

Equivalence from a TBT perspective

SPS Committee Thematic Session on Equivalence (Part I)

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Outline

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

SPS and TBT Agreements

Recognizing Members'
right to regulate...

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



Facilitating trade...

- ❖ Avoiding unnecessary barriers to international trade

Use of international standards, equivalence are tools for striking the balance

TBT Agreement: Equivalence of Technical Regulations

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

Separate equivalence provisions for technical regulations and conformity assessment procedures

TBT Agreement:

Equivalence of Conformity Assessment Procedures

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

(Article 6.1)

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

Possibility to accept results of CAP in other Members as equivalent even if underlying technical regulations are not equivalent

TBT Agreement: Mutual Recognition

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

Two-way equivalence?, not explicitly mentioned in SPS Agr. or Equivalence Decision

TBT Committee: Relevant work

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

TBT Committee: Relevant work

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

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

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

TBT Committee: Relevant work

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

TBT transparency elements

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

Notification of bilateral/plurilateral agreements

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

Notification of bilateral/plurilateral agreements

G/TBT/10.7/N/XX series

1. Notifying Member: 00000	1
2. Title of the bilateral or plurilateral Agreement: 00000	1
3. Parties to the Agreement: 00000	1
4. Date of entry into force of Agreement: 00000	1
5. Products covered (HS or CCCN where applicable, otherwise national tariff heading): 00000	1
6. Subject matter covered by the Agreement (technical regulations, standards or conformity assessment procedures): 00000	1
7. Brief description of the Agreement: 00000	1
8. Further information available from: 00000	1

Notification of bilateral/plurilateral agreements

Examples from Article 10.7 notifications

- EU – Chile: mutual recognition of equivalence of organic production rules and control systems (2017)
- *Ukraine – Korea: Mutual recognition of conformity assessment in selected products (2018)*

Regional Trade Agreements

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

To conclude:

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