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Equivalence and Mutual Recognition Agreements in Relation to Technical Measures

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Preface

The purpose of this paper is to focus on equivalence and mutual recognition as trade-facilitating tools in relation to technical measures, and to give some illustrating examples of actual agreements involving these issues. As a result, we hope to reveal important aspects and possible problems with regard to agreements on equivalence and mutual recognition for further discussions in relevant fora.

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1 Introduction

One of the main objectives of the World Trade Organization (WTO) is to facilitate international trade. Harmonisation is a well-known instrument for implementing this goal, i.e. through common international standards established by organisations like the Codex Alimentarius Commission (CAC) and the International Organization for Standardization (ISO). According to WTO rules, regulations shall be based on international standards (when such exist). The ultimate goal of harmonisation is to make all trade related measures uniform worldwide.

Equivalence and mutual recognition are two other trade-facilitating tools, which may not have attained the same degree of attention as harmonisation. The purpose of this paper is to focus on equivalence and mutual recognition as trade-facilitating tools in relation to technical measures.

Equivalence is a concept explicitly recognised in two WTO agreements, namely The SPS Agreement (Agreement on the Application of Sanitary and Phytosanitary Measures) and the TBT Agreement (Agreement on Technical Barriers to Trade). The concept of mutual recognition is only treated in the TBT Agreement. The relevant provisions in both agreements will be discussed. Recognition of equivalence seems to be more common in relation to SPS measures than for TBT measures. By comparing how these agreements treat the concept of equivalence, we hope to shed some light on possible differences to explain why this might be the case. After sorting out the concepts, we shall present some illustrating examples of actual agreements involving equivalence and mutual recognition in relation to technical measures. Hopefully, this can lead to better comprehension of equivalence and mutual recognition as trade-facilitating tools, which in turn may reveal interesting questions and possible problems regarding the establishment of equivalence agreements and mutual recognition agreements (MRAs).

2 The Concepts of Equivalence and Mutual Recognition

2.1 The TBT Agreement[1]

One of the main goals of the TBT Agreement, as stated in its preamble, is facilitating the conduct of international trade by ensuring that technical standards[2], regulations and procedures for assessment of conformity with these regulations and standards, do not create unnecessary obstacles to trade.

Equivalence is treated in the TBT Agreement as one important mean to facilitate trade.

In relation to technical regulations, article 2.7 states that[3]: *"Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied*

[1] The TBT agreement covers technical regulations, standards and conformity assessment procedures for all product categories, including industrial and agricultural products. All types of technical measures are regulated by the TBT agreement, except for those measures designed to protect human, animal or plant health that are covered by the SPS agreement (for the definition of SPS measures, consult Annex A (1) of the SPS agreement).

[2] In annex I of the TBT agreement, standards are defined as: "*document approved by a recognised 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*".

[3] In annex I of the TBT agreement, technical regulations are defined as: "*document which lays down product characteristics or their related processes and production methods, including the applicable provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packing, marking or labelling requirements as they apply to a product, process or production method*".

that these regulations adequately fulfil the objectives of their own regulations" (underlining by the author).

The TBT Agreement does not give any further guidance on how the concept of equivalence in relation to regulations should be understood or how it works in practice.

However, from article 2.7 one may deduce the following: to make an assessment of equivalence possible, the goals of the regulations must first be (made) explicit. If the goals are considered the same/equivalent, then the next step would be to perform the crucial test: whether the outcomes/results of the regulations can be considered equivalent. As long as this is the case, differences, e.g. with respect to the means prescribed to achieve the goals, should be accepted.

Consequently, an equivalence approach allows for different rules, but treating them as equal after making sure they fulfil the same regulatory goals and produce the same results. This would in practise lead to the same results as harmonisation. In contrast, harmonisation implies that the two different regulations are converted into one identical set of rules.

There is no specific provision with regard to equivalence and standards in the TBT Agreement. However, it seems reasonable to assume that the recognition of equivalence with regard to national standards would be relevant in situations where no international standard exist or when awaiting an international standard to be finalised. Then, national standards could be accepted as equivalent insofar as they are found to be sufficiently similar in relation to both their objectives and the effects they promote.

However, article 6.1 of the TBT Agreement makes it clear that the principle of equivalence can apply also to conformity assessment procedures. Conformity assessment procedures are defined in Annex I of the agreement as: *"any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled"*[4].

