligation to harmonize with relevant international standards.[45]

Second, there is a strong incentive to use international standards as the Agreements give a "safe haven" to measures that are harmonized with international standards. When TBT measures conform to relevant international standards, they are rebuttably presumed not to create unnecessary obstacles to international trade (i.e. they are presumed not to be more trade-restrictive than necessary), which provides additional incentive to use international standards. Likewise, SPS measures which conform to international standards are presumed to be consistent with relevant provisions of the Agreement and GATT 1994.[46] In practice, these provisions could shelter members from challenge when they adopt or harmonize with international standards. This additional incentive further promotes alignment and opportunities for IRC.

Third, in order to ensure that international standards are relevant for all members as a basis for harmonization, the Agreements also require members to participate in the preparation and adoption of international standards, within the limits of their resources. One of the objectives of the TBT Agreement is to encourage the development of international standards,[47] while the SPS Agreement requires members to promote the development and review of international standards.[48] Under the SPS Agreement, members should also encourage and facilitate the participation of developing countries in the relevant international organizations.[49] This, in turn, contributes to cooperation in international standard-setting bodies, which can itself contribute to IRC. Enhancing participation in international standards development increases global relevance and acceptance of standards, also increasing the likelihood of regulatory alignment on the basis of that international standard.[50] The SPS Agreement also requires the SPS Committee to develop a procedure to monitor the process of international harmonization,[51] which demonstrates that harmonization was an important objective for members during the SPS Agreement negotiations.

Cooperation in the application of TBT and SPS measures to reduce barriers: equivalence and acceptance of conformity assessment results

Regulatory alignment through adoption of international standards may not always be achievable, as WTO members still have the possibility to deviate from international standards under certain conditions (see above). There are other approaches that members can follow to reduce trade frictions without regulatory alignment.[52] The TBT/SPS Agreements provide members with sign-posts to engage in other forms of cooperation through various mechanisms, such as equivalence or arrangements for conformity assessment. These mechanisms encourage the reduction of regulatory diversity and associated trade costs.[53] This chapter focuses on equivalence in the SPS area, as well as arrangements for conformity assessment in the TBT area.

Equivalence

Equivalence refers to an arrangement in which members recognize that, although each other's product specifications and rules are different, they achieve the same result. When this happens, they can decide to accept the rules of the trading partner as "equivalent".[54] This facilitates trade by allowing firms to produce according to domestic requirements and still directly access foreign markets without having to meet another set of requirements; it likewise does not require regulations to be changed from the preferred domestic policy. The way that members choose to cooperate through equivalence agreements may vary depending on trade flows, their respective levels of protection, costs of demonstrating achievement of the appropriate level of protection in light of risk, and the possibility of unilateral or mutual recognition of equivalence.[55]





The SPS and TBT Agreements set out a framework for members to reach equivalence agreements on their SPS measures and TBT-related technical regulations. The SPS Agreement requires members to accept SPS measures of other members as equivalent, provided the exporting member adduces evidence that its measures, although different, achieve the same level of protection as the measures of the importing member. The SPS Agreement encourages members to cooperate with interested members on equivalence agreements, while the TBT Agreement also encourages similar cooperation.[56] The equivalence provisions, and the SPS Committee's decision on their implementation,[57] chart a course for IRC between members through equivalence.

More specifically, the SPS Committee's decision on "equivalence agreements" provides guidelines setting out specific procedures and timelines and promoting transparency and information. Members are encouraged to notify the SPS Committee when they have reached an equivalence agreement. The guidelines support trust and confidence building between members, and contribute to IRC by improving implementation of the Article 4 provisions on equivalence. The background to the development of the guidelines was a request from the General Council, because developing countries had indicated difficulties in implementing Article 4. The SPS Committee later adopted a work programme on equivalence and revised the decision in 2004.[58] The SPS Committee is currently reviewing the implementation of equivalence provisions in the context of the Fifth Review of the operation and implementation of the SPS Agreement.[59]

Facilitating acceptance of conformity assessment results

Divergent systems that trading partners use to verify conformity with applicable standards and regulations can create impediments to trade. Products that have demonstrated conformity to technical regulations in domestic markets might fail to conform to, or be recognized as conforming with, the regulatory requirements of importing countries, even if both countries have aligned their technical regulations with relevant international standards. To this end, any difference in conformity assessment procedures might create additional costs for manufacturers. However, as regulators are responsible for the achievement of vital public policy objectives, such as human health and safety or environmental protection, they may be unwilling to accept a test report or certificate from a foreign body that they do not know or may not trust. Moreover, limited development of National Quality Infrastructure (e.g. standardization, metrology, accreditation, conformity assessment procedures), and supporting laws and policy frameworks in many members may limit options available to regulators when choosing their conformity assessment procedures.[60]



The TBT Agreement requires members to ensure that their conformity assessment procedures, among other obligations, do not create unnecessary obstacles to international trade.[61] In other words, and amongst others, members need to strike a balance between on the one hand, the strictness of the procedures put in place to assess conformity with a given regulation's objectives, and, on the other, the risks that "non-conformity" with those objectives would create. Achieving this balance is difficult, and issues around conformity assessment procedures are a frequent source of trade friction giving rise to specific trade concerns in the TBT Committee, as duplication of testing and certification (due to non-recognition of results) can increase trade costs and create trade barriers.[62]

The SPS Agreement addresses control, inspection and approval procedures,[63] which are defined (in Annex C) as including procedures to check and ensure the fulfilment of SPS measures, including procedures for sampling, testing and certification. If members operate systems for approvals of food additives or tolerance levels, Annex C encourages them to use international standards as the



basis for access until final determinations are made, to avoid market access delays.[64] It also explicitly requires members to cooperate and assist each other to facilitate controls when these are required at the level of production.[65] Annex C procedures have also been discussed by the SPS Committee in the context of the Third Review of the Operation and Implementation of the SPS Agreement[66] at a dedicated workshop that brought together officials and relevant international standard-setting bodies,[67] and were presented as a topic of interest for consideration during the Fifth Review of the Operation and Implementation of the SPS Agreement.[68]

The relevance of control, inspection and approval procedures in the implementation of the SPS Agreement is further highlighted by the number of STCs that have been presented to the SPS Committee which refer to Annex C procedures (83 of the 447 STCs), especially in relation to undue delays in the completion of such procedures.

The provisions of the TBT Agreement on conformity assessment provide an umbrella for regulatory cooperation between members to minimize unnecessary regulatory divergence and facilitate trade, through trust and confidence building. These include recognition of conformity assessment results and the use of international and regional systems for conformity assessment.

The TBT Agreement encourages members to recognize the results of conformity assessment procedures of other members, recognizing that this needs to be built upon cooperation between members, including in respect of the adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting member. The Agreement provides a basis for cooperation, stating that prior consultations might be needed to arrive at a mutually satisfactory understanding on recognition.[69] The TBT Agreement mentions accreditation as one means to build trust and confidence in technical competence of foreign bodies providing conformity assessment procedures (CAP) results.[70] It also encourages members to allow foreign conformity assessment bodies to participate in their national conformity assessment procedures on a national treatment and MFN basis.[71]

Further, the TBT Agreement encourages members to enter into negotiations to conclude agreements on mutual recognition (MRAs) of the results of each other's conformity assessment procedures.[72] MRAs are one regulatory cooperation mechanism which allows parties to recognize specific results (e.g. test reports or certificates) in specific sectors. While little is known about the actual implementation and functioning of MRAs, they can require significant time and costs to negotiate and maintain.[73] MRAs are therefore most valuable when there are divergent regulations between countries, and where conformity assessment procedures are limited, and in sectors with deep global value chains where the trade benefits are the most obvious.[74]

The TBT Agreement requires members, wherever practicable, to formulate and adopt, as well as participate as members of, international systems for conformity assessment.[75] This can help to strengthen regional and international regulatory cooperation between members in the area of CAP. These types of international and regional systems have grown in importance since the entry into force of the TBT Agreement in 1995. In the TBT Committee members have discussed a range of systems based on arrangements between accreditation and conformity assessment bodies, including those operated by the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF),[76] International Electrotechnical Commission (IEC) (e.g. IECEE CB scheme[77]), as well as other organizations. In the TBT Committee, members have discussed how to increase regulators' reliance on these types of systems to facilitate trade.[78]

The TBT Agreement can help to strengthen regional and international regulatory cooperation between members in the area of conformity assessment procedures.



Box 3.2

OECD mutual acceptance of data on chemicals testing

As many of the same chemicals are produced in more than one country (or are traded across countries), different national chemical control policies can lead to duplication in testing and government assessment, thereby wasting the resources of industry and government alike. OECD estimates that, on average, the cost (*ad valorem* equivalent) of technical barriers to trade in chemicals was 9.3 per cent of the unit value.[1] Furthermore, differences in regulations and test standards discourage research, innovation and growth, and increase the time it takes to introduce a new (and potentially safer) product onto the market.

OECD's Environment, Health and Safety (EHS) programme was set up to make the process of testing and evaluating chemicals as efficient and cost effective as possible, while maintaining a high level of health and environmental protection.

The programme achieves these goals through, in particular, a set of OECD Council Decisions that make up the OECD Mutual Acceptance of Data (MAD)[2] system, including the OECD Guidelines for the Testing of Chemicals and the OECD Principles of Good Laboratory Practice (GLP). Under MAD, a safety test carried out in accordance with the OECD Test Guidelines and OECD GLP in one OECD country must be accepted by all OECD countries, as well as the six non-member countries that adhere to MAD. This saves the chemical industry the expense of duplicate testing for products that are marketed in more than one country and significantly reduces the number of laboratory animals needed for testing. In 2019, OECD estimated that due in large part to the MAD system, the EHS programme saves governments and industry at least EUR 309 million a year.[3]

1 OECD (2018), "Estimating ad-valorem equivalent of non-tariff measures: Combining price-based and quantity-based approaches", TAD/TC/WP(2017)12/FINAL, OECD Publishing, Paris, www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/TC/WP(2017)12/FINAL&docLanguage=En.

2 OECD Mutual Acceptance of Data (MAD) system: http://www.oecd.org/chemicalsafety/testing/mutualacceptanceofdatamad.htm.

3 OECD (2019), Saving Costs in Chemicals Management: How the OECD Ensures Benefits to Society, OECD Publishing, Paris. https://doi.org/10.1787/9789264311718-en.

Whenever members reach agreements on TBT matters these should be notified to the WTO for information.[79] These notifications increase transparency on agreements related to conformity assessment procedures reached between members and shed light on additional opportunities for IRC between members in the implementation and enforcement of regulation.

Endnotes

1 G/TBT/W/340.
2 G/TBT/W/340.
3 TBT Agreement, Article 1 and Annex 1.
4 SPS Agreement, Annex A. These include, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety.
5 OECD (2017), Op. cit., p. 50.
6 van Tongeren F., Bastien V., and von Lampe M. (2015), International Regulatory Cooperation, a Trade Facilitating Mechanism, E15 Initiative. http://e15initiative.org/publications/international-regulatory-cooperation-a-trade-facilitating-mechanism/
7 TBT Agreement, Articles 2.9.1 and 5.6.1, SPS Agreement Annex B(5)(a).
8 G/TBT/1/Rev.13, Section 5.3.1.3 page 24; G/SPS/7/Rev.4, Section 2.2 para. 2.7.
9 TBT Agreement, Article 2.9 and 5.6; and SPS Agreement, Article 7 and Annex B.
10 G/SPS/7/Rev. 4, Section 2.1; G/TBT/1/Rev.13, Section 5.3.1.2.
11 G/SPS/7/Rev.4, para. 2.2.
12 G/TBT/1/Rev.13, Section 5.3.1.4 page 25; G/SPS/7/Rev.4, para. 2.7, page 2.
13 TBT Agreement, Articles 2.9.4, 5.6.4. SPS Agreement Annex B(5) and (6); G/SPS/7/Rev.4 paras. 2.7-2.8 and 2.10.
14 G/TBT/1/Rev.13, Section 5.3.1.8 page 27. G/SPS/7/Rev.4 para. 2.28.
15 WTO members "may consider making available to other Members, where possible, non-confidential comments and questions it has received and answers it has provided" to draft SPS measures they have notified, according to recommended procedures on the implementation of transparency obligations under the SPS Agreement (G/SPS/7/Rev.4, para. 2.27).
16 Article 2.9.2 of the TBT Agreement; Annex B (5)(b) of the SPS Agreement.
17 G/TBT/35; G/SPS/7/Rev.4, Section 2.6, paras. 2.30-2.38.
18 G/TBT/35; G/SPS/7/Rev.4, para. 2.32.
19 However, it must be noted that the obligations on taking into account comments only relate to other WTO members (SPS Agreement Annex B(5)(d) and (6)(c) and TBT Agreement Articles 2.9.4 and 5.6.4).
20 TBT Agreement, Articles 2.11 and 5.8 and SPS Agreement, Annex B(1).
21 TBT Agreement, Article 2.12, SPS Agreement, Annex B(2).
22 G/TBT/1/Rev.13, Section 5.3.1.10 pages 28-29; G/SPS/33/Rev.1, para. 3.
23 SPS Agreement, Annex B(6) and Practical Manual for SPS National Notification Authorities and SPS National Enquiry Points 2018 Edition, pp. 24 and 32-34.
24 TBT Agreement, Articles 2.12 and 5.9.
25 TBT Agreement, Article 10; and SPS Agreement, Annex B(3).
26 In the SPS Agreement, Enquiry Points only have the obligation to reply to "reasonable questions" from other members (Annex B(3)). Some may reply to questions from other stakeholders, but this is not an obligation.
27 SPS Agreement, Annex B(5)(d) and Annex B(10).
28 TBT Enquiry Point Guide, 2018, www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_point_guide_e.pdf; Practical Manual for SPS National Notification Authorities and SPS National Enquiry Points, 2018 Edition, www.wto.org/english/tratop_e/sps_e/practical_manual_for_sps_national_notification_authorities_and_sps_national_enquiry_points_7531_18_e.pdf.
29 OECD (2017), Op. cit., p. 10.
30 See, for example: ISO and IEC 2007, "Principles for Developing ISO and IEC Standards Related to or Supporting Public Policy Initiatives". https://www.iso.org/files/live/sites/isoorg/files/archive/pdf/en/principles_for_developing_iso_and_iec_standards_related_to_or_supporting_public_policy_initiatives.pdfpdf
31 G/SPS/1 para.7 invites the three sisters to attend non-restricted SPS Committee meetings.
32 G/SPS/55 para. 9.
33 G/SPS/62, para. 5.9 third bullet.
34 G/SPS/62, para. 6.14.
35 G/SPS/62, para. 7.9.
36 G/SPS/62, para. 7.25 seventh bullet.
37 G/SPS/19/Rev.2, para. 10.

38 This is usually used for more general observations on international standards. The specific cases of non-use of international standards tend to be raised in specific trade concerns.

39 Wijkström, E. and McDaniels, D. (2013), 'Improving Regulatory Governance: International Standards and the WTO TBT Agreement'. Journal of World Trade 47, no. 5 (2013): 1013–1046.

40 G/TBT/1/Rev.9, Part I, Section III (pp. 10-12) and Annex B (pp. 37-39).

41 WTO Appellate Body Report, US – Tuna II (Mexico), WT/DS381/AB/R, paras. 370–2.

42 SPS Agreement, Article 3.3.

43 Under the second part of Article 2.4 of the TBT Agreement, a member may depart from a relevant international standard when it would be an "ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued" by the domestic regulation. In addition, on special and differential treatment, Article 12.4 states *inter alia*: "Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.".

44 G/SPS/7/Rev.4, para. 2.3.

45 TBT Agreement, Article 2.5; SPS Agreement, Article 5.8.

46 SPS Agreement, Article 3.2.

47 TBT Agreement, preamble, fourth recital.

48 SPS Agreement, Article 3.4

49 SPS Agreement, Article 10.4.

50 Wijkström, E. and McDaniels, D., (2013), Op. cit..

51 SPS Agreement, Articles 3.5 and 12.4.

52 OECD (2017), Op. cit.

53 OECD (2017), Op.cit., p.50.

54 We consider equivalence as concerning TBT technical regulations and SPS measures. Mutual recognition agreements deal with TBT conformity assessment procedures.

55 Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), Op. cit.

56 TBT Agreement, Article 2.7.

57 G/SPS/19/Rev.2.

58 Ibid.

59 For more information on "reviews" by the SPS and TBT Committees, see pages 58-61.

60 According to the World Bank: "Quality Infrastructure (QI) denotes the ecosystem of public and private institutions as well as legal and regulatory frameworks and practices that establish and implement standardization, accreditation, metrology, and conformity assessment (testing, inspection and certification). The QI system is required for the effective operation of the domestic market, and the international recognition of QI services is important to enable access to foreign markets." See: https://www.worldbank.org/en/topic/competitiveness/brief/qiwww.worldbank.org/en/topic/competitiveness/brief/qi.

61 TBT Agreement, Article 5.1.2.

62 McDaniels D. and Karttunen M. (2016), Trade, Testing and Toasters: Conformity Assessment Procedures and the TBT Committee, WTO Working Paper ERSD-2016-09. Available at : www.wto.org/english/res_e/reser_e/ersd201609_e.pdf.

63 SPS Agreement, Article 8.

64 SPS Agreement, Annex C(1) last paragraph.

65 SPS Agreement, Annex C(2).

66 G/SPS/36 paras. 100-101

67 G/SPS/GEN/997/Rev.8 and G/SPS/GEN/997/Rev.8/Add.1. See also www.wto.org/english/tratop_e/sps_e/workshop910718_e.htm.

68 G/SPS/GEN/1625/Rev.1.

69 TBT Agreement, Article 6.1.

70 TBT Agreement, Article 6.1.1.

71 TBT Agreement, Article 6.4.

72 TBT Agreement, Article 6.3.

73 TBT Committee discussion and Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), "The contribution of mutual recognition to international regulatory co-operation", OECD Regulatory Policy Working Papers, No. 2, OECD Publishing, Paris. http://dx.doi.org/10.1787/5jm56fqsfxmx-en.

74 Ibid.

75 TBT Agreement, Article 9.1.

76 https://ilac.org/ and https://www.iaf.nu/www.iaf.nu/.

77 https://www.iecee.org/.

