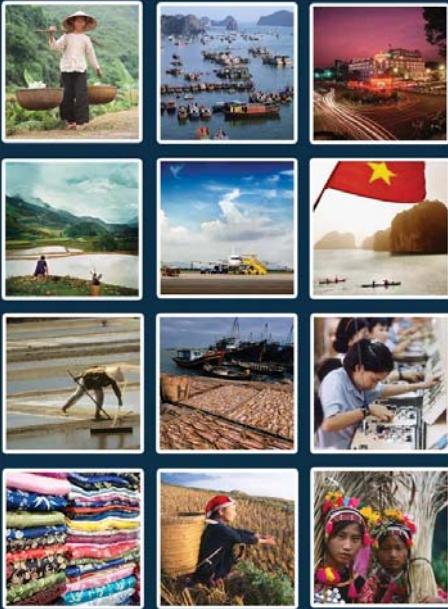


U.S. - Vietnam Standards Training Program



Cooperation between ANSI and STAMEQ
Sponsorship by the United States Trade and Development Agency

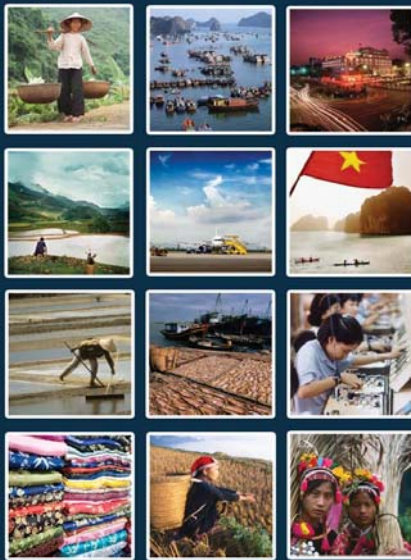


Intensive Session 4:
World Trade Organization

March 13, 2008



Cooperation between ANSI and STAMEQ
Sponsorship by the United States Trade and Development Agency



Lecture 1:

WTO Agreements on Technical Barriers to Trade (TBT) and the Application of Sanitary and Phytosanitary Measures (SPS)



This presentation is designed to

- ❑ Explain the obligations of the TBT Agreement
 - Overview
 - Prohibitions and Obligations
- ❑ Explain the obligations of the SPS Agreement
- ❑ Identify differences between SPS and TBT

WTO TBT Agreement: Preamble

- ❑ “Furtheres the objectives of GATT”
- ❑ Recognizes importance of international standards & encourages their development
- ❑ Unnecessary obstacles to trade
- ❑ Members have right to regulate at levels they deem appropriate-but can't be discriminatory, arbitrary
- ❑ Developing Countries

WTO TBT Agreement: Scope

- ❑ General terms, Annex 1 Definitions
- ❑ Applies to all products, including industrial and agricultural products
- ❑ Excludes product specifications covered by the Agreement on Government Procurement
- ❑ Excludes SPS measures covered by the Agreement on the Application of Sanitary and Phytosanitary Measures
- ❑ Excludes services

WTO TBT Agreement: Definitions

- ❑ **Standards:** 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.
- ❑ **Technical Regulations:** Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory.
- ❑ **Conformity Assessment Procedure:** Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled, including procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

WTO TBT Agreement: Core Rights and Obligations

- ❑ Ensure that technical regulations and conformity assessment procedures are not prepared, adopted, or applied with the effect of creating unnecessary obstacles to trade
- ❑ Provide non-discrimination: national treatment (NT); most favored nation (MFN)
- ❑ Base technical regulations on relevant international standards where they exist unless inappropriate or ineffective
- ❑ Fulfill legitimate regulatory objectives in a manner that is no more trade-restrictive than necessary

WTO TBT Agreement: Legitimate Objectives

- National security requirements
- Prevention of deceptive practices (such as misleading labeling)
- Protection of human health/safety, animal, plant life/health, environment
- Note not a closed list

Unacceptable Reasons

- ❑ Standard applied in an arbitrary or discriminatory manner against foreign imports to protect domestic industry
- ❑ Unnecessary obstacles to trade

WTO TBT Agreement: Transparency

- ❑ Establish and maintain a national inquiry point
- ❑ Notify draft regulations, if not in accordance with international standards, and if they may have a significant affect on trade, to the WTO Secretariat
- ❑ Provide copies of technical standards and conformity assessment procedures (upon request)
- ❑ Allow for a comment period while amendments can be still be introduced (60 day recommendation)
- ❑ Take written comments/discussions into account in the final regulation
- ❑ Allow producers an interval between publication and entry into force to adapt to new requirements (6 month recommendation)

WTO TBT Agreement: Transparency

continued

- Ensures information exchange
- Increases accountability
- Enables better coordination
- Enhances legitimacy
- Provides predictability

WTO TBT Agreement: Prohibitions

- ❑ Cannot Create “Unnecessary Obstacles to Trade”
- ❑ Members shall not prepare, adopt or apply technical regulations or conformity assessment procedures with a view to or with the effect of creating an unnecessary obstacle to trade, taking into account risks of non-fulfillment would create
- ❑ Measures are not more trade restrictive than necessary to achieve the government’s legitimate objective
- ❑ Note, there may be necessary obstacles to trade