In other words, the concept of conformity assessment procedures describes all kinds of procedures to check compliance with relevant standards and regulations.

Article 6.1 states that*: "Members shall ensure, whenever possible, that results of conformity assessment procedures of other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures."* (underlining by the author).

It is clear that the equivalence assessment in relation to conformity assessment procedures is directed at the results of the compliance check itself and not at the rules or standards they check the compliance of. The absolute criterion for recognition of equivalence is that the conformity assessment procedures of the other party must offer the same degree of assurance of conformity with applicable regulations and standard as their own procedures – even if the procedures differ.[5]

Article 6.1 of the TBT Agreement recognises the need for prior consultations between the parties in relation to establishing equivalence of conformity assessment procedures. However, an important element of the consultations mentioned in article 6.1.1, is the assessment of the competence of conformity assessment bodies e.g., through accreditation with international guides or standardising bodies. The parties may

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[4] More specific provisions on conformity assessment procedures are to be found in Article 5 of the TBT agreement.

[5] The definition of equivalence of The Codex Alimentarius Commission is focused on conformity assessment procedures (inspection and certification) and their results: *"Equivalence is the capability of different inspection and certification systems to achieve the same objectives, regardless of details related to methods applied by both systems"(CAC GL 26-1997).*

accept each other's certificates, marks or test reports after thoroughly examining whether the performance of the conformity assessment bodies complies with the requirements of international standards or guides (for instance the requirements to get ISO accreditation).

The TBT Agreement has a special provision requesting members to establish Mutual Recognition Agreements of the result of 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 other's conformity assessment procedures....." (Cf. Art. 6.3)* (underlining by the author).

The concept of mutual recognition agreements – MRAs – is related to accepting the results of each other's conformity assessment procedures. This means that MRAs are formal agreements recognising that the conformity assessment procedures of the parties are equivalent with regard to the results they produce.

Mutual recognition agreements can give the exporting country the right to perform conformity assessment according to the rules/standards of the importing country. This means that products can be approved before export in the country of production and that there will be no need to check conformity with the rules of the importing country again at arrival.

As mentioned above, it is clear that equivalence with regard to conformity assessment procedures is an acceptance of the results of the compliance checks and not the standards and rules they check. Consequently, it follows that mutual recognition agreements can be established irrespectively of whether regulations and standards are harmonised or found to be equivalent or not. The fact that regulations and standards of the parties are not harmonised or found to be equivalent, would not be relevant, since the MRA implies that conformity assessment nevertheless can be done in the exporting country. Moreover, the status of the exporting country's standards and rules would not be affected.

However, producers in the exporting country would still have to modify their products in accordance with two different sets of rules. The benefit of the MRA is that the countries in question can have their products tested and certified through a "one stop" control at one local/national agency, both for products aimed at the national market and for products aimed at foreign markets.

If rules and standards of the parties are harmonised or found to be equivalent, the producers' costs of adapting to different set of rules would be eliminated. But even if recognition of the equivalence of rules and standards is reached, it does not automatically give market access in terms of product approvals. Only mutual recognition of conformity assessment procedures enables the products to be certified in the country of export.

2.2 Choice of Trade-facilitating Tool

In the previous section we established the difference between harmonisation, equivalence and mutual recognition as trade-facilitating tools. An important question then is: Which trade-facilitating tool should have priority and under what circumstances?

Generally, harmonisation is considered the preferred tool in the sense that a general goal in international trade is to establish the same regulations, standards and procedures worldwide. However, to reach this stage of harmonisation is not an easy task. Parallel to the process of harmonisation, the use of equivalence and mutual recognition could prove very useful.

If the main problem is the high cost of industry's adoption to different national standards and regulations, harmonisation or recognition of equivalence of rules and standards would be the right tools to choose. Producers would thus only have to relate to one set of rules either on the basis that rules are harmonised or that rules are found to be equivalent (products can be placed on the market as if they conformed to the rules of the importing country).

If this is not a feasible strategy, or if the problems are not primarily related to the costs of adapting to different rules but to product approvals, priority should be given to the establishment of mutual recognition agreements to facilitate the process of conformity assessment.