78 G/TBT/1/Rev.13, Section 3.1 page 14.

79 TBT Agreement, Article 10.7.

Chapter 4

The role of the TBT and SPS Committees in supporting cooperation between members



- The SPS and TBT Committees provide permanent bodies for WTO members to regularly exchange information and experiences on the implementation of the SPS and TBT Agreements.
- Members raise "specific trade concerns" (STCs), i.e. provide feedback on proposed and final measures of other members which may create unnecessary obstacles to trade.
- The Committees periodically adopt guidance tools (e.g. decisions and recommendations) to help members to better and more efficiently implement specific provisions of the SPS and TBT Agreements.


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This chapter describes three of the cross-cutting functions of the TBT and SPS Committees to illustrate the key role they play as a cooperation forum on trade between members. Developed over time and through practice from very simple mandates, the TBT and SPS Committees have established processes, which provide members with the opportunity to: (i) exchange information and experiences on nascent regulation; (ii) address specific trade concerns (STCs); and (iii) develop guidance to support implementation. They play a role in promoting IRC among members, both from the perspective of providing a forum for discussion and the development of common guidance and by promoting greater consideration of the international environment and impacts on trading partners in the development of TBT and SPS measures (as explored in Chapter 3).



Exchanging information on nascent regulation

The TBT and SPS Committees have an important "incubator" role. For instance, the Committees support members' work by improving knowledge on a particular subject through various thematic sessions or thematic workshops (e.g. TBT Committee Thematic Sessions on GRP and Conformity Assessment Procedures in March 2019;[1] SPS Committee Thematic Sessions on Equivalence in October 2018[2] and March 2019[3]). In the context of SPS, most of these activities have focused on implementation of particular disciplines of the SPS Agreement (e.g. regionalization, equivalence and risk analysis). In the context of TBT, these exchanges have focused around key themes (e.g. transparency, standards, good regulatory practice and technical assistance), as well as cooperation on sector-specific ongoing, new or emerging regulatory issues (e.g. energy efficiency and nutrition labelling[4]). This is a way for members to learn and exchange information on various topics in a systematic and organized way, often in areas where regulation is emerging. Indeed, this type of exchange may be particularly useful for nascent problems; it is a means of promoting early dialogue before drafting of a regulation (or a Committee recommendation) commences (and therefore necessarily before any notification is made). This can help avoid trade problems emerging further down the line.

Governments could be encouraged to share information on the intention to regulate – there is a basis for this in the provisions of the TBT and SPS Agreements intended to promote early notice of regulatory activity to enable interested parties in other members to become acquainted with the proposal to introduce a particular regulation[5] however, these provisions have been little used.

As a forum for discussion of the implementation of the SPS Agreement, the SPS Committee provides various paths for members to raise matters in a structured manner. One of these paths is the standing agenda item on information sharing, which serves a preventive purpose, such as informing of an outbreak of a disease in a member's territory or another public health incident, and the measures the member is taking to keep the outbreak under control.[6] It is also used by members to explain changes in their SPS regulations, regulatory structures or certification procedures further to complying with transparency obligations through notifications, as it allows for a more detailed account and an exchange of observations between members. This agenda item also allows members and the three standard-setting bodies recognized by the SPS Agreement to provide information on their SPS-related activities.

As a forum for discussion of the implementation of the SPS Agreement, the SPS Committee provides various paths for members to raise matters in a structured manner.

The agenda of the SPS Committee meetings also covers: (i) the operation and implementation of the SPS Agreement, including items on equivalence; (ii) pest- and disease-free areas (regionalization); (iii) the operation of transparency provisions; (iv) special and differential treatment; (v) monitoring of the use of international standards; and (vi) the review of the operation and implementation of the SPS Agreement. Finally, the agenda provides for information on SPS-related technical assistance activities from the WTO Secretariat and members, and another item for observers (such as regional bodies working on SPS topics) to the SPS Committee to share relevant information.

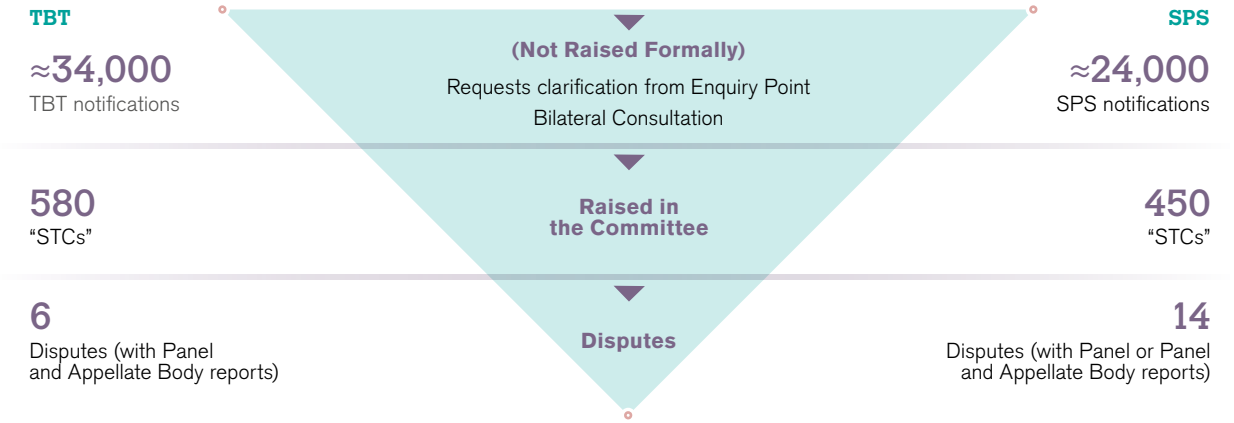
Specific trade concerns

Since the first meetings of the TBT and SPS Committees in 1995, members have used these fora to discuss trade problems related to specific measures (e.g. technical regulations, standards or conformity assessment procedures) maintained by other members.[7] Through this practice,[8] the TBT and SPS Committees created mechanisms to discuss "specific trade concerns" (STCs); in other words, this is used by WTO members as a form of peer review of issues that arise with TBT/SPS measures of trading partners. This practice contributes to IRC between members, by providing information and opportunities for policy learning in a specific deliberative setting, which institutionalizes repeated interaction between communities of trade, standards and regulatory experts on specific problems. The STC discussions provide a basis for cooperation through sharing experience, scientific and technical knowledge.[9] This was an extension of the broad mandate given to the Committees under the Agreements to consult on matters related to implementation.

Discussions of specific trade concerns provide a basis for cooperation through sharing experience, scientific and technical knowledge.

Raising an STC is not intended to be, or seen to be, a legal procedure with lawyers and adjudicators. Rather, it is first and foremost an exercise in enhanced transparency. In this exercise, members articulate concerns with regulations in a constructive, diplomatic, and technical manner. Through STCs, awareness can be raised, pressure can be exerted, and useful clarification and additional information can be provided (not only to the members concerned but rather to all interested parties). When raising STCs, members often seek to find pragmatic solutions through technical exchanges, which often takes place in bilateral meetings on the margins of the Committees. As many STCs are on draft measures, discussion of STCs may function as a means of dispute avoidance.[10] This is illustrated by the fact that since 1995, more than 1,000 STCs have been discussed in the TBT and SPS Committees, while only around 100 disputes have been brought to the WTO invoking provisions of the TBT and SPS Agreements, only about 20 of which have been the subject of panel and Appellate Body reports (see Figure 4.1).

Figure 4.1: Review of STCs by the TBT and SPS Committees



Source: WTO.

Note. Data valid as of March 2019.

In the early meetings following 1995, members would simply take the floor to talk about problems their industry was facing with respect to the measures of various trading partners. In some cases, the concerned members would respond, in some cases not. Over time, the exchanges have become more structured, and organized by issue. The TBT Committee adopted guidance in 2009 to better organize and improve efficiency of STC discussions.[11] This included specific procedures and deadlines for adding STCs to the agenda of meetings, and steps and information to be provided by members raising concerns.



The SPS Committee has specific Working Procedures that provide the basis from which the discussion of STCs has evolved,[12] which have been further developed to include specific practices and deadlines for adding STCs to the agenda of meetings, and steps and information to be provided by raising members.[13] The SPS Committee has consistently encouraged members to use this agenda item effectively and "to seek to find mutually satisfactory resolutions of these problems".[14] The SPS Committee has also recognized the contribution of STCs to avoiding potential trade conflicts,[15] and the commitment of the "three sisters" to address the issues raised as STCs and assist members accordingly.[16] Along these lines, a proposal was presented to consider the role of international organizations, in particular the "three sisters", in addressing SPS issues.[17]

In both Committees, the procedures for raising STCs can enable cooperation.[18] When placing an STC on the agenda, concerned members in parallel inform the member against which they are raising the concern, creating an additional opening for cooperation before discussing the matter in the Committee. In addition, when a member raises a new STC on the agenda, the regulating member is warned in advance by the WTO Secretariat through its inclusion in the agenda, which is circulated to members two weeks before the meeting in order to give time to prepare a response.

The concerned and regulating member may hold bilateral meetings with other members on the margins of the Committee meetings, sometimes in advance of the STC discussion. This allows space for bilateral discussion and progress towards resolution, in which case the concerned member may withdraw the STC from the agenda of the Committee meeting. Between 2015-2017, 27 STCs were withdrawn from the agenda of the nine meetings of the TBT Committee, an average of three per meeting. This represents around 5 per cent of the STCs discussed at any given meeting during that period, in which advance cooperation led to some form of positive developments for the concerned member. Between 2015-2018, 11 STCs were withdrawn from the agenda and 70 new STCs were discussed at the 12 meetings of the SPS Committee; this may indicate progress made in addressing these concerns following discussion in the lead-up to meetings.

The fact that the STC discussion takes place in the presence of all WTO members and is reflected in the minutes/summary report of the meeting (a publicly available document) exerts a certain level of public pressure and is an incentive for members to cooperate and be receptive to the concern. Applying this peer pressure on members can help push for progress in addressing concerns. Sometimes groups of complaining members will raise concerns together, which can add weight to the STC.[19]

The Committees are comprised of communities[20] of trade experts, standards officials, enquiry point officials, and in some cases sectoral regulators from members and acceding members as observers. They take place during a weeklong set of meetings. The Committees follow a pragmatic and efficient approach, dealing with highly technical issues and data. Delegations, in particular those from larger economies, engage in extensive bilateral cooperation in the margins of TBT and SPS Committee meetings. For instance, during 2018, there were 171 bilateral meetings booked in WTO rooms on the margins of TBT Committee meetings (66 in March; 44 in June; 61 in November). In 2018, there were 165 bilateral meetings booked in WTO rooms on the margins of SPS Committee meetings (50 in March; 62 in July; and 53 in November). This does not include reservations of rooms that do not specify the purpose of the meeting nor other meetings (at lunch or coffee, not taking place in a WTO meeting room), which would further increase this total.

Learning is one notable feature of the STC discussion in the TBT and SPS Committee. Peer-to-peer learning is one possible pathway of IRC between trading partners, and can contribute to administrative efficiency.[21] Learning can relate to how specific regulations and policies perform in different contexts, as well as to the external impacts of regulation on trading partners, sensitizing the regulating member.[22] Peer learning also brings awareness of legitimate objectives and appropriate levels of protection sought by members in light of specific risks.[23] More broadly, learning encompasses application of good regulatory practices to the preparation and application of specific measures, based on the practices of other members, which promotes the improvement of TBT and SPS measures.[24]

Learning is built into the STC discussion through structured exchanges between concerned and regulating members and the periodicity of meetings, which allow specific measures to be tracked over time. Moreover, the fact that a relatively stable set of participants are engaged in the TBT Committee, including representatives from capitals, may enhance learning. Information and feedback about performance, or adjustments made to measures due to learning from implementation, can be fed into Committee discussions. By providing a space for learning from differences, the STC discussion is a form of "cooperation on learning" from policy experimentation and change.[25] This arises from the regulatory autonomy enshrined in the TBT and SPS Agreements, which recognize the possibility of necessary regulatory diversity in light of different policy objectives and risk tolerances across countries, which extends to using (or not using) international standards.

As mentioned above, learning also occurs in respect of differences in the levels at which members choose to regulate, i.e. in terms of appropriate levels of protection (ALOPs) and legitimate objectives, and the argumentation they advance in this respect. Through the Committees, members may learn how another member has sought to address a legitimate objective in a novel regulatory area, or to address an established aim of regulation in an innovative manner.[26] To the extent this policy objective later becomes shared by another member, a member may decide to use a similar or adapted measure with greater confidence after having learned from the STC discussion about possible frictions of this measure with the implementation of the SPS or TBT Agreements. In this way, learning through cooperation in Committees can strengthen the justification of the regulation, including by building coalitions of supportive regulating members.

The Committees follow a pragmatic and efficient approach, dealing with highly technical issues and data.

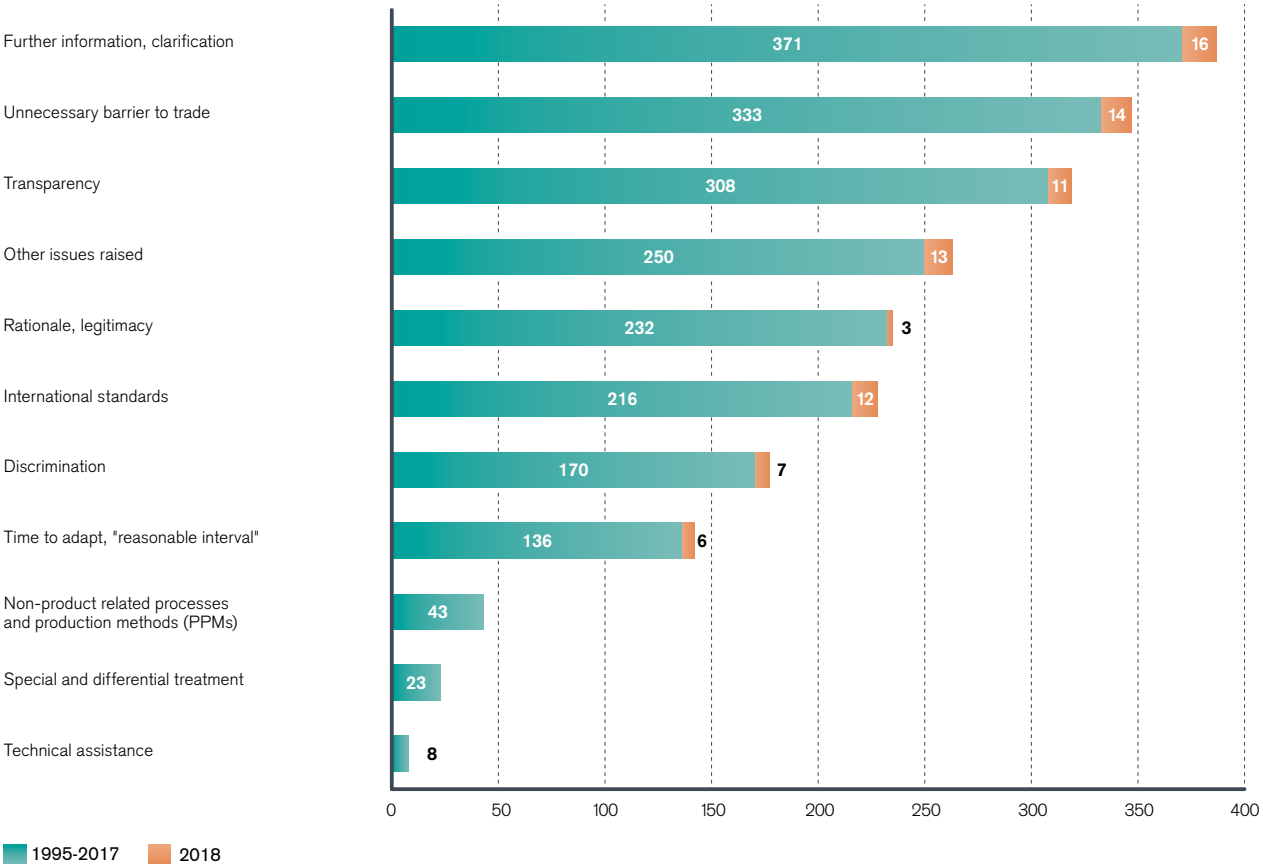
Learning can relate to how specific regulations and policies perform in different contexts, as well as to the external impacts of regulation on trading partners, sensitizing the regulating member.

In addition, observers can make important contributions, e.g. by referring to the existence of (or plan to develop) an international or regional standard on the issue. Of course, the opposite result is possible; in other words members may learn from the STC discussion that a certain regulatory approach is perceived as ineffective and incompatible with the Agreements by other members, giving rise to the need to consider an alternative approach.[27] Moreover, the discourse may have a bearing on what is perceived as effective, and may in some instances have a tendency to homogenize regulatory cultures at the expense of experimentalism.[28]

Discussions on STCs in the TBT/SPS Committees also help to enhance transparency about regulations.[29] This information is relevant to both firms seeking to access markets, and regulators developing new rules, the provision thereof supporting IRC between trading partners in at least two different ways.[30] Seventy per cent of STCs in the TBT Committee address notified measures, whereas 40 per cent of STCs in the SPS Committee refer to an SPS notification. Indeed, many STCs stem from regulatory uncertainty facing industry in concerned members, such as a lack of information about a new regulation's scope or timeline, which is raised to the trade representatives of the concerned member.[31]

In the TBT Committee STC discussion, the most frequent type of concern raised is with respect to clarification and further information (see Figure 4.2).[32] While some concerns extend into more targeted queries of legal inconsistency, one study suggests that those STCs that focus on gathering information are most successful at reaching some form of resolution.[33] Repeated exchanges during Committee meetings provide an incentive to the regulating member to meet the information demands of concerned members; otherwise the issue may remain on the agenda.

Figure 4.2: Issues raised in TBT STCs, 1995-2018



Source: WTO (2019), Twenty- Fourth Annual Review of the Implementation and Operation of the TBT Agreement, G/TBT/42.

Guidance for enhancing implementation: decisions and recommendations

Both the SPS and TBT Committees have adopted a substantial body of guidance instruments (decisions and recommendations) since 1995. This normative part of the Committees' work relates to the gradual development of guidance to facilitate the better implementation of the Agreements. The Committee's recommendations include principles, guidelines, best practices and recommended procedures. The focus is cross-cutting and on the Agreements' key provisions, such as transparency, equivalence, international standards, conformity assessment or technical assistance (as opposed to the consideration of specific measures). The process is a continuous feature of the Committee's work and tends to be more intensive during built-in review cycles. Compared to the discussion of STCs, it is forward-looking and pre-emptive in nature; when successful it may help minimize any future problems (STCs).

