

Introduction

- Background: where this book started
- What is transparency?

The Legal Principles Applying to Domestic Regulations under the SPS and TBT Agreements

- Aim: **reducing undue regulatory barriers to trade**
- How? **by « rationalising » regulatory interventions**
 - Scope of Agreements: SPS measures, technical regulations, standards and conformity assessment procedures
 - Justifications of domestic measures: necessity, scientific evidence basis, legitimate objective of measures
 - Consistent levels of protection, non-discrimination within the limits of regulatory autonomy



Strong need for transparency and regulatory co-operation to help implement these « fuzzy » disciplines

Transparency tools available to Members & interested parties

- ***Decentralised* transparency: enable a ‘right to know’ but require searching of information in different sources**
 - Publication of a notice – forward regulatory planning – hook for early dialogue
 - Publication of adopted regulations
- **Targeted, *centralised* transparency: ‘accessing’ information via single source**
 - Notifications: alert to all Members via Secretariat about draft measures with significant impact on trade, diverging from international standards
 - Electronic tools to enhance the effectiveness of centralised transparency (E-ping web portal, IMS website, electronic notification...)
- ***Collaborative* transparency: enabling bilateral and multilateral**

International regulatory co-operation (IRC): an important corollary of transparency

- **IRC can help countries work towards greater coherence in regulatory approaches and limit costs of regulatory divergences**
- **IRC is *encouraged* under the SPS and TBT Agreements**
 - Pursuit of harmonisation, through the adoption of international standards
 - Mutual recognition of domestic regulations
 - Good regulatory practices
- **IRC is *enabled* by the SPS and TBT institutional framework**
 - Platforms for exchange of information, data collection and policy analysis, developing guidance on implementing Agreements
 - Monitoring implementation, specific trade concerns, dispute settlement



WTO « disputing pyramid »: from domestic measures to disputes

From information to bilateral and then multilateral dialogue

- **Information triggers dialogue**
 - Notifications trigger bilateral and multilateral dialogue
 - STCs help raise awareness and improve understanding of measures
- **Bilateral dialogue as a precedent to STCs:** high share of STCs, esp.

The content of STC discussions: what do Members need to know?

- 1. Transparency, information and clarification**
- 2. Contribution to domestic regulatory processes**
- 3. Practical impediments to trade**

When is transparency enough to manage conflicts?

- SPS « resolved » STCs: procedural questions and practical impediments to trade, regarding large or small trading nations alike
- TBT STCs assumed as resolved: transparency and measures with potential trade effects

NB: 57% TBT and 70% SPS STCs are « Minor » STCs – discussed only once or twice.

Part 3

Transparency, Information and Dialogue
towards a Mutually Acceptable Solution

Transparency and disputes: Where is the difference?

- Broad tendency to raise STC dialogue before or in parallel to formal dispute proceedings, particularly by developing countries
- STCs used to raise issues about a measure's consistency with core SPS and TBT obligations that may be solved through better understanding of mutual perspectives
- Formal disputes: issues requiring interpretation/ clarification from third party



Transparency: a useful complement to formal dispute

- **Climbing the pyramid towards a mutually acceptable solution:**
Information, resources and alternative fora for discussions are key to raise/ solve trade disputes
- **SPS / TBT transparency tools are key to help « climb the pyramid »:**
potential to address Members' transparency needs in the pre-litigation phase

How can SPS and TBT transparency still be improved?

1. Improving the availability of information

- **More and better notifications**, with stronger incentives for

Conclusion

- **Transparency is a crucial pillar of the multilateral rules-based system**, often underestimated: supports implementation of SPS and TBT Agreements, helps manage conflicts and raise better disputes
- **Still space for more and better transparency and dialogue** within SPS and TBT frameworks to mitigate regulatory barriers to trade through increased coherence of regulatory approaches
- **High momentum for transparency today**: more essential than ever to ensure predictability of global trade and access to essential goods, and to maintain continuous application of Agreements.



Thank you!

For more information, and to order, visit:

<https://www.cambridge.org/fr/academic/subjects/law/international-trade-law/transparency-wto-spsand-tbt-agreementsreal-jewel>

Contact: marianna.karttunen@oecd.org