MRAs save time and expenses by allowing national inspectors to do the conformity assessment job all together, particularly when operating in heavily regulated sectors where testing is carried out both prior or post export, where there is unpredictability in obtaining approvals, where markets are distant and where rejections create delays and necessitate additional shipping or other costs, or when early marketing is crucial for the competitiveness of a product (European Commission 1996).

MRAs facilitate import administrative measures, speeding up customs clearance and reducing the rate of rejections of goods. MRAs will reduce the distance between the manufacturer and the conformity assessment body, and the importing country saves monitoring resources in terms of financial and personnel resources spent on end-product testing and certification.

However, being able to pursue a double-track strategy through both harmonisation and equivalence of rules and standard and establishing mutual recognition agreements of conformity assessment procedures, would give the greatest benefits. This strategy would ensure the reduction or elimination of the cost of adapting to different rules and the costs related to product approvals (European Commission 2001).

It should also be noted that both equivalence of rules and standards and mutual recognition will lead to increased market access, transparency and confidence building between the parties. Co-operation between the parties will be closer, leading to more efficient problem solving when necessary. The use of equivalence and MRAs as trade-facilitating tools will also promote harmonisation in the long run.

In conclusion, the choice of trade facilitating tools depends heavily on how close the systems of rules, standards and procedures of different countries in different sectors are brought together and on what the most urgent problems are.

2.3 The SPS Agreement

Generally, equivalence has gained more attention and acceptance in relation to SPS issues than for TBT issues. We shall therefore take a look at the relevant provisions of the SPS Agreement in order to compare the way in which the concept is dealt with in the two agreements.

Article 4.1 is the "equivalence provision" of the SPS Agreement stating that: *"even if measures differ from their own or from those used by other Members trading in the same product, Members shall accept the SPS measures of other Members as equivalent when the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of SPS protection"*(underlining by the author).

Article 4.1 of the SPS Agreement refers to the broad term "measures", while the TBT Agreement has one equivalence provision for regulations and one for procedures. In addition, the concept of mutual recognition is not mentioned in the SPS Agreement. Another difference is that article 4.1 of the SPS Agreement makes it explicitly clear that

it is the exporting country that must demonstrate equivalence to the importing country's measures. Furthermore, the measures in focus for equivalence assessment are measures related to the "appropriate level of SPS protection".

The objective of SPS measures is to protect animal, plant and human health and the measures must address specified types of corresponding SPS risks. This criterion is closely linked to the fact that SPS measures must have scientific justification on the basis of a health risk assessment. In contrast, there are no such preconditions for adopting TBT measures, and TBT measures may be adopted for multiple reasons. Legitimate TBT objectives are *inter alia* national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant health, or the environment (article 2.2 of the TBT Agreement), but this list cannot be considered exhaustive. This implies that it could be easier to assess equivalence in relation to SPS measures insofar as these measures address a specific kind of objective (level of health protection). Moreover, acceptable levels of health protection are (in many cases) quite easy both to identify and to measure.

Another difference is that we observe two substantially different elements in article 4.1 of the SPS Agreement compared to articles 2.7 and 6.1 of the TBT Agreement. First, the wording is much stronger in the SPS Agreement, in which article 4.1 states that members "shall accept" measures as equivalent. In comparison, the TBT Agreement states that members should "give positive consideration to accepting as equivalent" (2.7/regulations in the TBT Agreement) or "shall ensure, whenever possible" (6.1/conformity assessment procedures in the TBT Agreement).

The other main difference is that while the SPS Agreement requires that the exporting member must give an "objective demonstration" of equivalence, the TBT Agreement is more vague, merely stating that the members accepting equivalence should be "satisfied" that the regulations of the other members adequately fulfil the objectives of their own regulations.

Against this background we can conclude that the concept of equivalence has a stronger standing within the SPS Agreement than within the TBT Agreement. The assessment of equivalence with regard to SPS measures also seem to be more straight-forward, since SPS measures addresses only one type of goal related to protection levels that may be quantified.

How can these discrepancies in the recognition of equivalence between the two agreements be explained?

2.4 Equivalence – More Relevant for SPS Measures than for TBT Measures?

Professor Dukgeun Ahn (2002) points to the different natures of SPS and TBT measures as the rationale behind the different emphasis on equivalence in the two agreements, in line with the arguments suggested above. A precondition for assessing equivalence is that the goals of regulations must be clarified and made explicit. Professor Ahn finds the concept of equivalence to better fit the nature of SPS measures, since SPS measures are defined by one goal only (to protect health) with a variety of possible measures. In contrast, he refers to the fact that TBT measures are adopted for various reasons and that the regulations are very specific, making it harder to find comparable rules and establish equivalence. In his opinion this makes equivalence less relevant for technical measures.