The mandate for both the TBT and SPS Committees' work stems from the Agreements: for TBT, members are tasked with meeting for the "purpose of affording members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives".[34]



The SPS mandate is similar and aims to "provide a regular forum for consultations (…) to carry out the functions necessary to implement" the SPS Agreement and "the furtherance of its objectives, in particular with respect to harmonization".[35]

The operation and implementation of the two Agreements is periodically reviewed; the TBT Committee has a three year-cycle[36] and the SPS Committee four years.[37] More specifically, the textual basis in the SPS Agreement is to review the operation of the Agreement every three years "with a view to recommending an adjustment of the rights and obligations of this Agreement where necessary …. Having regard, inter alia, to the experience gained in the implementation of the Agreement…".[38] Although neither Committee has ever submitted any proposals for amending the legal texts, a large body of recommendations and decisions has been developed through this review process to maintain the relevance of both Agreements.

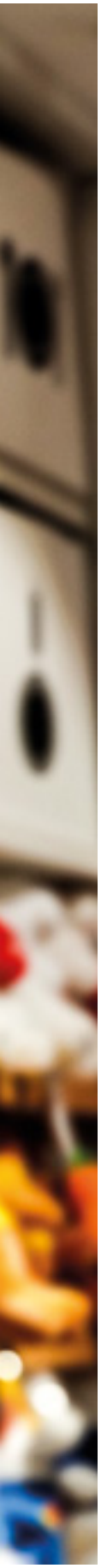


In the TBT Committee, work on the triennial review follows a clearly choreographed process. This process has evolved from practice rather than by design and is sometimes referred to as the "triennial review process", normally spanning over a little more than a year. The SPS Committee also has periodic reviews of the operation and implementation of the SPS Agreement. In both Committees, the reviews begin with an agreed timeline and process for the review (which includes deadlines for the submission of proposals), followed by inputs from members (proposals), evolves mid-way into a (first) draft text by the Secretariat, turns into a series of back-and-forth iterations between Secretariat and delegations with, towards the end, increasing engagement by the Chairperson as the text moves closer to consensus, and, finally adoption. It is a text-based negotiation that has to date always led to agreement in the Committees by consensus among all members, albeit sometimes with extensive discussions along the way.

A large body of recommendations and decisions has been developed by the TBT and SPS Committees to maintain the relevance of both Agreements.

In the SPS Committee, review reports are also adopted by consensus with a high degree of engagement from the membership, usually within schedule.[39] Nevertheless, members decided to return to the four-year cycle and agreed on the process for the Fifth Review of the Operation and Implementation of the SPS Agreement;[40] members have since submitted 13 papers and proposals.[41]





The outcome of deliberations is a report, containing recommendations, which is subsequently adopted by consensus.

A few points are worth stressing about this process. First, throughout it is a transparent and member-driven process: members' initial proposals are circulated to all members; the Secretariat's first draft text is circulated at the same time to all members; in addition, if the TBT Committee has any comments on the evolving draft, the texts are circulated as track-change documents to all members. Second, the Secretariat's involvement is substantive (it is entrusted with preparing the first and subsequent drafts based on the proposals and discussions). Third, it is a gradual, step-by-step process, with members, Secretariat and Chair moving closer with each iteration of the draft. This does not, of course, guarantee the report will be adopted as scheduled; both the TBT and SPS Committees have, at times, run into difficulties. Nevertheless, the process does convey "ownership" to Committee participants, and the process itself tends to engender a collective sense of ownership which, at the very least, contributes to reaching an outcome.

The outcome of deliberations is a report, containing recommendations, which is subsequently adopted by consensus. In many cases, the SPS Committee has begun work as part of a review that has later resulted in the adoption of a standalone guidance document, such as a decision or a procedure. The nature of the decisions and recommendations range from the very specific to the very general and can sign-post the Committees' work over the following years; they can create a form of work programme, or provide a specific mandate for further work, for instance the development of guidance in a particular area. An example of very specific guidance is the agreement, in both Committees, that the time for comments on draft regulations should be at least 60 days.[42] An example of more general guidance is the 2000 TBT Committee decision on the Six Principles for international standards,[43] or more recently in the SPS context, the development of a procedure to help resolve food safety and animal-plant health friction in trade through facilitation.[44] It is important to stress that these are not agreed amendments or changes to the treaty texts; instead, they should be seen as building blocks that collectively form "best practices" that serve to facilitate implementation of the Agreement and do not alter rights and obligations. In other words, although anchored in the hard law of the Agreement texts (as discussed above), this relates to the development of soft law. How members incorporate this guidance into their own procedures and laws is up to them; they may choose to draw on this "soft" law for domestic requirements, or even do so on a wider basis among parties in RTAs.[45]

In November 2018, the TBT Committee adopted its Eighth Triennial Review report. This document contains 40 recommendations agreed by members across the areas of: good regulatory practice, regulatory cooperation, standards, conformity assessment procedures, transparency, technical assistance, and operation of the Committee. In July 2017, the SPS Committee concluded its Fourth Review of the operation and implementation of the SPS Agreement with recommendations including: monitoring the use of international standards; equivalence; consistency; regionalization; transparency; technical assistance; special and differential treatment; specific trade concerns; use of ad-hoc consultations, and cooperation with the three standard-setting bodies (the "three sisters").[46] The ongoing Fifth Review was launched in March 2018.[47]

In sum, the value of this normative part of Committees' work is that it is a source of best practice that leverages the Committee's expertise and, in doing so, adds dynamism to the treaty text itself. Delegations, Chairs and the Secretariat come and go, but the "collected works" of decisions and recommendations can be built on, picked up where one Chair or members left off and reverted to when more opportune. Thus, the outcome is an expression of the institutional knowledge of the Committees in their particular areas of expertise. The value of this work may extend beyond the WTO membership.

Endnotes

1 The thematic session on GRP focused on domestic coordination: www.wto.org/english/tratop_e/tbt_e/thematicsession5319_e.htm ; and, the thematic session on conformity assessment procedures focused on market surveillance and risk assessment: www.wto.org/english/tratop_e/tbt_e/thematicsessioncap5319_e.htm

2 https://www.wto.org/english/tratop_e/sps_e/workshop301018_e.htm

3 https://www.wto.org/english/tratop_e/sps_e/workshop18032019_e.htm

4 G/TBT/41, paras. 2.2-2.16.

5 TBT Agreement, Articles 2.9.1, 5.6.1, 10.1.5 and SPS Agreement, Annex B(5)(a).

6 Members share information on various topics, for instance: Canada, for example, used this agenda item to inform and update members on its work to modernize its food safety framework and its Safe Food for Canadians Regulation (SFCR); the United States provided updates on the Food and Drug Administration (FDA) Food Safety Modernization Act (FSMA) and Japan has been using this agenda item to update members on the situation surrounding Japanese food after the Fukushima nuclear power plant incident.

7 G/TBT/1/Rev.13, Section 8.1, page 49; G/SPS/GEN/204/Rev.18 Section 1. See also Report of the SPS Committee G/L/118 of 15 October 1996.

8 This practice was carried over from the GATT TBT Committee, established in 1980.

9 See, for example: Holzer K., 'Addressing Tensions and Avoiding Disputes: Specific Trade Concerns in the TBT Committee' (2019) 14 Global Trade and Customs Journal, Issue 3, pp. 102-116; Sungjoon C.; J.; Radecki; and S. Cecilia (2017) "Communitizing Transnational Regulatory Concerns," Chicago Journal of International Law: Vol. 1 8: No. 1, Article 2, at page 69; Lang A. and Scott, J., "The Hidden World of WTO Governance", European Journal of International Law, Volume 20, Issue 3, 1 August 2009, at page 593, https://doi.org/10.1093/ejil/chp041; Gruszczynski L., (2013), The Reach Regulation and the TBT Agreement: the role of the TBT Committee in regulatory processes, chapter 12 in Research Handbook on the WTO and Technical Barriers to Trade, edited by Epps T. and Trebilcock, M. J., Edward Elgar Publishing, 2013.

10 See: Horn, H., P.C. Mavroidis and E.N. Wijkstrom, "In the Shadow of the DSU: Addressing Specific Trade Concerns in the WTO SPS and TBT Committees", 47 J. World Trade 729, 754 (2013); Karttunen M. (2016), "Transparency and dispute settlements: a study of the agreements on sanitary and phytosanitary measures and technical barriers to trade", EUI PhD thesis, available at http://cadmus.eui.eu/handle/1814/44490; Kateryna Holzer (2019), Op. cit.), pp. 102-116.

11 G/TBT/1/Rev.13, Section 8.1.1, page 50.

12 G/SPS/1 Working Procedures of the Committee, paras. 2-3. Paragraph 3 instructs members raising "a matter relating to a particular notification in the course of a meeting" to "give notice of its intention to the notifying notifications".

13 The SPS Committee also agreed to undertake discussions to "[c]onsider how developing country Members, and in particular least-developed country Members, can make greater use of the opportunities provided by the SPS Committee to identify and resolve specific trade concerns." G/SPS/35 para. 43(c).

14 G/SPS/36 para. 86; G/SPS/53 para. 94; S/SPS/62 para. 10.6.

15 G/SPS/12 para. 25.

16 G/SPS/36 para. 12.

17 G/SPS/W/304, in the context of the Fifth Review of the Operation and Implementation of the SPS Agreement.

18 For further description on the procedures for raising STCs, see: Karttunen M. (2016), Op.cit. and Holzer K., (2019), Op. cit., pp.103-105.

19 For example, SPS STC 382 concerning the European Union's revised proposal for categorisation of compounds as endocrine disruptors, was initially raised by four members and supported by another forty members over time (http://spsims.wto.org/en/SpecificTradeConcerns/View/382).

20 Black, J., 2002, "Regulatory conversations". Journal of Law and Society, 29(1), 163-196. Cho et al. (2017).

21 OECD (2013a). For discussion about learning in the context of WTO dispute settlement, see, e.g.: Shaffer, G., M. R., Sanchez, and B. Rosenberg (2008), "The Trials of Winning at the WTO: What Lies Behind Brazil's Success". Cornell International Law Journal, 41:383; Conti, J. (Joseph. 2010), "Learning to Dispute: Repeat Participation, Expertise, and Reputation at the World Trade Organization". Law & Social Inquiry, 35(3):625-662.

22 Andrew L. and Scott J. (2009), Op. cit.,, p. 593; Gruszczynski L. (2013), Op. cit.

23 Sungjoon C.; J. Radecki; and S. Cecilia (2017), Op. cit., p. 69.

24 OECD (2016), op. cit.; Holzer K., Op. cit., p.107.

25 Wiener J. B., Alemanno A., (2015), "The Future of International Regulatory Cooperation: TTIP as a Learning Process Toward a Global Policy Laboratory", 78 Law and Contemporary Problems 103-136 (2015). Available at: https://scholarship.law.duke.edu/lcp/vol78/iss4/5.

26 Holzer K. (2019), Op. cit., pp. 107-108.

27 For studies on "regulatory chill" in the trade law context, see, e.g.: Santos, A. (2011) "Carving Out Policy Autonomy for Developing Countries in the World Trade Organization: The Experience of Brazil & Mexico". Vanderbilt Journal of International Law, 52:551; Shaffer, G. (2015) "WTO and regulatory governance". Regulation & Governance, 9: 1-15. For studies in the international investment law context, see: Tienhaara, K. (2009), The Expropriation of Environmental Governance: Protecting Foreign Investors at the Expense of Public Policy. Cambridge, UK: Cambridge University Press.

28 For a discussion on the need for experimentation in the face of modern regulatory challenges, see: Charles Sabel and Jonathan Zeitlin, (2012). "Experimentalist Governance" in The Oxford Handbook of Governance, edited by David Levi-Faur.

29 On the role of the STC discussion in clarifying technical regulations, see: Holzer K. (2019) Op. cit., p. 107.

30 On the power of information in domestic regulatory processes, see, e.g.: Wagner, W. E. (2010) "Administrative Law, Filter Failure, and Information Capture". Duke Law Journal, 59(7):1321-1432.

31 On the role of the STC discussion in reducing uncertainty, see a page 435: Lukasz Gruszczynski (2013), Op. cit.

32 WTO (2017), G/TBT/39/Rev.1.

33 Cho, S., J. Radecki, and C. Suh (2017), Op. cit. Available at: https://chicagounbound.uchicago.edu/cjil/vol18/iss1/2

34 TBT Agreement, Article 13.1.

35 SPS Agreement, Article 12.1.

36 TBT Agreement, Article 15.4.

37 SPS Agreement, Article 12.7. providing for an initial review after three years, and then Doha Ministerial Declaration establishing four-year cycle.

38 SPS Agreement, Article 12.7.

39 The adoption of the Fourth Review Report was delayed due to lack of consensus.

40 G/SPS/W/296/Rev.1.

41 G/SPS/GEN/1625/Rev.1.

42 For TBT, G/TBT/1/Rev.13, p. 27 and, for SPS, G/SPS/7/Rev.3, para.13.

43 TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the TBT Agreement (G/TBT/1/Rev.13, Annex 2).

44 G/SPS/61 Procedure to Encourage and Facilitate the Resolution of Specific Sanitary or Phytosanitary issues among members in Accordance with Article 12.2, regarding ad hoc consultations.

45 McDaniels D., Molina A.C. and Wijkström E.N. (2018), Op. cit., pp. 815–843.

46 G/SPS/62, 25 July 2017, Review of the Operation and Implementation of the SPS Agreement, Report adopted by the Committee on 14 July 2017.

47 G/SPS/W/296/Rev.1, Proposed Process for the Fifth Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures.

Chapter 5

Improving the TBT and SPS frameworks

- The transparency provisions of the SPS and TBT Agreements are generally well implemented by WTO members, although there is room for improvement. The ePing alert system helps stakeholders keep track of notifications of relevance to them. Opportunities could be explored to enhance internal coordination, including on the notification mechanism and other domestic stakeholder engagement processes.

- The discussion of specific trade concerns (STCs) has grown significantly. Opportunities could be explored to share information on the outcomes of these discussions in the TBT Committee, in light of the positive experience in the SPS Committee.

- Opportunities could be explored to improve monitoring of the use of international standards by the Committees, and of the application of the "Six Principles".

- Opportunities could be explored to enhance acceptance of conformity assessment results (TBT) and recognition of equivalence (SPS).



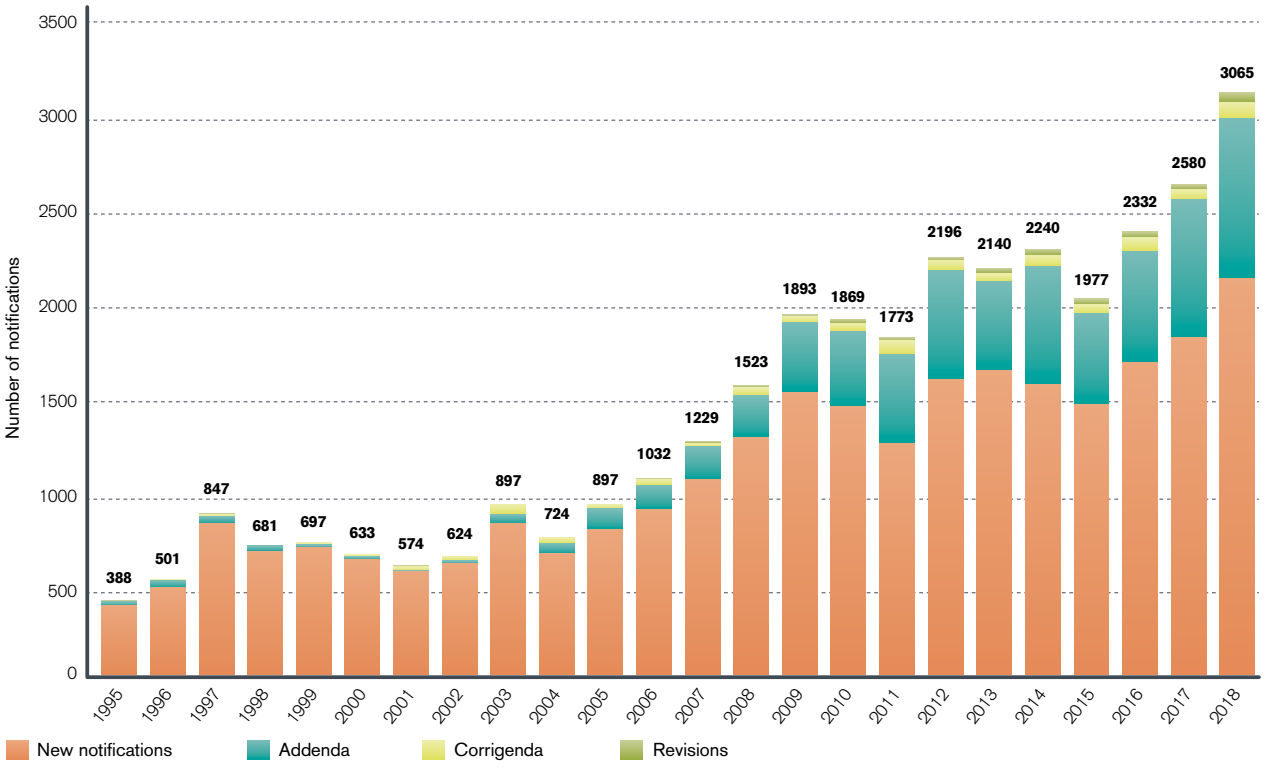


Transparency in practice

The TBT and SPS notification obligations are generally well implemented by WTO members, although there is room for improvement. The number of TBT and SPS notifications increased significantly between 2007 and 2018. The total number of TBT notifications increased from 1,229 in 2007 to 3,065 in 2018 (see Figure 5.1). Similarly, the number of SPS notifications grew from 1,196 in 2007 to 1,632 in 2018 (see Figure 5.2).[1] In terms of participation, in 2018, 86 members submitted at least one TBT notification, the highest level of participation in submission of notifications in any year since 1995. Moreover, 83 per cent of TBT notifications in 2018 were submitted by developing and least-developed members.[2]