WTO TBT Agreement: Assessment of Risk

- In assessing the risks that may arise from non-fulfillment of a legitimate objective, a government may consider a number of elements
 - Available scientific and technical information
 - Related processing technology
 - Intended end-uses of products
 - Note again, not a closed list

WTO TBT Agreement: International Standards

- ❑ Must use them “as a basis,” unless “ineffective or inappropriate”
- ❑ Purpose is harmonization-to facilitate trade
- ❑ Members must also participate in international standards development through international standardizing bodies

WTO TBT Agreement: International Standards Rebuttable Presumption

- ❑ If technical regulation is in accordance with international standards for one of legitimate objectives expressly listed in TBT, then “rebuttably presumed” not to create an unnecessary obstacle to international trade
- ❑ Nonetheless, the government must be able to justify it under the TBT Agreement (nondiscriminatory, not more trade restrictive than necessary to meet its objective, etc.)

TBT Committee: Decisions and Recommendations International Standards

- Principles for development of international standards, guides, and recommendations:
 - Transparency
 - Openness
 - Impartiality and Consensus
 - Effectiveness and Relevance
 - Coherence (avoid duplication by cooperation)
 - Development dimension

WTO TBT Agreement: Performance v. Design

- ❑ Must use performance over design based standards wherever appropriate
- ❑ Raises issue of whether a particular design- based standard is necessary to fulfill a government's legitimate objective or does there exist a less trade-restrictive measure based on performance characteristics of the product?

WTO TBT Agreement: Conformity Assessment Procedures

- Nondiscriminatory, Unnecessary Obstacles to Trade
- Undertaken and completed as expeditiously as possible
- Transparency-Applicant informed
- Information requirements limited to what is necessary to assess conformity and determine fees
- Confidentiality of information is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected
- Fees must be equitable
- Place of facilities and samples can't be unnecessarily inconvenient
- Procedure exists to review complaints

WTO TBT Agreement: Coverage of Voluntary Standards

- ❑ Annex 3: TBT Code of Good Practice
- ❑ Applies to standards most of substantive and procedural requirements applicable to technical regulations
- ❑ TBT Article 4
 - Central government standardizing bodies required to comply and Members must ensure such compliance
 - Members are obligated to take such reasonable measures as available to ensure local government and non-government bodies comply

TBT Committee

- ❑ Monitors the implementation and administration of the TBT Agreement
- ❑ Provides Members the opportunity to raise specific trade concerns in full Committee or in informal bilateral meetings “on the margins”. Generally meets three times a year (required to meet once a year)
- ❑ Triennial Review of operation and implementation
- ❑ Conducts Workshops



WTO SPS Agreement: Rights & Obligations

- ❑ WTO Members have the right to adopt measures to protect the life or health of humans, animals and/or plants in their territory, provided that they are not inconsistent with the WTO SPS Agreement

WTO SPS Agreement: Rights & Obligations

continued

- The right to adopt SPS measures to achieve a given appropriate level of protection is accompanied by basic obligations. Essentially, WTO Members may adopt SPS measures provided the measures:
 - are applied only to the extent necessary to protect life or health;
 - are based on scientific principles either by being based on an international standard (Codex, OIE, IPPC) or a scientific risk assessment (except emergency or provisional measures); and
 - do not unjustifiably discriminate between national and foreign, or among foreign sources of supply

WTO SPS Agreement: Rights & Obligations

continued

- ❑ **Transparency:** rulemaking processes are to be open and transparent; provide notification at a draft stage to the WTO and comment period (60 days recommended); publish SPS measures; establishment of inquiry point and national notification authority
- ❑ **Equivalence:** Article 4 recognizes that different methods may be used to achieve the same level of health protection. If an exporting country's measures achieve the importing member's appropriate level of sanitary and phytosanitary protection, then those measures may be acceptable, even if they differ from those used by the importing country.
- ❑ **Regionalization:** SPS measures are adapted to the sanitary or phytosanitary characteristics of an area/region

Differences between SPS & TBT: Examples

- ❑ Food labeling
 - Health warnings, use, dosage — SPS
 - Label's position, lettering, composition, nutrient content, quality — TBT

- ❑ Containers for shipping grain
 - Fumigation, disinfectant, etc. to prevent disease spreading — SPS
 - Size, construction/structure, safe handling — TBT

- ❑ Bottled water: specifications for the bottles
 - Materials that can be used because safe for human health — SPS
 - Requirement that no residues of disinfectant, so water not contaminated — SPS
 - Permitted sizes to ensure standard volumes — TBT
 - Permitted shapes to allow stacking and displaying — TBT

Thank you,

Christine P. Brown

Office of Trade Agreements and Compliance

International Trade Administration

U.S. Department of Commerce

+1-202-482-5089

Christine.Brown@mail.doc.gov