Should we thus view equivalence as an important trade facilitating tool in relation to SPS measures, but an instrument with limited practical implications in relation to TBT measures?

It is clear that TBT measures are much more thematically diverse and that they can be adopted for a much wider range of objectives than SPS measures, making it harder to find comparable measures. An illustrating example of diversity of claimed TBT goals is the so called "trout case" between New Zealand and Canada. New Zealand argues conservation of recreational fishing as a cultural heritage and the value of this heritage for tourism as the basis for import restriction (as a technical regulation) on fresh, commercially caught trout from Canada (Veggeland et al. 2002).

SPS measures are considered easier to quantify (with regard to the protection levels they address) than TBT measures. Further, SPS measures are also considered to be more internationally harmonised than TBT measures. This could make it an easier task to close the remaining gap of differences in the SPS area by way of equivalence recognition.

Against this background, it may seem more complex to grasp the potential for equivalence recognition in the TBT area than in the SPS area. However, in specific sectors one may find comparable technical measures, e.g., in relation to food quality requirements designed to fulfil similar types of regulatory goals. It may also be noted that there is a trend towards defining quality measures in more general terms through performance requirement rather than by way of detailed specification, which may be helpful when considering equivalence as an approach to facilitating trade. An obvious task for further research would be to map potential sectors and product groups that could benefit from equivalence recognition.

An argument that actually goes against the notion that equivalence easier fits SPS measures, is the fact that the SPS Agreement recognises the introduction of measures leading to a higher level of protection than would be achieved on the basis of international standards – given there is scientific justification for the deviation (cf. article 3.3). It follows that in situations where trading partners have chosen significantly different protection levels, consultations on equivalence of SPS measures would not be very relevant even if it is easy to identify comparable sets of rules with the same kind of objectives.

Both SPS and TBT measures shall be based on international standards. However, the way in which member states choose to implement standards in national regulations may create variations between national regulations for both types of measures. In addition, both agreements allow for measures to deviate from international standards under specific conditions, which in turn may lead to variations in the measures adopted by different countries (ref. article 3.3 of the SPS Agreement and article 2.4 of the TBT Agreement)[6].

This implies that in theory there should be a potential for facilitating trade for both TBT and SPS measures by recognition of equivalence, even if the process could be more demanding for TBT measures. It is an empirical question in what sectors and for what specific regulations and standards equivalence recognition is most relevant and useful. Thus, there is a need for empiricaly exploring these issues further.

The next section contains some examples of different agreements involving equivalence and/or mutual recognition to show how these concepts are used in practice for TBT measures.

[6] For TBT measures, fundamental climatic or geographical factors or fundamental technical problems are mentioned as legitimate reasons for deviation from international standards in article 2.4.

3 Examples of Agreements on Equivalence and Mutual Recognition

In order to find relevant examples of equivalence and mutual recognition agreements, we have gone through notifications to the TBT committee. We have also searched the Internet to find agreements that are not notified to the TBT committee[7], and we have made some enquiries to relevant agencies for further information.

The general impression is that very few agreements involve recognition of the equivalence of TBT rules and standards. Our search resulted only in a few examples regarding standards. However, there are multiple examples from many different sectors of mutual recognition agreements of conformity assessment procedures.

Another impression is that agreements on equivalence and mutual recognition seem most widespread in relation to different kinds of equipment and sectors like tele-communications and medicine. This seems not to be the case for the food sector, even though we found some examples, e.g. in the fishery sector. There may of course exist relevant agreements not discovered by our relatively limited search, and here we only present a few examples of agreements for the sake of illustration. The examples we have chosen to highlight are either examples related to food or examples of general significance/not sector specific. However, some examples from other sectors are mentioned.

3.1 Fish and Fishery Products

In 1993, Canada and Australia signed a Memorandum of Understanding leaving inspection with the exporting country without any additional inspection and analyses on

[7] Article 10.7 of the TBT Agreement requires members to notify agreements.... *"related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade"*.

arrival, on the basis of accepting each other's inspection systems as equivalent.[8] The agreement only involves equivalence in relation to the assurance that the control and inspection agencies meet the requirements of the importing country ("purpose", point 1).