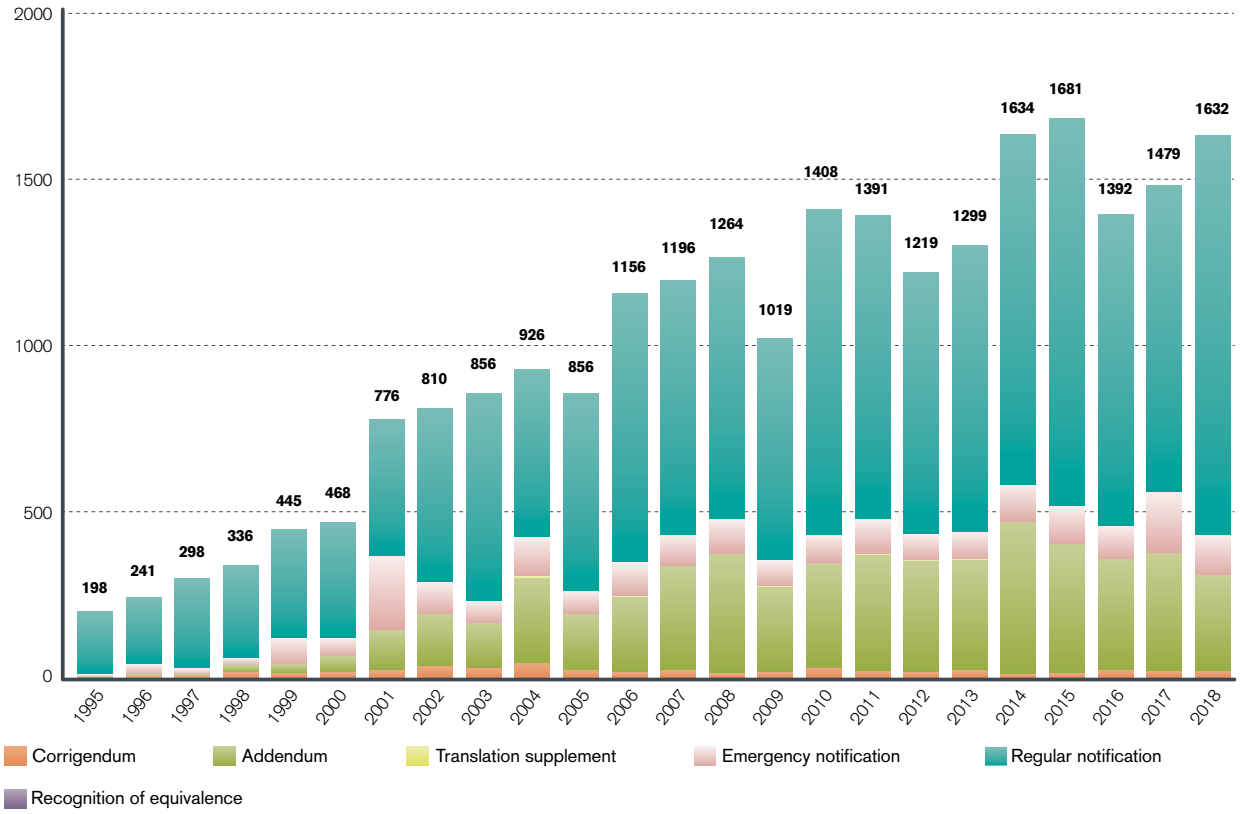
Since the entry into force of the TBT Agreement and up to 31 December 2018, 137 members (84 per cent of the membership) had submitted at least one TBT notification. As of September 2018, 127 members had submitted SPS notifications, including two members that submitted notifications for the first time in 2018. In all, 68 members notified at least one SPS measure in 2018,[3] about 73 per cent of which were submitted by developing countries.[4] Nevertheless, there are opportunities to further enhance implementation of the TBT and SPS notification obligations across the WTO membership, including through technical assistance.

Figure 5.1: Total number of TBT notifications from 1995 to 2018



Source: WTO TBT IMS, http://tbtims.wto.org/ (accessed 12 March 2019).

Figure 5.2: Total number of SPS notifications from 1995 to 2018



Source: WTO SPS IMS, http://spsims.wto.org/ (accessed 12 March 2019).

The ePing alert system can help exporters, especially small and medium-sized enterprises (SMEs), more easily obtain access to relevant information on regulatory requirements.

Tracking and monitoring the more than 4,500 TBT and SPS notifications submitted each year is a considerable challenge, and resource and capacity constraints may limit the extent to which notifications reach affected members and stakeholders. If members and their stakeholders are not aware of notifications that could impact their trade, they are not in position to submit comments on them and engage in subsequent opportunities for discussion and cooperation to reduce potential trade frictions.

The ePing alert system,[5] a free publicly available online tool developed in collaboration with the United Nations Department of Economic and Social Affairs (UNDESA) and the International Trade Centre (ITC) can help stakeholders keep track of notifications and react to them in a timely manner. ePing can help exporters, especially small and medium-sized enterprises (SMEs), more easily obtain access to relevant information on regulatory requirements. More broadly, ePing helps to raise awareness among stakeholders on TBT and SPS and relevant regulatory developments, and can also support coordination. Once registered on the ePing website with their filter preferences, users start receiving email alerts when notifications affecting products or markets of particular interest to them are circulated. In addition, the ePing website can serve as a communication platform to exchange comments and other documentation (such as translations) related to notifications. WTO members' officially designated SPS and TBT Enquiry Points can also request access to the Enquiry Point Management Tool in order to communicate with domestic stakeholders and connect with Enquiry Points of other countries.

Since its launch in November 2016, ePing has gained more than 6,500 users up to April 2019, about half of whom are from the private sector.[6] ePing uses information from two publicly available and searchable WTO databases on notifications and

STCs – the TBT information management system (IMS)[7] and SPS IMS.[8] However, ePing remains a tool, and to take full advantage of its benefits, a number of actions and structures are needed at the domestic level. These include engaged and active TBT and SPS Enquiry Points; mechanisms for national coordination; and efforts to build up capacity of public and private stakeholders to understand and react to the information provided (e.g. by preparing comments on notifications of interest).

Both the TBT and SPS Committees have recently set out recommendations for a range of further work to enhance implementation of the transparency provisions. In November 2018, the TBT Committee agreed on several recommendations for further work on transparency in the context of the Eighth Triennial Review of the TBT Agreement.[9] These include:

1. Enquiry Points: validate their functionality in all members, and explore the use of online tools like ePing to facilitate their work.[10]

2. Domestic coordination: good practices for domestic coordination and engagement with regulators to ensure that all relevant notifications are made, including domestic committees and other administrative mechanisms.[11]

3. Submission of notifications: improving product information in notifications and making available online relevant supporting documents cited in notifications; discussing how to identify deviations for international standards; and discussing how to handle notification of measures that may fall under the TBT and/or the SPS Agreement;[12] exploring the need to update the notification template.[13]

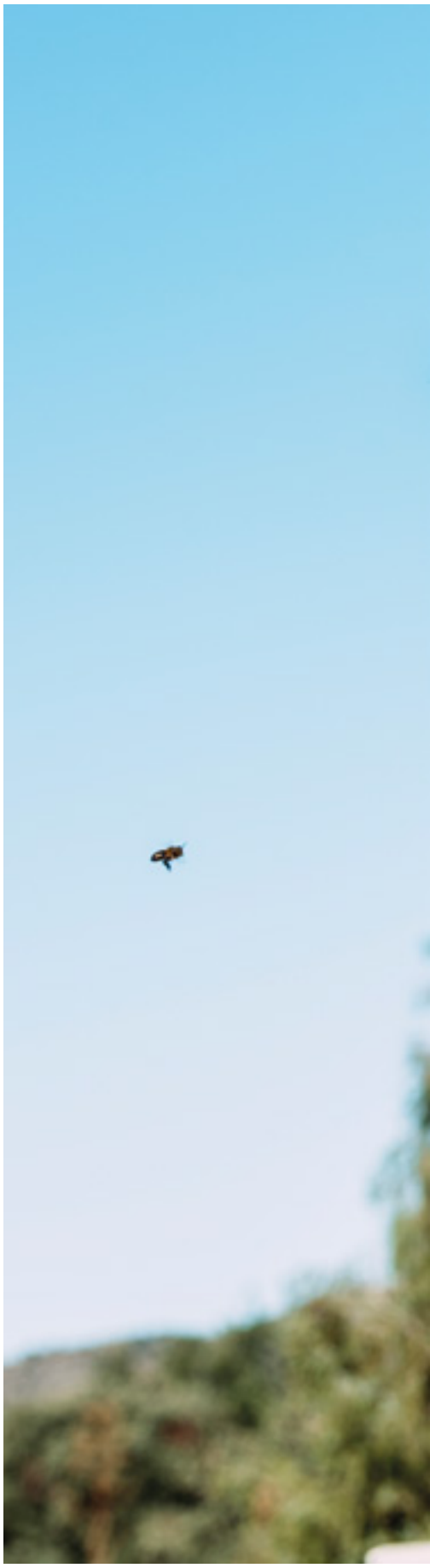
4. Adopted final texts: further encourage members to notify adopted final texts and to modify or develop a new addenda template to indicate when the measure entered – or will enter – into force and where the final text can be downloaded; to share websites where adopted final texts of technical regulations, as well as applicable conformity assessment procedures, can normally be accessed.[14]

5. Handling of comments: further encourage members to disseminate comments received on notifications, and substantive replies given, possibly through an online tool.[15]

6. Preparation of comments: to develop a good practice guide on how to prepare a comment on a WTO notified technical regulation or conformity assessment procedure.[16]

7. Regulatory impact assessment: encourage members that apply regulatory impact assessment (RIA) to provide access to assessments (*ex-ante* and *ex-post*) through TBT notifications.[17]

The Fourth Review of the Operation and Implementation of the SPS Agreement, adopted by the SPS Committee in July 2017, included several recommendations pertaining to transparency: to maintain it as a standing agenda item; to ensure the full implementation of the transparency provisions, and to the extent possible, follow the recommended procedures for implementing these obligations;[18] encourage developing country members to identify their difficulties to implement transparency provisions, and assistance to least-developed and developing country members and to their notification authorities and enquiry points; to take implementation difficulties into account to consider proposals to modify the recommended procedures and when revising and modernizing the SPS Information Management System (SPS IMS) and Notification Submission System (SPS NSS).[19]







After the period covered by the report of the Fourth Review, the Committee continued to consider some proposals on transparency submitted as part of the Review. Following a joint proposal,[20] the SPS Committee agreed that the WTO Secretariat should develop a questionnaire on transparency to undertake a diagnosis of members' needs and difficulties in 2015.[21] The analysis of its results[22] fed into a dedicated workshop in 2015,[23] and thematic session in 2017.[24]

Internal coordination on transparency, including through domestic committees and other administrative mechanisms, remains an important area of focus in both the SPS and TBT areas. In the context of the SPS Fifth Review, one relevant proposal[25] seeks to examine how to strengthen national SPS committees to enhance coordination at the national, regional and international levels. It identifies as topics for discussion: (i) the mechanism for establishment and composition of national SPS committees; (ii) the role of the private sector in advising or providing input to national SPS committees; (iii) the procedures for developing national SPS strategies and positions in regional and international organizations; (iv) the use of established information exchange mechanisms; and (v) the role of national SPS committees in advocacy. The proposal also queries the usefulness of a "good practices" document. The SPS Committee will hold a dedicated workshop in July 2019 on these topics.

Similarly, in the TBT Committee, members held a thematic session in March 2019 to exchange experiences on domestic TBT committees, and other administrative mechanisms facilitating internal coordination.[26] These discussions highlighted the importance of including a broad range of stakeholders, the role of coordination mechanisms in implementing the transparency provisions of the Agreement and preparing positions for TBT Committee meetings, and the need to build awareness of TBT obligations among regulators, e.g. through guidance documents.[27] The TBT Committee has also agreed to discuss good practices for domestic coordination and engagement with regulators to ensure that all relevant notifications are made.[28]



More broadly on internal coordination, data collected in support of the 2018 OECD Regulatory Policy Outlook shows that, in some cases, coordination may not be particularly strong between the TBT and SPS Agreement transparency provisions and the domestic consultation processes required of regulators in the development of laws and regulations. It notes that: "while the transparency disciplines related to notification in trade fora have been thoroughly developed by the trade community, including related guidance, they appear to be largely self-contained and have limited interface with the regulatory policy agenda".[29] One illustration of this is the separation in OECD countries between authorities responsible for the oversight of TBT and SPS notification process and those in charge of supervising the engagement of stakeholders in rule-making processes: only eight countries report that their regulatory oversight bodies play a role in the notification requirement for primary laws and seven for subordinate regulations. More cross-fertilization and information sharing could help improve the functioning of transparency and consultation processes.

The TBT Committee recommendations on RIA point out the important opportunities that exist for cooperation between members following notifications, and the value in exchanging of comments about the rationale and analysis behind the proposed measures. The TBT Agreement requires members to justify a technical regulation which may have a significant effect on the trade of other members, upon request of another member.[30] Sharing the justification behind a regulation, including the analytical work, supports cooperation between members by building understanding of the problem (market failure) that the regulating member is trying to address, and how the selected measure addresses that problem.[31] Similarly, the SPS Agreement requires members to explain the reason for measures that deviate from international standards, upon request.[32]

In 2012, the TBT Committee encouraged members to share, together with notifications of proposed measures, any "assessment (such as regulatory impact assessment) that they may have undertaken on the potential effects of the draft measure, including likely impacts on consumers, industry and trade (e.g. a cost-benefit analysis, analysis of alternative measures)".[33] However, since 2013, only about ten TBT notifications from the European Union, Brazil, Mexico and the United States have included this type of information.[34] This is in line with the results of the 2018 OECD Regulatory Policy Outlook, which finds that RIA is not systematically made available to stakeholders as a supporting document in the consultation process on new primary and secondary legislation. This trend is nevertheless on the rise and it is therefore not surprising that this recommendation was reiterated and deepened in 2018,[35] showing that this is an area where members believe further improvements could be made, which could contribute to international regulatory cooperation (IRC) opportunities.

Internal coordination on transparency, including through domestic committees and other administrative mechanisms, remains an important area of focus in both the SPS and TBT areas.

Further in the SPS area, information can be requested from Enquiry Points on risk assessment procedures, factors taken into consideration, and the determination of the appropriate level of protection (ALOP).[36] This can help interested members and stakeholders provide more effective feedback and suggestions about possible alternative measures to address the regulating member's policy objective in a less trade restrictive manner.

Finally, another opportunity that could be explored is to better harness early notices to foster engagement with stakeholders and promote opportunities for cooperation between interested members at an early stage. The TBT Committee has agreed to examine the ways in which the publications for such early notices – and their content – are made available to enable all interested parties to become acquainted with them.[37] The SPS Committee has agreed on recommended procedures to implement transparency obligations but they do not contain guidance in relation to early notices.[38] Early engagement between members can help to avoid unnecessary regulatory diversity down the line.

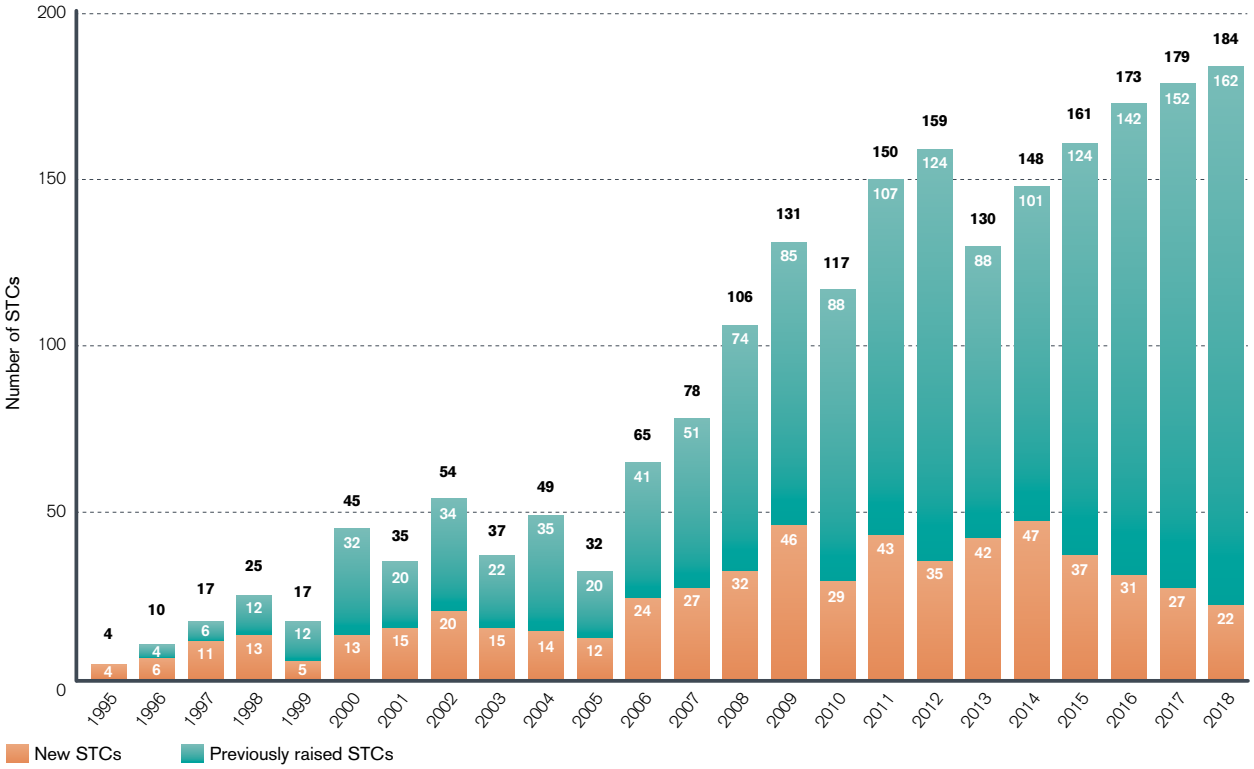
Strengthening the effectiveness of specific trade concerns

Discussion of specific trade concerns (STCs) has grown significantly over the history of the Committees, and the TBT Committee is particularly active in this area. However, while widely used by some members, it is important to ask how effective the STC discussion is at resolving concerns, and how it could be improved. This chapter explores avenues to strengthen the effectiveness of STCs to better promote opportunities for cooperation. The reporting of the resolution of STCs in the SPS Committee is a valuable practice that could be worthy of further consideration in the TBT Committee.

Overall trends in STCs

There has been a steady increase in the number of STCs raised in the TBT Committee, particularly since 2006 (see Figure 5.3). In the SPS Committee, the level of STCs discussed peaked in the early 2000s, and has been relatively stable since 2007 (see Figure 5.4).