In 1996, Canada and New Zealand entered into an *"Equivalence arrangement on control measures for the safety and quality of fish and fishery products"*. This agreement refers to facilitation of bilateral trade as the main objective, while protecting public health and consumers from unwholesome fish and from false/misleading/deceptive labelling practices. The description of the goals and the title of the agreement refer to both safety and quality issues, thereby being both SPS and TBT relevant. However, the agreement itself only includes an explicit reference to the SPS Agreement.

The equivalence provision of the agreement (8.1) states that: "*Each Party will recognise as equivalent the other Party's inspection and control systems governing the processing, packaging, handling or export of fish and fishery products...*" (underlining by the author).

Important benefits from the agreement are mutual acceptance of export certificates and no inspections or analyses of shipments on arrival as the main rule (7.3.A).

Annex A of the agreement describes the process of equivalence assessment, stipulating assessment of the competent authorities with regard to, among others, structure, powers and performance, as well as legislation, procedures, standards and programs. The agreement also includes separate provisions on audits, transparency and exchange of information. However, it is clear that the agreement only involves equivalence with regard to the *"....efficiency of the total program in meeting the requirements of the importing Party"*(annex A, b2) (underling by the author).

In 1997, Canada and Thailand established the agreement "*On equivalence of fish and fishery products inspection and control systems*". Under article 4 it is stated that: *"Each Party hereby recognises as equivalent the other Party's fish and fishery products inspection and control systems governing raw materials, holding, handling, transporting, processing, packaging, and trade in fish and fishery products...."*. However, article 4.3 states that: *"Where differences exist in product standards and labelling requirements, the exporting Party will require the establishments identified in Annex III to comply with the product standards and labelling requirements of the importing Party"* (underlining by the author).

The agreement with Thailand seems to be more detailed, particularly in giving a description of the criteria for recognition of equivalence of the inspection and control systems (Annex II). The description of criteria includes requirements in relation to the legislative framework, governmental structures, adequate resources/tools, appropriate implementation of mandate, training of inspectors and laboratory personnel, inspection and sampling plans, certification systems, enforcement history, identification of (fish processing) establishments, ability to perform audit procedures and verification of equivalence.

It is interesting to notice that one of the requirements for the responsible authorities is to identify the main objectives addressed by their fish and fishery products inspection and control systems. The agreements specify that verification of equivalence may include side-by-side comparison, review of compliance history of products imported from the other Party and compliance audits. With regard to verification of equivalence each party should: *"...verify the equivalence of the other Party's fish and fishery*

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[8] Memorandum of Understanding Concerning the Inspection and Certification of Fish and Fishery Products between Australia and Canada, 28 June 1993.

products inspection and control system to meet import requirements" (underlining by the author).

It is also worthwhile mentioning that Canada has an arrangement of mutual recognition with Indonesia, established in 2002. This arrangement recognises the fish and fishery products inspection and control systems of the parties according to a specified procedure.[9] The agreement only involves recognition of the adequacy of the other party's control system to meet import requirements.

The agreements mentioned above can be found on the website of the Canadian Food Inspection Agency: www.inspection.gc.ca/

3.2 Organic Labelling

In March 2002, the Japanese Ministry of Agriculture, Forestry and Fisheries recognised that the United States Department of Agriculture's national organic standard for the production, handling and processing of plant-based organic agricultural products meets the requirements of the Japanese agricultural standard. The recognition of U.S. organic labelling standards was made after determining that the U.S. grading system is equivalent to the grading system of organic products under the Japanese agricultural standard.[10]

The Japanese recognition means that plant-based agricultural products certified to meet the U.S. organic standard can be labelled as organic and sold on the Japanese market (United States Department of Agriculture 2002). However, Japan could not accept three specified substances in organic products allowed under the U.S. organic standard and demanded a special compliance statement on the U.S. organic products for these substances. This means that Japan has only accepted the U.S. standards as partially equivalent. The U.S. will now consider banning of the three substances, so that producers only have to conform to one set of rules and avoid the demand for any additional documentation when exporting to Japan.

Regarding organic labelling, it is also worthwhile mentioning that the EU Council Regulation (EEC) No 2092/91 recognises the concept of equivalence in relation to organic products from third countries (article 11.1). This means that third countries can develop their own organic food production and certification systems as long as they fulfil the objectives of EU regulations. A list of all the countries with equivalence status or mutual recognition agreements can be found in Commission Regulation (EEC) No 94/92.

At the international level, the International Federation of Organic Agriculture Movements (IFOAM), established in 1992, has an accreditation programme ensuring equivalency of certification bodies worldwide. IFOAM check whether the bodies meet the IFOAM requirements for certification bodies and the IFOAM basic standards[11].

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[9] *"Arrangement on the Mutual Recognition of Fish and Fishery Products Inspection and Control Systems"* between The Canadian Food Inspection Agency and The Directorate General of Capture Fisheries of the Department of Marine Affairs and Fisheries of the Republic of Indonesia, 7 March 2002.

[10] The agreement is notified to the TBT committee: G/TBT/10.7/N/36.

[11] In 1999, the Codex Alimentarius Commission adopted *"Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods"*, aiding member countries to draw up their own rules on the basis of Codex principles taking account of specific national features.

3.3 Food MRAs

In APEC (The Asia-Pacific Economic Co-operation), a multilateral arrangement is established called *"the APEC Mutual Recognition Arrangement on Conformity Assessment of Foods and Food Products"* consisting of one general umbrella arrangement and one specific arrangement for implementation of sectoral arrangements.

In sectoral arrangements the participants engage in a mutual recognition agreement (MRA) recognising that the conformity assessment procedures of the other(s) are equivalent, in terms of outcomes, to their own. As a result, products can be assessed prior to export as to their conformity with the importing countries' requirements. On this basis, the need to reassess the product prior to entry onto the market in the importing economy disappears. The legislative, regulatory and administrative requirements on safety, fitness of purpose and truth in labelling which apply in each of the participating members economies remains in force. This means that the food MRAs can involve both SPS and TBT measures.

Phase I of the APEC arrangement encompasses mutual recognition of test reports, and Phase II is acceptance of product approvals. All APEC countries are now in phase I, and many countries are ready for phase II.

APEC also encourages MRAs in relation to physical measurement standards along with MRAs between accreditation bodies for calibration/testing laboratories and for certification as well as MRAs on legal metrology. It follows that the APEC MRAs are established both in the voluntary and the regulated sectors.

3.4 Accreditation in Relation to Testing, Calibration and Certification

Accreditation means to recognise the competence of a body with regard to testing, certification and associated functions in order to reduce or eliminate the need for products to be re-tested in another country. Accreditation is established through an objective body that assesses and verifies that the conformity assessment activities and results are in accordance with international standards.

Accreditation at the international level is established within the framework of the IAF (International Accreditation Forum) and the ILAC (International Laboratory Accreditation Cooperation). Within Europe, the parallel body is the EAA (European Cooperation for Accreditation).

The primary function of the IAF is to develop a single worldwide program of conformity assessment certificates, which will promote the elimination of non-tariff barriers to trade. IAF's objectives include facilitating trade by establishing mutual recognition agreements based on the equivalence of accreditation programmes operated by accredited body members, verified through peer review among those accredited body members.

Accreditation is used as an impartial means of assessing the competence of conformity assessment bodies. IAF provides the technical basis for the worldwide recognition of the competence of the bodies accredited by its members. The concept is *"tested or certified once – accepted everywhere!"*.

One result of this recognition is that purchasers, regulators and insurers who might have insisted on results accredited by their own national accreditation system, must accept results from other accredited sources. This facilitates the international acceptance of goods traded across borders.

The Comité International des Poids et Mesures (CIPM) (International Bureau of Weights and Measures) is a global body for measurement standards and calibration. In

1999, thirty-eight countries throughout the world signed an MRA established under the auspices of the CIPM. This MRA provides for the formal mutual recognition of national measurement standards and calibration capabilities, including measurement capabilities related to certified reference materials.

The MRA established by CIPM will gradually replace formal bilateral or regional agreements recognising the equivalence of key national measurement standards and create a uniform global metrology system contributing to the removal of technical barriers to trade.