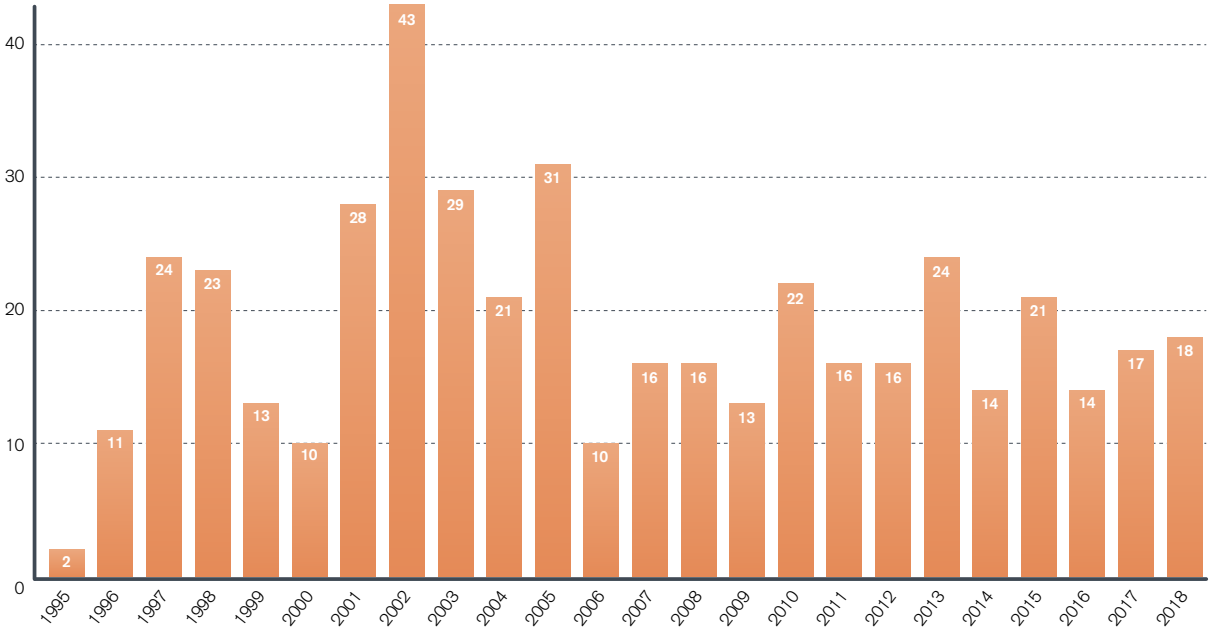
Figure 5.3: Number of TBT STCs raised from 1995 to 2018



Source: WTO (2019), Twenty-Fourth Annual Review of the Implementation and Operation of the TBT Agreement, G/TBT/42.

Notes: For the purposes of this chart, an STC is counted each time it has been raised in a TBT Committee meeting. If raised for the first time, it is counted as a new STC. If it is raised again, it is counted as a previously raised STC. In other words, members can be subject to the same STC more than once in the same year and each time the STC is raised in the Committee, it is counted.

Figure 5.4: Number of new SPS STCs raised from 1995 to 2018



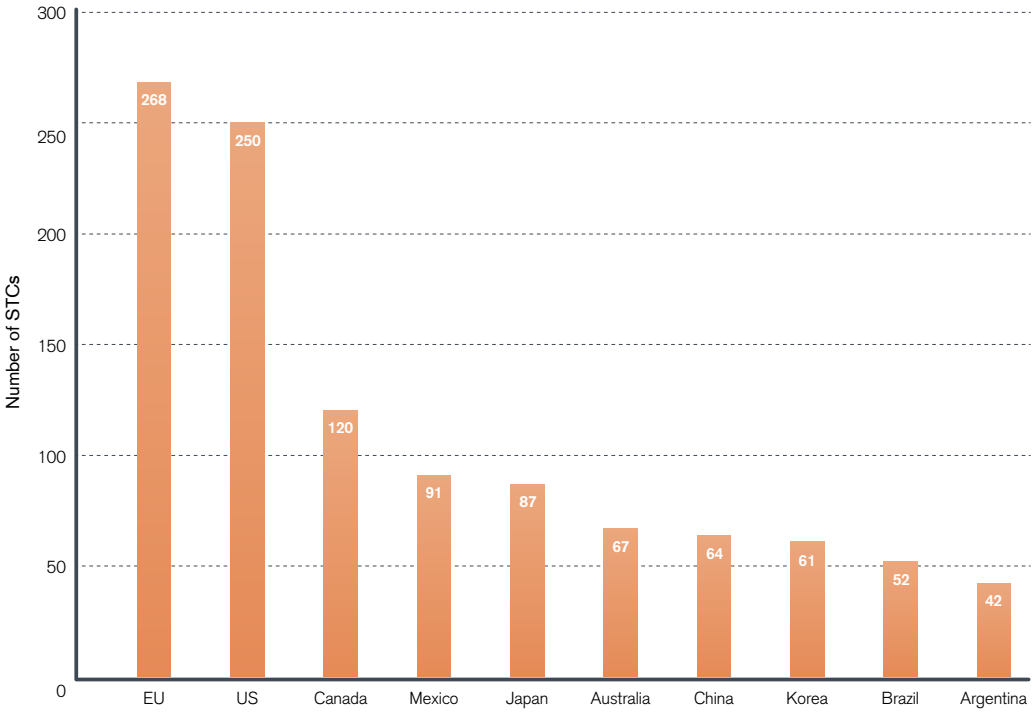
Source: WTO (2019), Specific Trade Concerns – Note by the Secretariat, G/SPS/GEN/204/Rev.19.



Participation in STCs

The level of participation across the membership in these STC discussions is lower than for notifications (see page 66). In the TBT Committee, 67 members (41 per cent of the membership) have raised at least one new STC between 1995 and 2018. Certain members are very active in raising STCs, for example the EU and US have by far raised the highest number of new STCs in the TBT Committee (see Figure 5.5).

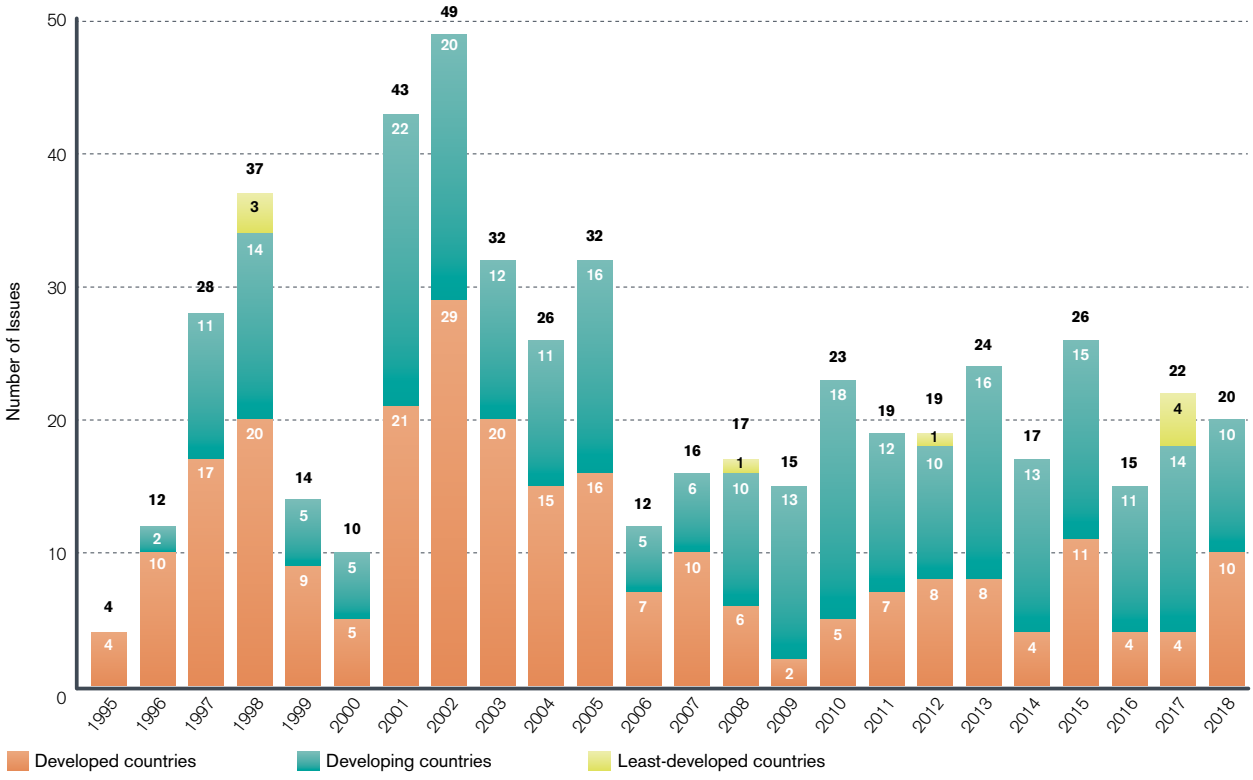
Figure 5.5: Ten members raising highest number of new TBT STCs from 1995 to 2018



Source: WTO (2019), Twenty-Fourth Annual Review of the Implementation and Operation of the TBT Agreement, G/TBT/42.

While there are some particularly engaged members, it is notable that developing countries have overall increased their activity in raising STCs in both the TBT and SPS Committees. Between 1995 and 2017, developing and least-developed countries raised slightly more STCs than developed countries in the SPS Committee (258 and 242, respectively) (see Figure 5.6).

Figure 5.6: Number of new SPS STCs raised by members from 1995 to 2018



Source: WTO (2019), Specific Trade Concerns – Note by the Secretariat, G/SPS/GEN/204/Rev.19.

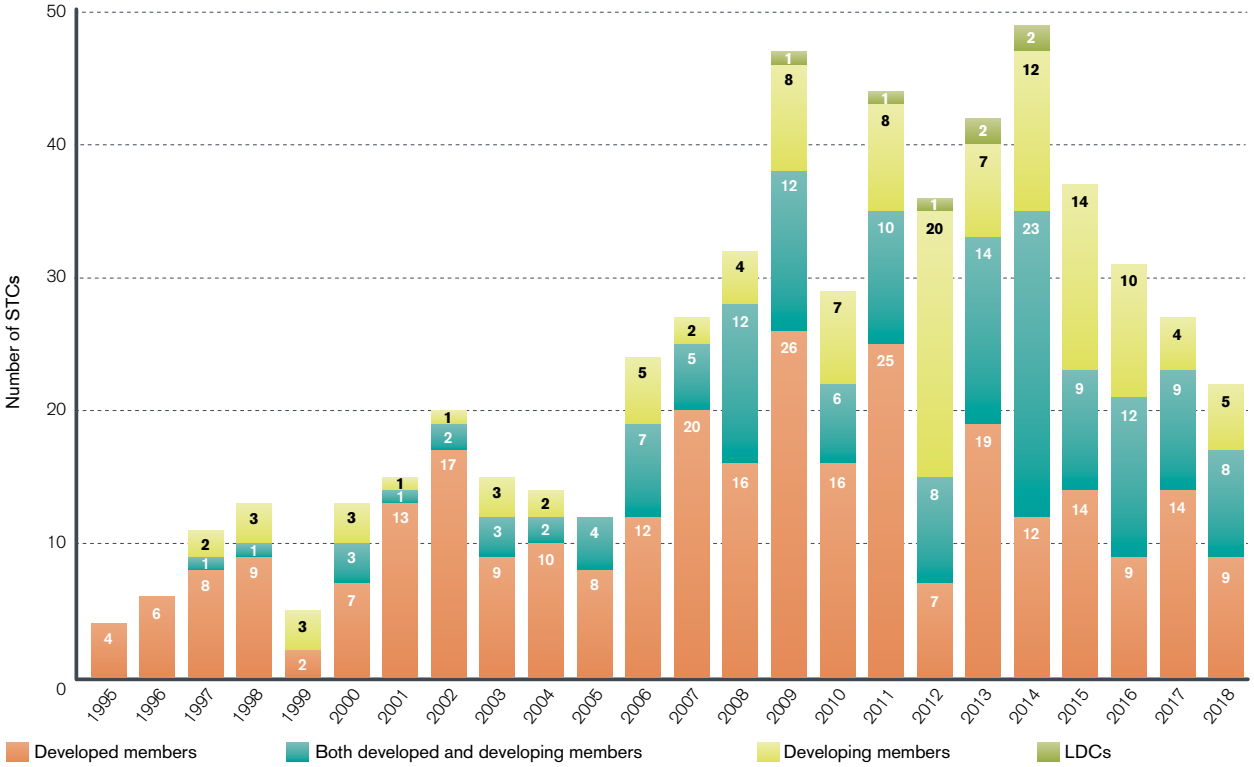
Developing countries have increased their activity in raising specific trade concerns in both the TBT and SPS Committees.

In the TBT area, developing countries have also been active, although less so than in SPS. In 2018, five of the 22 new TBT STCs were raised by developed members, eight by both developing and developed members, nine by developed members, and none by least-developed members (see Figure 5.7).

Of the 41 STCs discussed in the SPS Committee in 2018, 22 were raised by 25 developed members, while 21 STCs were raised by 27 developing members. In addition, three STCs were raised by two least-developed members.[39]

While there is growing participation by developing members, finding ways to further increase it could be explored. These members face challenges as they may be unable to participate in SPS and TBT Committee meetings in Geneva through a lack of resources or coordination, or the absence of feedback from the private sector on the notifications and trade problems faced.[40] More generally, factors that may determine participation in STC discussions include: importance of international trade to a member's economy, its legal and scientific capacities, experience in using the WTO system, or dependence on other members including preferential trade agreements or development partnerships.[41] Additional technical assistance to support and enhance developing country participation in STC discussions could be one avenue worth exploring.

Figure 5.7: New TBT STCs raised by development status from 1995 to 2018[42]



Source: WTO (2019), Twenty-Fourth Annual Review of the Implementation and Operation of the TBT Agreement, G/TBT/42.

Outcomes of STCs

This chapter explores selected aspects of the outcomes of STC discussions in the SPS and TBT Committees and focuses on reported resolutions.

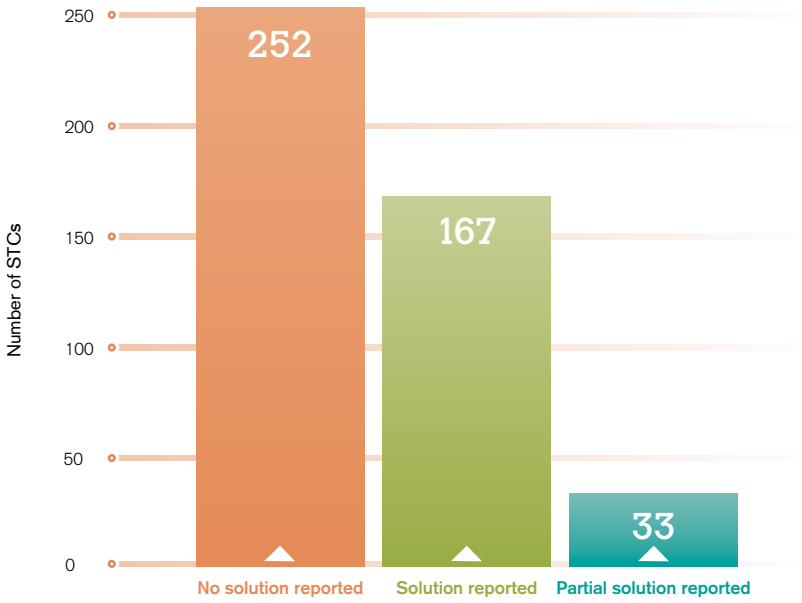
SPS Committee – reported resolutions

In the SPS area, members report when they resolve concerns. Members are encouraged to report the resolution of STCs during Committee meetings, and the Secretariat periodically contacts members to seek information regarding the status (resolved, partially resolved or not reported as resolved) of each STC which has not been discussed for more than a year. Twenty-five STCs were reported as resolved during the last exercise, which took place in 2017.

Where an STC has been raised by more than one member but not all those who raised the STC have reported it as resolved, the STC is considered to be partially resolved (see Figure 5.8). Also, in partially resolved STCs, trade may have been allowed for selected products, or by some of the importing members maintaining the measure in question. This information is then included in the SPS IMS and in a dedicated annual WTO Secretariat report on STCs.[43]

Out of the 452 STCs raised between 1995 and 2018, 167 STCs (37 per cent) have been reported as resolved, and 33 STCs (8 per cent) have been reported to be partially resolved.[44] In 2017, 17 STCs were reported as resolved and eight STCs were reported as partially resolved. No solutions have been reported for the remaining 252 STCs. Of these, 214 STCs were raised more than one year ago with no reported resolution. However, some of these STCs may have been resolved

Figure 5.8: Resolved SPS specific trade concerns



Source: WTO (2019), Specific Trade Concerns – Note by the Secretariat, G/SPS/GEN/204/Rev.19.

without the Committee being made aware of these developments.[45] Reporting of resolutions not only allows the Secretariat to track the progress of the STC discussions, but more importantly, it informs all WTO members and any interested stakeholder on any recent developments in the regulation that is raising concerns. As such, it is a valuable opportunity to extend the benefits of cooperation beyond the parties directly participating in the STC discussion.

TBT Committee – an information gap

In the TBT area, members do not have a history of reporting resolutions in the Committee. In March 2017, for the first time a member took the initiative to report progress in addressing its concerns with respect to a certain STC.[46] Since that meeting, the agenda of TBT Committee meetings has included an item for reporting on resolutions to STCs; however, at the time of writing no other member has reported such information. Exploring ways to enhance the reporting of progress or positive developments on STCs in the TBT Committee could help improve transparency and extend the benefits of cooperation on STCs to other members.

Exploring ways to enhance the reporting of progress or positive developments on specific trade concerns in the TBT Committee could help improve transparency and extend the benefits of cooperation to other members.