3.5 Other Examples

We also found examples of mutual recognition agreements from other sectors. These include agreements for accepting test reports, certificates and marks of conformity established, *inter alia*, in the automotive industry, for chemicals, electrical equipment, medical services, mechanical equipment, pharmaceuticals and cosmetics, pressure equipment, radio and telecommunication equipment and for recreational crafts. It should also be mentioned that the EU has entered into seven MRAs with third countries involving most of the sectors mentioned above (EU – USA, Canada, Australia, New Zealand, Israel, Japan and Switzerland). In addition, the EFTA countries (Norway, Iceland and Liechtenstein) have agreed on MRAs with third countries like Australia and Canada, mutually recognising the results of conformity assessment activities related to, e.g., telecommunications, electrical equipment and machinery.

4 Summary and Conclusions: Problems and Possibilities

In the introduction, harmonisation was pointed out as a well-known tool for facilitating trade. Moreover, harmonisation is generally considered to be the preferred and most effective tool for removing technical barriers to trade.

However, achieving harmonisation is a very complex and lengthy process. In many cases, there are difficult technical and political circumstances that are hard to overcome. In many sectors, the potential for harmonisation is not very large, at least in a short-term perspective. The question then is what other means could be used as alternatives or supplements to harmonisation, in order to remove technical barriers to trade and facilitate trade?

In this paper we have focused on equivalence and mutual recognition as two other tools for facilitation of trade. In the following, we shall try to sum up both the problems and the possibilities of using these tools in relation to TBT measures.

Problems

The TBT Agreement does not give much guidance with regard to defining the concepts and how these tools could be used (the same is the case for the SPS Agreement). There are no authoritative documents describing the meaning of the concepts in detail. These concepts are thus often misunderstood and misused. This paper has been an attempt to get a clearer picture, but there are obvious needs for further work on equivalence and mutual recognition in relation to technical measures in relevant fora.

In general, there seem to be no good reasons why equivalence and mutual recognition could not be just as relevant for TBT measures as for SPS measures. However, one problem is that TBT measures address a wide variety of different objectives that are not so easily compared and/or understood across national borders. In contrast, SPS measures only address goals related to health protection. It may also be easier to assess equivalence of SPS measures because the core issue is to compare the equivalence of protection levels only.

Against this background, the difficulties that the broad scope of TBT objectives could cause in relation to equivalence should be subject for more thorough studies. A theoretical approach to answer how limiting this aspect really is would not be very efficient. One has to look at the actual situation in specific trade areas and for specific product categories, for instance in relation to product quality or labelling.

Possibilities

Equivalence can be considered the "the light-version" of harmonisation. The result of equivalence agreements is that products can be placed on the markets as if they conformed to the same rules, even though the rules actually remain different. This is possible after establishing that the different rules have the same objective and that the effects of the rules lead to fulfilment of the same goals.

To be able to agree on equivalence, it is clear that one precondition is a quite high degree of uniformity in relation to objectives and outcomes of regulations. It is also clear that the process of equivalence assessment in relation to rules and standards may be a quite complex and technical process that requires a great deal of time and resources.

However, recognition of equivalence of standards and regulations must be seen as a useful supplement to the harmonsationefforts: *"It* (equivalence) *can also be useful when harmonisation has almost been achieved through voluntary international standards and equivalence would then step in to close the remaining gap, which is often rooted in the peculiarities of a country's administrative and legal structure, rather than in any objective difference on what needs to be regulated and how"*(Petriccione 2000) (underlining by the author).

Thus, equivalence recognition should be seen as a complementary tool to harmonisation and not as a "competitor". This implies that the concept may be worthwhile further consideration, especially by exploring the use and applicability of equivalence for TBT measures with regard to specific products/product categories.

Mutual recognition of conformity assessment procedures may seem to be an even more interesting tool to consider, since it can be an important aid to facilitate trade regardless of how far the process of harmonisation or recognition of equivalence of rules and standards has come. The benefits gained from getting product approval for exports from the exporting country are obvious both for the producers/exporting country and for the importing country. MRAs also seem to be a much more widespread and commonly used tool than equivalence of rules and standards. The role of MRAs for facilitating trade in specific sectors and product categories, *inter alia*, for the food trade, should be a subject for further studies.

To be able to make better use of equivalence and mutual recognition as trade-facilitating tools for TBT measures, it would be appropriate to do further work to clarify the concepts, collect examples and systematise practical knowledge of the use of equivalence and mutual recognition in different settings and product areas.

Reference

Ahn, Dukgeun (2002): "Comparative Analysis of the SPS and the TBT Agreements," *International Trade Law & Regulations*, Vol.8: Issue 3, 2002.