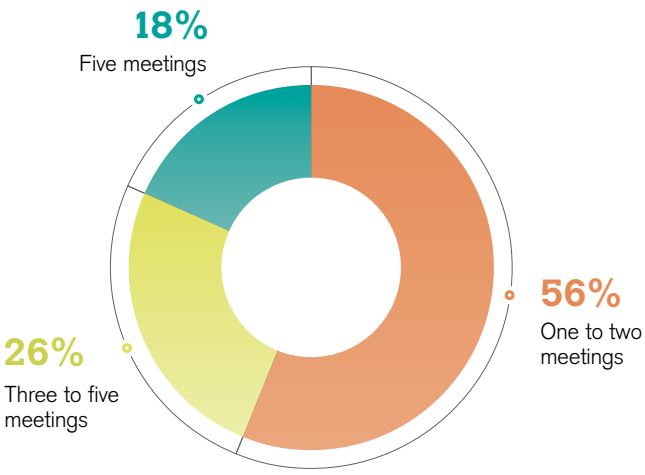
In the absence of such reporting, what do we know about the outcomes of STC discussion in the TBT Committee? There is information about the number of times that a given STC has been raised in the TBT Committee, and when it was last raised. There may be various reasons explaining the number of times that an STC is raised, such as: the importance members attach to the concern; a window of opportunity to address the concern while the measure is still in a draft stage;[47] whether progress was made in addressing concerns; or perhaps because concerned members and their stakeholders have given up raising a concern (e.g. because another export market was found).

STCs raised at only one or two meetings could indicate concerns for which discussion resulted in some positive developments. On the other hand, longstanding STCs raised at five or more meetings may represent concerns for which less progress has been made. The majority of STCs (56 per cent) have been raised at one or two Committee meetings, 26 per cent were raised three to five times, and only 18 per cent were raised more than five times (see Figure 5.9).[48]

Moreover, 83 per cent of all STCs discussed in TBT Committee meetings held since 1995 were not raised over the past two years (i.e. during the last six meetings of the Committee) (see Figure 5.10). The remaining 17 per cent were raised over the past two years. While these figures do not necessarily indicate whether an STC has been resolved, they do provide at least some anecdotal evidence that an important proportion of the STCs discussed in the TBT Committee are no longer on the agenda, and that presumably there was some form of progress or positive developments, or that members pursued the issue through other means or in other fora. Less complex, procedural focused STCs that address gaps in notification or information are probably easier to resolve.[49] However, it should be noted that just because an STC is no longer on the agenda of the Committee does not necessarily mean that it has been resolved.[50]

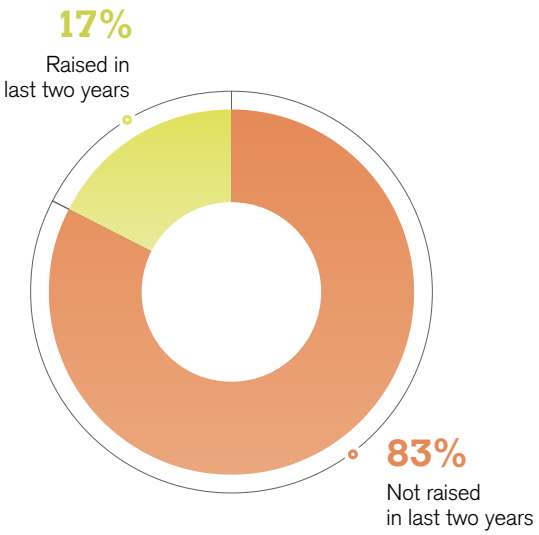
When comparing this information with the number of times an STC is raised, 90 per cent of STCs discussed at only one to two meetings have not been raised during the last two years. On the other hand, more than 40 per cent of longstanding STCs (discussed at five or more meetings) were raised in the last two years (see Figure 5.11).

Figure 5.9: Number of times a TBT STC is raised from 1995 to 2018



Source: WTO (2019), Twenty-Fourth Annual Review of the Implementation and Operation of the TBT Agreement, G/TBT/42.

Figure 5.10: Share of TBT STCs discussed over past two years

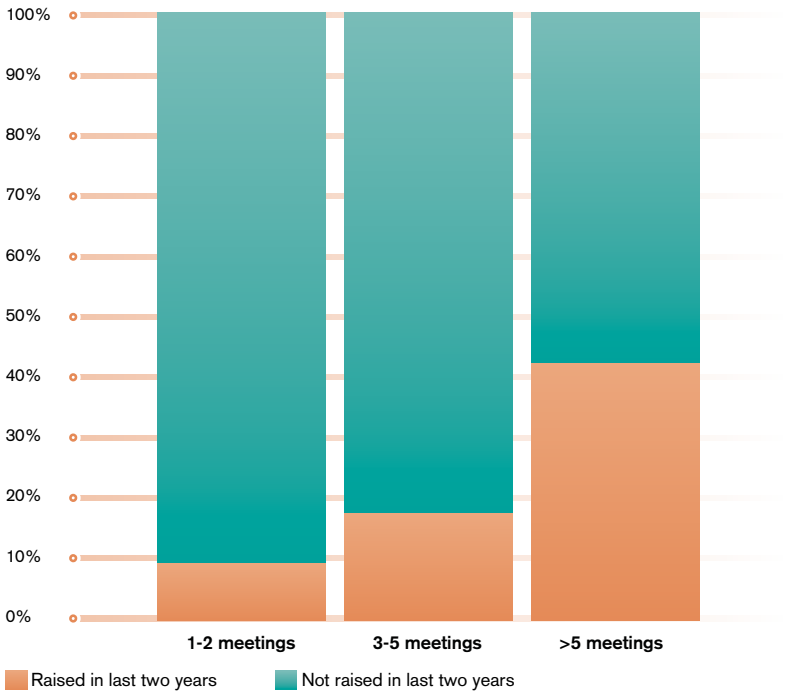


Source: WTO (2019), Op.cit.

One trend in the TBT area is the growth of previously raised STCs, and the decline in new STCs being raised; this could raise questions on the effectiveness of the Committee at resolving concerns. The work of the Committee has focused more on following developments on previously raised concerns since 2014 (see Figure 5.11).

On the one hand, this shows that members chose to use the TBT Committee to follow longstanding trade irritants, some of which have been on the agenda for up to 30 meetings.[51] This may provide an alternative to dispute settlement for longstanding issues, as the concerned member may prefer not to lodge a dispute and may instead choose to express ongoing concerns through the Committee. As these measures move from a proposal, to enter into force, the Committee forum helps to gather information about these and other developments. However, this could also be taken as a sign that the Committee has limited effectiveness when it comes to resolving

Figure 5.11: Share of STCs discussed over past two years, by number of times raised



Source: WTO (2019), Twenty-Fourth Annual Review of the Implementation and Operation of the TBT Agreement, G/TBT/42.

these longstanding trade concerns. Previously raised trade concerns could crowd out new concerns on the agenda, given members' limited capacity to identify and prepare STCs in advance of meetings. Indefinite and repetitive discussion may not be an effective way to reach a positive solution.

Over the years, efforts have been made to improve the efficiency of STC discussions held at the TBT Committee.[52] Most recently, new procedures were adopted on a trial basis in the TBT Committee's Eighth Triennial Review.[53] These procedures set the deadline for submitting STCs on the agenda as 20 calendar days before the meeting in order to give members more time to prepare. They also recommend members to provide information on whether the STC they are raising is related to a proposed or final measure. The Eighth Triennial Review also called for further discussions with a view to improving the efficiency and effectiveness of the Committee's consideration of specific trade concerns.[54] In this connection, exploring ways to improve the structure of STC discussions for greater efficiency or encourage members to share information about progress on STCs with the TBT Committee could be useful.

Technical assistance and other support

Another way to assess the effectiveness or impact of discussions on STCs is to consider other outcomes in favour of concerned members that facilitate compliance. For instance, because of the discussion of an STC, the regulating member may provide technical assistance or capacity building to help concerned members meet the requirements.

However, it is relatively rare that members in the SPS and TBT Committees highlight a need for technical assistance when raising STCs.[55] Anecdotal evidence suggests that in at least some cases technical assistance is provided in response to concerns raised; however, more systematic analysis and information sharing could be useful.[56]

Monitoring the use of international standards

The SPS Agreement mandates the SPS Committee to monitor the process of international harmonization and the use of international standards, guidelines or recommendations.[57] The SPS Committee first developed a Provisional Procedure to Monitor the Process of International Harmonization,[58] which has since been extended indefinitely, including a review of its operation as an integral part of the periodic review of the operation and implementation of the SPS Agreement. The monitoring of the use of international standards is a standing agenda item of the SPS Committee, and annual reports on the procedure have been produced by the WTO Secretariat.[59] The use of this agenda item has evolved. Initially, members sometimes identified outdated or missing international standards, and the "three sisters" in response, provided information to the SPS Committee in this respect. More recently, members use it to raise issues related to the non-use of certain international standards, or to express concerns about a given international standard-setting process (e.g. independence of Codex, importance of science, etc.). In 2017, members reaffirmed their commitment to the monitoring process.[60]

The SPS Agreement mandates the SPS Committee to monitor the process of international harmonization and the use of international standards, guidelines or recommendations.

In the TBT area, one important policy challenge is the identification of the sources of relevant international standards. The decision on the "Six Principles" (see page 61) is one of the most important decisions adopted by the TBT Committee. It has taken greater importance in the governance of international standards development by those standardizing bodies that are trying to adhere to the Six Principles.[61] Moreover, the Six Principles have been incorporated as provisions in a sizable proportion of bilateral and regional trade agreements outside the WTO. In more than 25 per cent of regional trade agreements (RTAs) in force today with TBT provisions, the parties commit to implement the TBT Committee's Six Principles as a means to identify relevant international standards.[62]

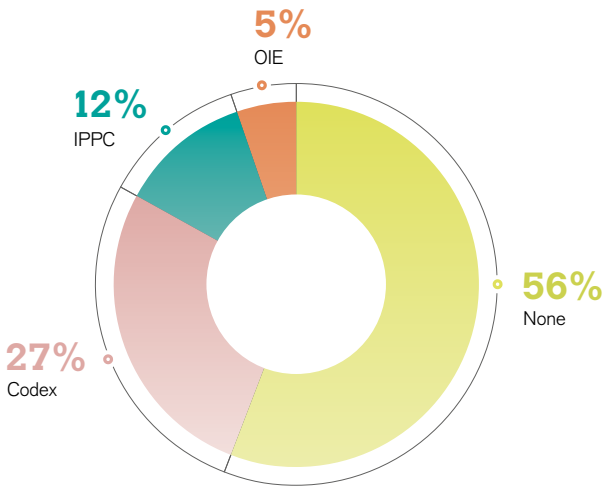
The TBT Committee does not have a process in place to monitor the adherence of standardizing bodies to the Six Principles. However, it should be noted that in a WTO dispute relating to the issue of use of international standards under the TBT Agreement, the panel and Appellate Body reviewed the Six Principles to help support understanding of the meaning of the term "relevant international standard".[63] Exploring opportunities for the TBT Committee to monitor the use of the Six Principles could provide one possible avenue for enhancing information on the sources of relevant international standards.

The notification process provides another source of information on the use of international standards by members. With respect to SPS notifications, members are required to provide information on whether a relevant international standard produced by one of the "three sisters" exists, whether the notified measure "conforms to" such a standard, and if not to identify the deviations.[64] For regular notifications, just under half refer to an international standard (see Figure 5.12). However, more than 80 per cent of emergency measures refer to international standards, mainly OIE standards (see Figure 5.13). This reflects the fact that many emergency measures are taken in response to animal disease outbreaks, for which the OIE sets the relevant international standards.[65]

In the case of TBT notifications, the notification templates agreed by the Committee do not require members to indicate whether the measure is based on international

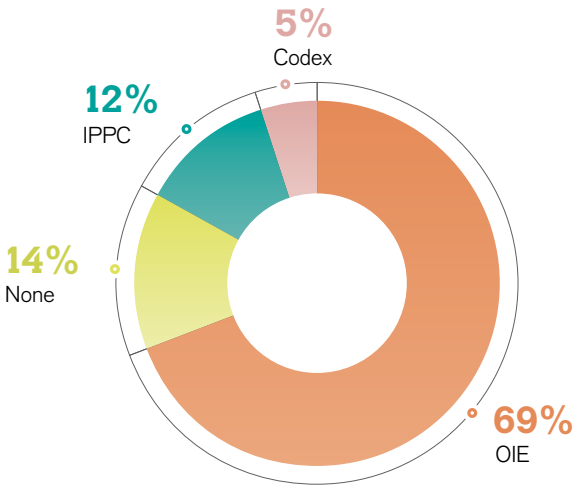
standards.[66] In the Eighth Triennial Review of the TBT Agreement, members agreed to discuss challenges in identifying deviations from relevant international standards in notifications.[67] Evaluating possibilities to enhance the provision of information on the alignment or deviation with international standards through TBT notifications could provide a useful source of information for facilitating trade and improving international standards.[68]

Figure 5.12: SPS notifications referring to an international standard



Source: WTO (2018), Overview regarding the level of implementation of the transparency provisions of the SPS Agreement, G/SPS/GEN/804/Rev.11.

Figure 5.13: SPS emergency notifications referring to an international standard



Source: WTO (2018), Overview regarding the level of implementation of the transparency provisions of the SPS Agreement, G/SPS/GEN/804/Rev.11.

Implementing equivalence and acceptance of conformity assessment results



The TBT and SPS Agreements contain disciplines on equivalence and facilitating the acceptance of conformity assessment results, and encourage members to cooperate through these mechanisms to facilitate trade. This section presents information on the implementation of these mechanisms, as notified through the WTO framework, focusing on equivalence in SPS, and acceptance of conformity assessment results in TBT, and discusses possible means to promote the use of these mechanisms.

Equivalence

The implementation of SPS (and TBT) equivalence provisions, at least as reported in the SPS and TBT Committees, has been limited. Few equivalence agreements have been notified to date: three in the SPS area[69] and six in the TBT area.[70] SPS Committee members recognize that notification of equivalence could be improved.[71]

SPS Committee meetings have a standing agenda item for members and relevant observer international organizations to report on their experience and any work undertaken on the recognition of equivalence. Most discussions on equivalence occurred before agreement was reached on the guidelines (July 2004). After a period during which equivalence was rarely discussed, this topic has attracted considerable interest during the Fifth Review, including on systems approaches to equivalence.[72]

At the request of members, the first of a two-part Thematic Session on Equivalence was held in October 2018 to increase awareness of the relevant provisions of the SPS Agreement, Committee guidance (G/SPS/19/Rev.2) and related jurisprudence. In addition, there were presentations from the "three sisters" on the practical application of the concept of equivalence in their areas and the relevant international standards.[73] The second part of this thematic session was held in March 2019 and focused on members' experiences with the implementation of equivalence.[74]

Reaching agreements on the recognition of equivalence is reported to be difficult,[75] and even when members may have reached formal or informal recognitions of equivalence, reporting has not been regular.[76] One member has suggested that listing all equivalence agreements would help other members negotiate similar agreements (G/SPS/W/236). Another member suggested that recognition of equivalence was part of a rule-making process, and would therefore be notified as regular SPS measures, which might incorporate an element of equivalence, and not be notified specifically as a recognition of equivalence. Efforts to improve notification of equivalence agreements is one practical step to disseminate information about existing cooperation, and inspire other members to pursue equivalence arrangements where appropriate.



Box 5.1

RTA provisions on equivalence and the acceptance of conformity assessment results

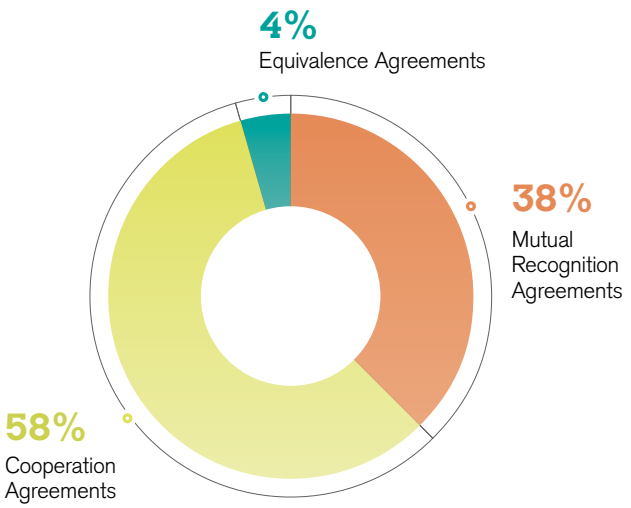
Correia de Brito, A., C. Kauffmann and J. Pelkmans[1] found that, among a sample of 99 RTAs concluded by Australia, Canada, the EU, the Republic of Korea, Japan, Mexico, New Zealand and the US, and notified and published in the WTO RTAs database by 30 May 2014, a third encouraged the parties to give positive consideration to accepting as equivalent technical regulations of the other party. Of these sampled RTAs, 41.4 per cent require or promote the (mutual) recognition of the results of conformity assessment procedures. The conclusion of mutual recognition agreements (MRAs) itself is promoted in more than half of the sampled RTAs (56 per cent). However, the negotiation and conclusion of MRAs is only usually mentioned as one of several mechanisms for the parties to facilitate the acceptance of conformity assessment results and avoid duplicating tests. In addition, very few RTAs integrate MRAs in annexes. Generally, countries have a preference to conclude stand-alone MRAs. The large majority of MRAs integrated in RTAs are on the electrical and electronic sectors.

1 Correia de Brito, A., C. Kauffmann and J. Pelkmans (2016), "The contribution of mutual recognition to international regulatory co-operation", OECD Regulatory Policy Working Papers, No. 2, OECD Publishing, Paris, https://doi.org/10.1787/5jm56fqsfxmx-en.

Facilitating acceptance of conformity assessment results

Compared to equivalence agreements, WTO members have notified significantly more agreements of other types on TBT, mainly for facilitating conformity assessment results. In total, 143 bilateral or plurilateral agreements between members on TBT have been notified, which can be broadly categorized as either MRAs (more specific to recognition of conformity assessment) or cooperation agreements (more general, covering various aspects of the quality infrastructure) (see Figure 5.14).[77] This disparity could be a function of members striking more of these types of agreements, and relatively lower importance of equivalence agreements in reducing TBT-related barriers. However, it could also be explained by deficits in notification of equivalence agreements. Bilateral agreements are the most frequent type notified, accounting for 90 per cent of notified agreements on TBT between members.[78]

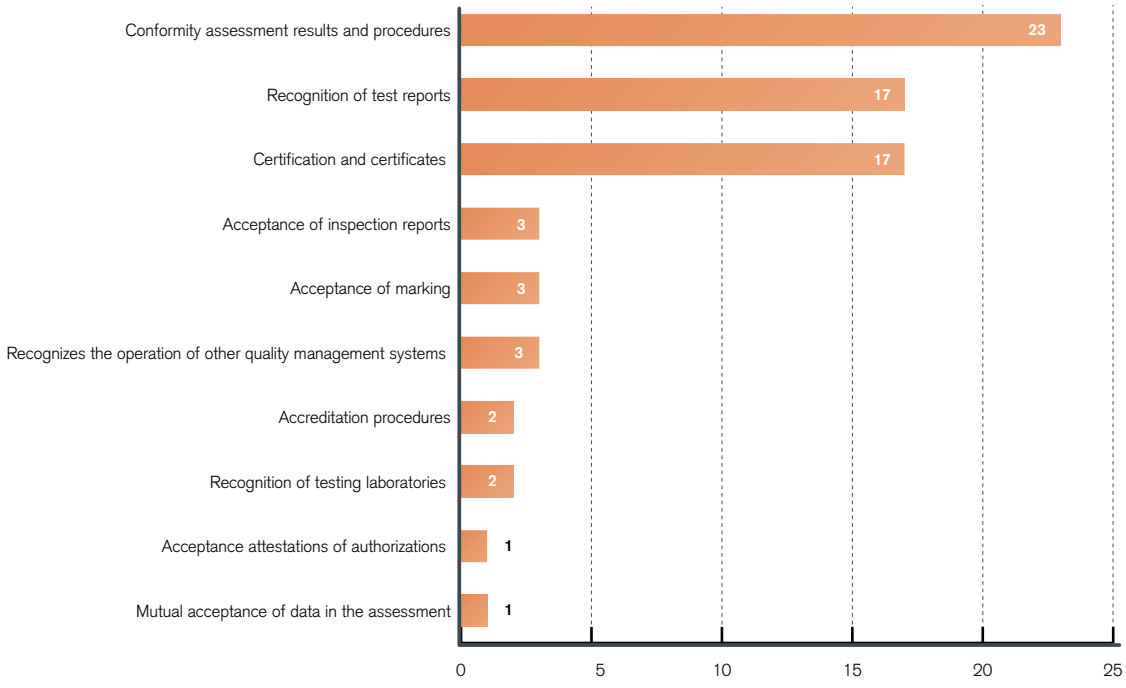
Figure 5.14: Agreements on TBT between members notified to the WTO



Source: WTO TBT IMS, http://tbtims.wto.org/ (accessed 12 March 2019).
Note: Authors' calculations based on information notified by WTO members.

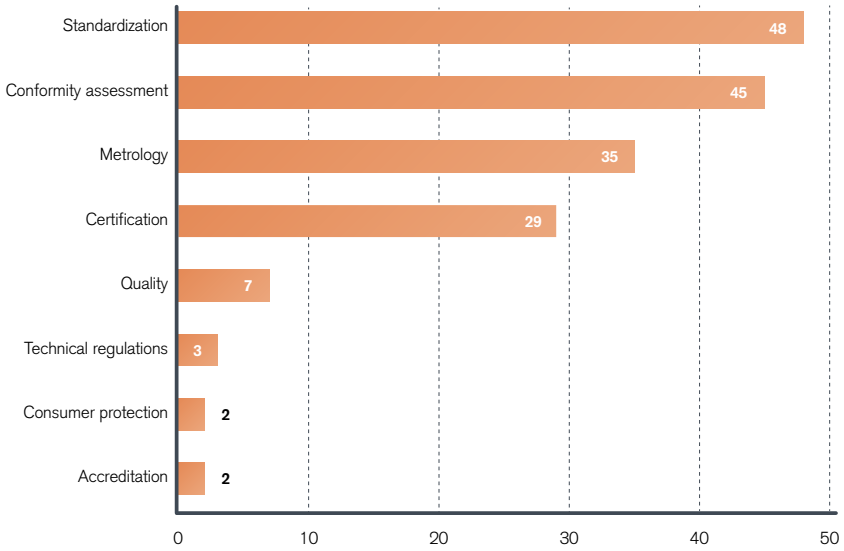
The TBT-related MRAs notified by members cover different aspects of conformity assessment (see Figure 5.15), in particular certification and test reports. Nearly all the notified cooperation agreements (96 per cent) cover standardization, conformity assessment procedures, metrology or certification (see Figure 5.16).

Figure 5.15: Mutual Recognition Agreements



Source: WTO TBT IMS, http://tbtims.wto.org/ (accessed 12 March 2019).
Note: Authors' calculations based on information notified by WTO members.

Figure 5.16: Topics covered in cooperation agreements



Source: WTO TBT IMS, http://tbtims.wto.org/ (accessed 12 March 2019).
Note: Authors' calculations based on information notified by WTO members.

Besides notifications, the TBT Committee has developed some guidance with respect to facilitating the acceptance of the results of conformity assessment. For instance, in 2000, it agreed on an "Indicative list of approaches to facilitate the acceptance of conformity assessment results".[79] This includes six approaches: (i) MRAs for Conformity Assessment to Specific Regulations; (ii) Cooperative (Voluntary) Arrangements between Domestic and Foreign Conformity Assessment Bodies; (iii) the Use of Accreditation to Qualify Conformity Assessment Bodies; (iv) Government Designation; (v) Unilateral Recognition of Results of Foreign Conformity Assessment; and (vi) Manufacturer's/Supplier's Declarations (SDoC).

In the Eighth Triennial Review of the TBT Agreement adopted in 2018, members agreed to share case studies of practical examples of how they arrive at the acceptance of conformity assessment results (including by using the approaches mentioned in the Committee's "Indicative List").[80] Further in-depth discussion by members, building on the "Indicative List", could help shed light on which approaches are most often used by members, and whether the list could benefit from further discussion to reflect current realities and challenges.

The TBT Committee has developed some guidance with respect to facilitating the acceptance of the results of conformity assessment.

In the SPS Committee, the discussion regarding conformity with members' obligations under the SPS Agreement has included the need to broadly consider the issue of undue delays "in the recognition of equivalence; in the adaptation of measures to the pest or disease status of a trading partner; in the completion of risk assessments related to the granting of market access; in the operation of control, inspection and approval procedures; and in the suspension or adjustment of measures when SPS conditions have changed".[81] Recently, the SPS Committee has decided to focus on control, inspection and approval procedures, including export certification, in a dedicated workshop,[82] and agreed to hold a thematic session in November 2019 for members to share their experiences in the area.

Endnotes

1 http://spsims.wto.org/en/PredefinedReports/NotificationsSubmittedPerYearPage.
2 G/TBT/40, 2018, 23rd Annual Review of the Implementation and Operation of the TBT Agreement. Since 1995, 136 members have submitted at least one TBT notification.
3 http://spsims.wto.org/en/Notifications.
4 G/L/1280, 8 November 2018, Report (2018) on the activities of the Committee on Sanitary and Phytosanitary Measures, para. 1.11. See also G/SPS/GEN/804/Rev.11 (and Corr.1) of 11 October 2018, Overview Regarding the Level of Implementation of the Transparency Provisions of the SPS Agreement.
5 The system is available at the following link: www.epingalert.org.
6 G/TBT/42, 25 February 2019, 24th Annual Review of the Implementation and Operation of the TBT Agreement.
7 http://tbtims.wto.org/.
8 http://spsims.wto.org/.
9 G/TBT/41, para. 6.19.
10 G/TBT/41, para. 6.19(a).
11 G/TBT/41, paras. 6.19(b) and 8.2.
12 This topic was also proposed for discussion in the context of the Fifth Review of the SPS Agreement (G/SPS/W/300. See also G/SPS/GEN/1625/Rev.1, para. 5.1).
13 G/TBT/41, para. 6.19(d).
14 G/TBT/41, para. 6.19(e).
15 G/TBT/41, para. 6.19(f).
16 G/TBT/41, para. 7.12(c).
17 G/TBT/41, para. 1.7(b).
18 G/SPS/7/Rev.4, Recommended Procedures for Implementing the Transparency Obligations of the SPS Agreement, adopted on 4 June 2018. The fourth review referred to the previous version of the document, G/SPS/7/Rev.3, please see the most recent update.
19 G/SPS/62 Review of the Operation and Implementation of the SPS Agreement, adopted by the SPS Committee on 14 July 2017, para. 6.22.
20 Joint proposal for actions related to the implementation of the transparency provisions of the SPS Agreement (G/SPS/W/278 by Chile, the European Union, Morocco and Norway), which highlighted specific modifications to the Recommended Transparency Procedures (G/SPS/7/Rev.3) aiming primarily at improving the quality and completeness of SPS notifications.
21 G/SPS/GEN/1382. The Secretariat received 108 responses to the questionnaire.
22 G/SPS/GEN/1402.
23 https://www.wto.org/english/tratop_e/sps_e/wkshop_oct15_e/wkshop_oct15_e.htm and G/SPS/R/80.
24 https://www.wto.org/english/tratop_e/sps_e/wkshop22march17_e.htm, G/SPS/GEN/1544 and G/SPS/R/86 paras. 4.21-4.49.
25 G/SPS/W/297 submitted by Benin, Burkina Faso, Burundi, Gambia (The), Ghana, Kenya, Madagascar, Morocco, Nigeria, the United States and Zambia. See also G/SPS/GEN/1625/Rev.1, para. 4.1.
26 G/TBT/41, para. 8.2.
27 G/TBT/GEN/256.
28 G/TBT/41, para. 6.19(b.i).
29 OECD (2018), Op. cit., p. 137.
30 TBT Agreement, Article 2.5, first sentence.
31 See, in general: G/TBT/1/Rev.13, Section 1.1 page 6-8.
32 SPS Agreement, Article 5.8.
33 G/TBT/1/Rev.13, Section 5.6.2.1 page 35-36.
34 In addition, a handful of notifications from Sweden (six), Switzerland (one) and the United States (one) refer to RIAs but do not provide a link.
35 G/TBT/41, para. 1.7(b).
36 SPS Annex B(3).
37 G/TBT/19, 14 November 2006, paras. 51 and 68(a)(i); G/TBT/26, 13 November 2009, para. 46.
38 G/SPS/7/Rev.4, 4 June 2018, Section 2.2.
39 G/SPS/GEN/204/Rev.19 para. 2.3.
40 See section 2.2, in Kateryna Holzer (2019), Op. cit.
41 See: Boza S. and F. Fernandez, Development Level and WTO member Participation in Specific Trade Concerns (STCs) and Disputes on SPS/TBT, ECO/WTI Academic Cooperation Project Working Paper Series 2014/17, at 25; cited at footnote 27 in: Holzer K. (2019), Op. cit., pp. 102–116.
42 This chart indicates the development status of members that raised a new STC. An STC can be raised by several members, each with a different development status.
43 Most recently in G/SPS/GEN/204/Rev.19.
44 G/SPS/GEN/204/Rev.19 para. 1.7.
45 G/SPS/GEN/204/Rev.19 para. 1.8.
46 At the meeting of 29-30 March 2017, the representative of Mexico informed the Committee that Mexico's production sector had recently confirmed that its concerns regarding the Ecuadorian Technical Regulation RTE INEN No. 034 had been addressed. Mexico thanked Ecuador for taking into account their comments as they had been raised on a number of occasions since 2014. (G/TBT/M/71, para. 2.2).
47 The number of times a STC is raised in Committee may be an indicator of how early in the policy cycle the measure was picked up, and the opportunities for influence on the process that may be available at that time.
48 G/TBT/42, 25 February 2019, 24th Annual Review of the Implementation and Operation of the TBT Agreement.
49 Sungjoon C., J. Radecki, and S. Cecilia (2017), Op. cit. and https://chicagounbound.uchicago.edu/cjil/vol18/iss1/2; Holzer K., (2019), Op. cit., p. 110.
50 For example, an STC could stop being raised because the private sector has lost interest in the issue, perhaps due to finding another export market. See, e.g.: Holzer K. (2019), Op. cit. pp.110-111.
51 For example, the EU Regulation on the Registration, Evaluation and Authorization of Chemicals (REACH) was raised 38 times between 2013 and 2017. See: Gruszczynski L. (2013), Op. cit.

52 G/TBT/1/Rev.13, Section 8.1.1, p.49-50.

53 G/TBT/41, para. 8.2(b).

54 G/TBT/41, para. 8.2(b).

55 G/TBT/42, Chart 28.

56 See, for example, SPS STC 39 on maximum levels for certain contaminants (aflatoxins) in foodstuffs, raised by 11 members and supported by another 11 members, which led to EU technical assistance programmes to ensure compliance with the new standards http://spsims.wto.org/en/SpecificTradeConcerns/View/128.

57 SPS Agreement, Articles 3.5 and 12.4.

58 G/SPS/11/Rev.1 and G/SPS/40. See also G/SPS/62 Section 2.

59 G/SPS/13, G/SPS/16, G/SPS/18, G/SPS/21, G/SPS/28, G/SPS/31, G/SPS/37, G/SPS/42, G/SPS/45, G/SPS/49, G/SPS/51, G/SPS/54, G/SPS/56, G/SPS/59, G/SPS/60, G/SPS/GEN/1332, G/SPS/GEN/1411, G/SPS/GEN/1490, G/SPS/GEN/1550 and G/SPS/GEN/1617.

60 G/SPS/62 Review of the Operation and Implementation of the SPS Agreement - Report adopted by the Committee on 14 July 2017, para. 2.14 first bullet.

61 See, for example: Villareal A.B. (2018), International Standardization and the Agreement on Technical Barriers to Trade, Cambridge.

62 Devin McDaniels, Ana Cristina Molina, Erik N Wijkström (2018), Op. cit..

63 WTO Appellate Body Report, US – Tuna II (Mexico), WT/DS381/AB/R, paras. 370–2.

64 See Practical Manual for SPS National Notification Authorities and SPS National Enquiry Points 2018 Edition, p. 29.

65 As reported in document G/SPS/GEN/804/Rev.11, "[d]uring the period from 16 September 2017 to 15 September 2018, of the 50% of regular notifications identifying a relevant international standard regarding the measure, 88% indicated that the proposed regulation conformed to that relevant international standard. For the same period, nearly all (98%) of emergency notifications identifying a relevant international standard indicated that the proposed regulation conformed to the relevant international standard." It is important to stress that it is the notifying member who identifies the relevant international standard and their assessment of conformity of their proposed regulation to said standard. It is therefore not an authoritative statement of harmonization with the international standard.

66 For more information about the TBT notification templates, see: G/TBT/1/Rev.13, Annex 3, pages 58-61. Note however, that in respect of standards, Annex 3J of the TBT Agreement states: "Before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a member of the WTO. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards" (emphasis added).

67 G/TBT/41, para. 6.19 (d)(iii).

68 Information on partial or complete deviations from international standards, for example, because the standard is "ineffective" or "inappropriate"," could also provide feedback to bodies developing international standards, by illustrating situations in which an international standard is not fulfilling its harmonization objective.

69 The first example brought to the SPS Committee after agreement on the guidelines was a joint Committee on hygiene and health of fisheries products between Brazil, Argentina, Uruguay and Chile; noting that its transparency allowed for the expeditious settlement of problems which could have caused undue delays (G/SPS/R/37). Most recently, Madagascar announced the recognition of its Plant Protection Organization phytosanitary measures by South Africa's Plant Protection Organization, with an improved market access to the South African market (G/SPS/87).

70 TBT Agreement, Article 10.7. All six equivalence agreements notified under the TBT Agreement related to trade in organic agriculture products.

71 In the TBT Committee, members have encouraged sharing experiences on equivalency in the Committee particularly with regard to how the concept is implemented in practice, and the steps taken and criteria used to arrive at an equivalency decision (G/TBT/1/Rev.13, Section 1.1, p. 7).

72 Proposals from Canada (G/SPS/W/302/Rev.1); Australia and Brazil (G/SPS/W299, G/SPS/W/301, G/SPS/19/Rev.2).

73 https://www.wto.org/english/tratop_e/sps_e/workshop301018_e.htm.

74 https://www.wto.org/english/tratop_e/sps_e/workshop18032019_e.htm.

75 Including "due to the resource commitments needed" (G/SPS/GEN/212).

76 According to some members, this could be, among other reasons, "to avoid other exporters benefiting from the arrangements" (G/SPS/R/44).

77 Six notifications of agreements under Article 10.7 (G/TBT/10.7/N/100/Corr.1; G/TBT/10.7/N/20/Add.1; G/TBT/10.7/N/35; G/TBT/10.7/N/38; G/TBT/10.7/N/45/Corr.1; and G/TBT/10.7/N/87/Corr.1) have been excluded considering that there are revisions or corrections.

78 Agreements between one member and the EU, ASEAN or EFTA are counted as bilateral.

79 G/TBT/1/Rev.14, Annex 1, pp52-53.

80 G/TBT/41, para. 4.17(c).

81 Review of the Operation and Implementation of the Agreement on the Application of Sanitary and Phytosanitary Measures - Report Adopted by the Committee on 30 June 2005 (G/SPS/36).

82 G/SPS/GEN/1613/Rev.1. See also: www.wto.org/english/tratop_e/sps_e/workshop910718_e.htm.

Readers' guide

- This Readers' Guide aims to help readers understand the scope of the analysis and key concepts used in this study in relation to good regulatory practices and international regulatory cooperation.

- It highlights the increased focus by the regulatory policy and the trade communities on the regulatory agenda and builds on key definitions used in the two communities as well as similarities and differences in understanding to situate this work.

Increasing prevalence of good regulatory practices

In the past two to three decades, both "regulators" (government departments and other agencies responsible for making and enforcing regulation) and trade policy makers have paid increased attention to the effectiveness and efficiency of regulation, through regulatory policy, or good regulatory practices, and international regulatory cooperation.

Within the regulatory community, the importance of good regulatory practices has been acknowledged "to ensure that regulations and regulatory frameworks are justified, of good quality and achieve policy objectives".[1] While the agenda itself has taken various names (see Table 1), consensus has grown within the regulatory policy community on the elements of high quality regulation and a large body of knowledge has developed on various strategies, institutions, tools and practices around regulatory policy and governance. These efforts have led to the development of a number of OECD instruments, starting with the "1995 Recommendation of the Council on Improving the Quality of Government Regulation", including the "2005 APEC-OECD Integrated Checklist on Regulatory Reform", and culminating in 2012 with the "OECD Recommendation of the Council on Regulatory Policy and Governance".

Table 1: Terminology used in relation to regulatory policy

OECD	WTO TBT Committee	Other terminologies used in countries
Regulatory quality Regulatory reform Regulatory policy	Good regulatory practice	Better regulation Smart regulation Regulatory fitness deregulation Paperwork reduction Regulatory management Regulatory governance Regulatory improvement Simplification

Source: adapted from 2015 Regulatory Policy Outlook.