APEC (Asia-Pacific Economic Cooperation): *APEC Mutual Recognition Arrangement of Conformity Assessment of Foods and Food Products*. Found at APEC web site: http://www.apecsec.org.sg/ (August 2002)

Australia and Canada (1993): *Memorandum of Understanding Concerning the Inspection and Certification of Fish and Fishery Products*. Agreement between Australia and Canada dated 28 June 1993.

Canada and Indonesia (1996: *Arrangement on The Mutual Recognition of Fish and Fishery Products Inspection and Control Systems*. Agreement between The Canadian Food Inspection Agency and The Directorate General of Capture Fisheries of The Department of Marine Affairs and Fisheries of The Republic of Indonesia dated 7 March 2002.

Canada and New Zealand (1996): *Equivalence Arrangement on Control Measures for the Safety and Quality of Fish and Fishery Products*. Agreement between New Zealand and Canada dated 29 April 1996.

Canada and Thailand (1997): *Agreement between The Government of Canada and The Government of The Kingdom of Thailand on the Equivalence of Fish and Fishery Products Inspection and Control Systems*. Dated 9 April 1997.

Codex Alimentarius Commission (1997): *Guidelines for the Design, Operation, Assessment and Accreditation of Food Import and Export Inspection and Certification Systems*. Document # CAC/GL 26-1997.

Codex Alimentarius Commission (1999): *Guidelines for the Production, Processing, Labelling and Marketing of Organically Produced Foods*.

European Commission (1996): *Community External Trade Policy in the fields of Standards and Conformity Assessment*. Communication. Document # COM (96) 564 def. Of 13/11/96.

European Commission (2001*): Implementation Policy for External Trade in the Fields of Standards and Conformity Assessment: A Tool Box of Instruments.* Working Paper. Document # SEC (2001) 1570 of 28/09/01.

European Union: *Mutual Recognitions Agreements.* An overview on the web site of the European Union: http://www.europa.eu.int/comm/enterprise/international/indexb1.htm (August 2002)

European Union (1991): *Council Regulation (EEC) No 2092/91 of 24 June 1991 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs*

European Union (1992): *Commission Regulation (EEC) No 94/92 of 14 January 1992 laying down detailed rules for implementing the arrangements for imports from third countries provided for in Regulation (EEC) No 2092/91 on organic production of agricultural products and indications referring thereto on agricultural products and foodstuffs*

Petriccione, Mauro (2000): *Mutual Recognition Agreements*. Speech at the Transatlantic Consumer Dialogue, Washington 10–12 February 2000. Found at the web site of the Trans Atlantic Consumer Dialogue: www.tacd.org (August 2002)

United States Department of Agriculture (2002): *USDA announces Japanese recognition of U.S. organic standards for plant-based agricultural products*. Press release No. 068-02, United States Department of Agriculture. Various related information found at the web site of Agricultural Marketing Service, USDA: http://www.ams.usda.gov (August 2002)

WTO: *The Agreement on Technical Barriers to Trade (The TBT agreement)*. See WTO web site: http://www.wto.org/ (August 2002)

Veggeland et al. (2002): Frode Veggeland, Svein Ole Borgen, Stig Gezelius, Christel Elvestad, *TBT-avtalen i WTO - tekniske handelshindringer og internasjonal handel med sjømat*. NILF-rapport 2002-3. Oslo: Norsk institutt for landbruksøkononisk forskning. English summary available: http://www.nilf.no/Publikasjoner/Rapporter/Bm/2002/R200203Innhold.shtml (August 2002)

WTO: *The Agreement on the Application of Sanitary and Phytosanitary Measures (The SPS agreement)*. See WTO web site: http://www.wto.org/ (August 2002)

WTO (1999): *Agreement Reached by a Member with another Country or Countries on Issues Related to Technical Regulations, Standards or Conformity Assessment Procedures.* Notification. Agreement between Australia and the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway. Dated 19 July 1999. Document # G/TBT/10.7/N/25

WTO (2001): *Agreement Reached by a Member with another Country or Countries on Issues Related to Technical Regulations, Standards or Conformity Assessment Procedures.* Notification. Agreement between Canada and the Republic of Iceland, the Principality of Liechtenstein and the Kingdom of Norway. Dated 28 May 2001. Document # G/TBT/10.7/N/31.