With the continuous reduction in tariffs and rise of global value chains, the costs and trade barriers generated by non-tariff measures (NTMs) and regulatory divergences across jurisdictions have become a growing focus of trade policy and discussions. Good regulatory practices (GRP) and international regulatory cooperation (IRC) are increasingly used as a means to reduce unnecessary costs and supported through international commitments in the WTO or regional trade agreements (RTAs).[2] Regulatory quality and GRP are not explicitly mentioned in the TBT and SPS Agreements. However, the SPS and TBT Agreements aim to ensure that technical regulations, conformity assessment procedures, standards and SPS measures are transparent, non-discriminatory and do not result in unnecessary barriers to trade. In this connection, the TBT Committee has recognized the importance of GRP for reducing technical barriers to trade, through "improved and effective implementation of the substantive obligations of the TBT Agreement".[3]

Scope and building blocks of GRPs

Despite common interests in improving the effectiveness and efficiency of regulation, the regulatory community and the trade policy community tend to use different language and tools, relative to their respective mandates and scope of activities.

The scope of work of the regulatory community is as broad as the remit of laws and regulations. Regulation affects the everyday lives of all citizens. From protecting the rights and safety of citizens, ensuring the delivery of public goods and services, and underpinning markets, regulations are essential. The effectiveness of regulations is therefore vital to ensure that public interests are well protected, without excessive administrative burdens or unnecessary costs for citizens and businesses. Regulatory policy sets the processes through which governments decide whether to use regulation as a policy instrument, and to draft and adopt a regulation through evidence-based decision-making. The 2012 OECD Recommendation of the Council on Regulatory Policy and Governance identifies 12 principles that constitute the building blocks of regulatory policy (see Box 1). These processes support governments in developing regulations that fulfil their objectives, operate in the public interest, and remain within the boundaries of the rule of law.

Box 1

The scope of the 2012 OECD Recommendation of the Council on Regulatory Policy and Governance

The OECD 2012 Recommendation sets out the measures that governments can take to support the implementation and advancement of systemic regulatory reform to deliver regulations that meet public policy objectives and will have a positive impact on the economy and society. These measures are integrated in a comprehensive policy cycle in which regulations are designed, assessed and evaluated *ex ante* and *ex post*, revised and enforced at all levels of government, supported by appropriate institutions. The Recommendation covers the 12 following principles:

- Whole-of-government policy for regulatory quality
- Transparency and participation in the regulatory process
- Mechanisms and institutions to actively provide oversight of regulatory policy
- Regulatory impact assessment (RIA) in the formulation of new regulatory proposals
- Review of the stock of significant regulation
- Reports on the performance of regulatory policy
- Governance of regulators
- Review of the legality and procedural fairness of regulations and of decisions
- Risk-based approach
- Regulatory coherence across supranational, national and sub-national levels of government
- Regulatory policy at sub-national levels of government
- International regulatory cooperation

At the same time, the TBT and SPS Agreements aim to ensure that technical regulations, standards, conformity assessment procedures and SPS measures do not create unnecessary obstacles to international trade, while at the same time recognizing that countries should not be prevented from taking measures necessary to protect legitimate public interests. To strike the balance between avoiding unnecessary trade barriers and respecting members' regulatory autonomy, the two Agreements set disciplines that are intended to rationalize the preparation, adoption and application of domestic regulations, for instance requiring that measures: are not more trade-restrictive than necessary; do not arbitrarily or unjustifiably discriminate; are based on relevant international standards; and are prepared, adopted and applied in a transparent manner. These disciplines therefore have similar motivations to broader regulatory policy tools, focusing on the objectives of the TBT and SPS Agreements in facilitating trade.

More specifically, the substantive obligations of the TBT and SPS Agreements include: to identify legitimate objectives and avoid unnecessary obstacles to trade (e.g. Articles 2.2, 5.1.2 and Annex 3.E of the TBT Agreement) and, wherever appropriate, specify technical regulations and standards based on product requirements rather than their design or descriptive characteristics (e.g. Article 2.8 and Annex 3.I of the TBT Agreement). In addition, they require that, subject to certain qualifications, measures are based on relevant international standards, when they exist (e.g. Articles 2.4, 5.4 and Annex 3.F of the TBT Agreement; Article 3.1 of the SPS Agreement), that all SPS measures are based on "scientific principles" i.e. on evidence from a risk assessment or be based on international standards (e.g. Articles 2.2, 3.1 and 5.1 of the SPS Agreement), to review the performance of TBT technical regulations and provisional SPS measures in light of the legitimate objective sought (e.g. Article 2.3 of the TBT Agreement and Article 5.7 of the SPS Agreement), and to consider, amongst others, the cost-effectiveness of alternative approaches to limiting risk (e.g. Article 5.3 of the SPS Agreement). In addition to applying to TBT measures taken by central government bodies, the TBT Agreement disciplines also apply to TBT measures of local governmental and non-governmental bodies (e.g. Articles 3, 7, 8 and Annex 3 of the TBT Agreement).

Both agreements also set out disciplines on various mechanisms for cooperation on regulation, such as equivalence, recognition of foreign conformity assessment results, or international and regional systems for conformity assessment (e.g. Article 4 of the SPS Agreement and Articles 2.7, 6 and 9 of the TBT Agreement). Both the SPS and TBT Agreement contain various transparency provisions, including on the notification of proposed measures and the opportunity to comment, and the establishment of enquiry points (e.g. Articles 2.9-2.12, 5.6-5.9, 10 and Annex 3 of the TBT Agreement, Article 7 and Annex B of the SPS Agreement). Transparency is key for a better understanding of proposed and adopted TBT and SPS measures. Better information, in turn, increases the chance that the right balance between trade facilitation and regulatory autonomy is struck.

Regulatory policy, GRPs, IRC and the rule-making cycle

The terms "regulatory policy" and "good regulatory practices" are sometimes used interchangeably, although their meanings may differ between countries and contexts. The general definitions below are drawn from the OECD 2012 Recommendation and the WTO SPS and TBT Agreements, as well as related documents. They aim to help the readers understand the terminology used in this case study.

Broadly speaking, **regulatory quality** is about enhancing the performance, cost-effectiveness and legal quality of regulation and administrative formalities. The notion of regulatory quality covers process, i.e. the way regulations are developed and enforced, which should follow the key principles of consultation, transparency, accountability and evidence-based approaches. The notion of regulatory quality also covers outcomes, i.e. regulations that are effective at achieving their objectives, efficient, coherent and simple.[4]

In the framework of OECD Regulatory Policy Committee discussions, **regulatory policy** represents the set of rules, procedures and institutions introduced by government for the express purpose of developing, administering and reviewing regulation. In this context, **"good regulatory practices"** (GRP) is used interchangeably with regulatory policy. These terms are not defined by the WTO Agreements. However, good regulatory practices are commonly referred to in the work of the WTO TBT and SPS Committees.[5]

Following OECD,[6] **international regulatory cooperation** (IRC) can broadly be defined as any agreement, formal or informal, between countries to promote some form of cooperation in the design, monitoring, enforcement or ex-post management of regulation.[7]

In the TBT context, regulatory cooperation is aimed at limiting costs arising from divergences in product regulations between countries, while respecting differences in regulatory objectives.[8] In the TBT Committee, members have highlighted that regulatory cooperation can help achieve a better understanding of different regulatory systems and approaches to addressing identified needs, and can promote regulatory convergence, harmonization, mutual recognition and equivalence, thereby contributing to the avoidance of unnecessary regulatory differences.[9] IRC is recognized as an element of good regulatory practice.[10]

Regulatory policy applies throughout the **regulatory cycle**, from identifying policy objectives and the need to regulate, to regulatory design, and evaluation.[11] In other words, regulatory policy aims to ensure not only that the right regulatory (or non-regulatory) option is identified to address a specific policy challenge, but also that this option is based on evidence, achieves the policy objectives in a cost-effective manner, and that the regulations in question are effectively complied with. Finally, enforcement of regulatory policy, in a broad sense, covers "… all activities of state structures (or structures delegated by the state) aimed at promoting compliance and reaching regulations' outcomes – e.g. lowering risks to safety, health and the environment, ensuring the achievement of some public goods including state revenue collection, safeguarding certain legally recognized rights, ensuring transparent functioning of markets etc. These activities may include: information, guidance and prevention; data collection and analysis; inspections; enforcement actions in the narrower sense, i.e. warnings, improvement notices, fines, prosecutions, etc.".[12]

The disciplines of the TBT and SPS Agreements also apply at various stages of the regulatory cycle, taking account of the specific requirements of the design, implementation and enforcement of SPS and TBT measures (also referred to as the preparation, adoption and application of TBT measures), which apply to goods. For example, "enforcement" in the SPS and TBT Agreements typically focuses on the "applicable administrative provisions" of technical regulations, conformity assessment procedures or SPS control, inspection and approval procedures.

Regulatory measures and international instruments within the scope of the study

Regulations, as defined by the regulatory policy community, cover the diverse set of instruments by which governments set requirements on enterprises and citizens. Regulation includes all laws, formal and informal orders, subordinate rules, administrative formalities and rules issued by non-governmental or self-regulatory bodies to whom governments have delegated regulatory powers. Regulations may cover acts that are either approved by Parliament or Congress (primary legislation), or by a Head of Government, individual minister or by the cabinet (subordinate regulation).[13]

The scope of regulatory measures covered by the SPS and TBT Agreements are circumscribed to the objectives and definitions of the two Agreements. From this perspective, the GRP disciplines that are found in the two Agreements (and in the scope of this study) pertain to SPS measures, technical regulations, conformity assessment procedures and voluntary standards, as defined below.

- **SPS measure:** Any measure applied:

  a. to protect animal or plant life or health within the territory of the member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;

  b. to protect human or animal life or health within the territory of the member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

  c. to protect human life or health within the territory of the member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

  d. to prevent or limit other damage within the territory of the member from the entry, establishment or spread of pests.

"Sanitary or phytosanitary measures include all relevant laws, decrees, regulations, requirements and procedures including, inter alia, end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety."[14]

- **Technical regulation:** "Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is 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."[15]

- **Standard:** "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."[16]

- **Conformity assessment procedure:** "Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations."[17]

Normative instruments developed at the international level may help domestic regulators design relevant policies to fulfil their policy agenda, and to coordinate approaches among peers with similar objectives. OECD emphasizes that, for the purpose of designing primary or secondary legislation, and given the broad range of areas in which they intervene, regulators may find inspiration in a wide range of international instruments.[18] Such **international instruments** may refer to those meant to be directly binding on member, as well as non-binding instruments (including voluntary international standards) that may be given binding value through transposition into domestic legislation or recognition in international legal instruments. This may include, for example: treaties; legally binding decisions; non-legally binding recommendations; model treaties or laws; declarations; and international standards.

For trade policy makers, international instruments are most relevant insofar as they help facilitate the conduct of international trade by promoting alignment of technical specifications faced by traders when exporting to different markets. From this perspective, the types of international instruments that are referred to specifically in the SPS and TBT Agreements are **international standards**.

Although the TBT Agreement does not define "relevant international standard", in 2000 the TBT Committee set out Six Principles for the development of international standards,[18] including: (i) transparency; (ii) openness; (iii) impartiality and consensus; (iv) effectiveness and relevance; (v) coherence; and (vi) the development dimension. In addition, WTO case-law provides some guidance. According to such relevant case-law, for an instrument to be considered an "international standard" under the TBT Agreement it must both: constitute a "standard", as defined in Annex 1.2 of the Agreement, and be "international" in character, a condition primarily predicated upon whether it was adopted by an

"international standardizing body". Whether an "international standardizing body" exists requires, in turn, assessing whether this body is one that has "recognized activities in standardization" and whose membership is open to the relevant bodies of at least all WTO members.[19]

The SPS Agreement does not contain a general definition for "international standards, guidelines and recommendations". Instead, they are defined by the Agreement (Annex A.3), based on whether they come from any of the following three international bodies: international standards for "food safety" established by the FAO/WHO "Codex Alimentarius Commission" (Codex); international standards for "animal health and zoonoses" developed by the "World Organisation for Animal Health" (OIE); international standards for "plant health" developed under the auspices of the "International Plant Protection Convention" (IPPC). For matters not covered by the above organizations, the SPS Agreement also allows for the possibility of the SPS Committee identifying "appropriate standards, guidelines and recommendations promulgated by other relevant international organizations open for membership to all Members".[20]

What are the key regulatory disciplines and how do we define them?

Transparency is a broad term that entails the provision of information on domestic measures, as well as facilitating broad public access to them. In the TBT and SPS Agreements, transparency refers to a number of requirements, including notification of draft regulations and providing the opportunity for comment, publication, Enquiry Points and related obligations enabling public access to TBT and SPS measures proposed and adopted by members. The TBT and SPS Committees also serve as a platform for transparency, by providing public and centralized access to TBT and SPS measures notified and/or discussed by members.[21]

The 2012 OECD Recommendation on Regulatory Policy and Governance highlights that transparency is part and parcel of the broader open government principles and goes hand in hand with **participation** and **stakeholder engagement** in the regulatory process. This involves that all regulations are easily accessible by the public. In particular, "… a complete and up-to-date legislative and regulatory database should be freely available to the public in a searchable format through a user-friendly interface over the Internet.".[22] In addition, "this includes providing meaningful opportunities (including online) for the public to contribute to the process of preparing draft regulatory proposals and to the quality of the supporting analysis" (Principle 2 of the Recommendation).

Regulatory impact assessment (RIA) refers to a systematic process of identification and quantification of benefits and costs likely to flow from regulatory or non-regulatory options for a policy under consideration. Such an assessment may be based on benefit-cost analysis, cost-effectiveness analysis, business impact analysis, amongst others. RIAs are also sometimes referred to as regulatory impact analysis.

Endnotes

1 OECD (2011), Regulatory Policy and Governance: Supporting Economic Growth and Serving the Public Interest, OECD Publishing, Paris, http://dx.doi.org/10.1787/9789264116573-en, p. 18.

2 RTAs are increasingly including specific provisions, or horizontal chapters, on good regulatory practices, or international regulatory cooperation.

3 G/TBT/26, 13 November 2009, para. 5.

4 OECD (2015), OECD Regulatory Policy Outlook 2015, OECD Publishing, Paris, https://doi.org/10.1787/9789264238770-en.

5 See for example G/TBT/41, p. 2, and G/SPS/62, paras. 13.1-13.2, p. 22. In the SPS Committee, good regulatory practices are mostly referred to in the context of transparency, equivalence, recognition of pest- or disease-free areas, and the avoidance of arbitrary or unjustifiable distinctions in levels of protection.

6 OECD (2013), International Regulatory Co-operation: Addressing Global Challenges, OECD Publishing. http://dx.doi.org/10.1787/9789264200463-en.

7 OECD (2014a), International Regulatory Co-operation and International Organisations: The Cases of the OECD and the IMO, OECD Publishing, Paris, https://doi.org/10.1787/9789264225756-en. p.29.

8 "Regulatory Cooperation Between Members, Background Note by Secretariat." G/TBT/W/340; IMF, World Bank, WTO (2018), "Reinvigorating Trade and Inclusive Growth". Available at: https://www.wto.org/english/news_e/news18_e/igo_30sep18_e.pdf.

9 G/TBT/19, para.18.

10 Principle 12, OECD 2012 Recommendation on Regulatory Policy and Governance; G/TBT/32, para.4.

11 See Principle 1.1, OECD 2012 Recommendation on Regulatory Policy and Governance.

12 OECD (2014b), Regulatory Enforcement and Inspections, OECD Best Practice Principles for Regulatory Policy, OECD Publishing, p.11 http://dx.doi.org/10.1787/9789264208117-en.

13 OECD (2018), Op. cit., Glossary.

14 Annex A(1) to the SPS Agreement.

15 Annex 1.1 to the TBT Agreement.

16 Annex 1.2 to the TBT Agreement.

17 Annex 1.3 to the TBT Agreement.

18 TBT Committee Decision on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the TBT Agreement (G/TBT/1/Rev.13, Annex 2).

19 See, e.g. Appellate Body Report in US – Tuna II and Panel Report in Australia – Tobacco Plain Packaging (currently under appeal). The TBT Committee decision on the six Principles for the Development of International Standards, Guides and Recommendations (G/TBT/9, 13 November 2000, para. 20 and Annex 4) also played an important role for clarifying the meaning of "international standard" under the TBT Agreement (see e.g. Appellate Body Report in US – Tuna II, paras. 370-379 and 382, 384, and 394). The TBT Agreement refers to "relevant" international standards; the term relevant has been addressed by the Appellate Body in EC-Sardines. For further discussion on the "Six Principles", see pages 80-81.

20 SPS Agreement, Annex A.3(d). To date, the SPS Committee has not identified any other standards or organisations.

21 The WTO Secretariat, at the request of WTO members, maintains an alert system www.epingalert.org/, and dedicated databases http://tbtims.wto.org/ and http://spsims.wto.org/ , as well as circulates regular reports on transparency. See, e.g. G/TBT/42 and on the notion of centralised transparency, Marianna Karttunen (2016), Op. cit.

22 See Principle 2.5, OECD Recommendation on Regulatory Policy and Governance.

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Note: The words "country" and "nation" are frequently used to describe WTO members, whereas a few members are officially "customs territories", and not necessarily countries in the usual sense of the word.

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Facilitating trade through regulatory cooperation
The case of the WTO's TBT/SPS Agreements and Committees

The WTO plays an important role in supporting efforts to achieve international regulatory cooperation (IRC) and to facilitate trade. First, the WTO provides a multilateral framework for trade among its 164 members, with a view to ensuring that trade flows as smoothly, predictably and freely as possible. Second, the WTO's Agreements provide important legal disciplines, helping to promote good regulatory practice and IRC at the domestic level as a means of reducing unnecessary barriers to trade.

This publication highlights how the WTO's Agreements on Technical Barriers to Trade (TBT) and on the Application of Sanitary and Phytosanitary Measures (SPS) and the work of their related Committees promote opportunities for regulatory cooperation among governments and ease trade frictions. It demonstrates how members' notification of draft measures, harmonisation of measures with international standards, discussion of specific trade concerns and other practices help to facilitate global trade in goods. The study also makes recommendations on how to benefit further from the transparency and cooperation opportunities provided by the TBT and SPS Agreements.

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