

Minutes

EGM How best to Assemble and Conduct Analysis of Non-Compliances Affecting Market Access for Developing Economies

Vienna, Austria

26-27 September 2007

Present

Ms. Carolin Averbeck	ITC
Mr. Mondher Mimouni	ITC
Mr. Frank Vantongeren	OECD
Ms. Barbara Fliess	OECD
Mr. Ian Dunmill	OIML
Mr. Victor Ognivtsev	UNCTAD
Mr. Hiroaki Kuwahara	UNCTAD
Mr. Sudip Basu	UNCTAD
Ms. Donna Roberts	US-ERS
Mr. Otto Loesener	UNIDO
Mr. Michael Ferrantino	US-ITC
Mr. Christopher Johnson	US-ITC

Opening remarks

Mr. Pataconi, UNIDO Trade Capacity Building Officer in Charge, opened the meeting by:

- Welcoming the participants and expressing the importance of the EGM
- Mentioning UNIDO's long-term involvement in standards and conformity assessment and support to its member states
- Highlighting the role of UNIDO's Trade Capacity Building Branch in offering technical assistance to developing countries in the fields of metrology, accreditation and standardization (MAS)
- Mentioning the JCDCMAS initiative and its objective of developing a joint harmonized approach in assisting developing countries in metrology, accreditation and standardization (MAS)
- Drawing attention to the importance of defining and assessing the impact of non-compliances affecting market access for developing countries and the opportunity that the group represents in defining a classification and tool to identify quality infrastructure problems
- Wishing the participants a fruitful discussion

Introduction to the Expert Group Meeting

Mr. Loesener introduced the draft agenda highlighting the importance of classifying in particular SPS and TBT related to Non-Tariff Measures (NTMs) / Non-Tariff Barriers (NTBs) and assure a relationship between HS codes and international standards as to ascertain a harmonized classification system as well as to facilitate the analysis of non-compliances of regulations affecting market access of developing countries.

He suggested that in the course of the 2-day EGM the group would:

- Exchange knowledge and experience in order to harmonize approaches
- Discuss the methodologies and contributions by the partners to be applied
- Classify pending US-FDA, EU-RASFF and Japanese non-compliances according to the existing classification
- Discuss the compatibility of SPS and TBT classifications
- Discuss findings of joint activities with OIML, ITC and the SPS/TBT Sub-Groups of MAST
- Come to conclusions and recommendations on the way forward

Presentations

Ms. Roberts presented US-ERS' research, which consist of analyzed patterns of FDA import detentions/refusals and the role of international institutions in capturing benefits from improved food safety as well as the analysis of existing international spillovers, links to monitoring and to the allocation of technical assistance for developing country exporters.

Mr. Loesener introduced UNIDO's analysis of non-compliances affecting market access of developing countries according to the refusals originating from the American FDA for Central America analyzed since 2000, as well as notifications originating from European RASFF and rejections originating from Japan for all regions globally using the new and old classifications in an analogous approach.

Mr. Ferrantino layed out the US-ICT's indicative quantitative information methodology in analyzing NTMs used mainly to satisfy the increasing demands from US Congress and US Administration to increase identification and quantitative assessments of NTMs and the recent application of this methodology for the negotiation of bilateral Free Trade Agreements.

Ms. Averbek presented ITC's project of classifying Codex Alimentarius, OIE and IPPC standards according to HS codes in order to provide information by product on SPS measures applied at international and national levels and identify potential NTBs by matching national against international standards.

Mr. Dunmill introduced OIML and legal metrology as well as the methodology and experience acquired from classifying international OIML documents according to HS codes, which was done in close cooperation with UNIDO.

Assorting the pending classifications

The group discussed and classified the pending US-FDA, EU-RASFF and Japanese violations, based on cases and on those which could not be assorted according to the

existing classification. All pending items, except for one concerning illegal imports in the EU- RASFF, were classified successfully.

Compatibility of the SPS and TBT classifications

Due to the question of compatibility and simplification, discussion revolved around whether it was advisable to maintain the SPS and TBT distinctions, as established by the WTO, regarding the classification. It was agreed to keep the distinction SPS and TBT and that the disputable items would be added under one of the categories with notes to facilitate the entries.

Conclusions of the EGM:

- Regarding the assortment of the pending classifications, it was agreed that Mr. Loesener would consult the RASFF team on the last unclear RASFF violation.
- Regarding the classification of Codex Alimentarius, OIE and IPPC standards according to HS codes it was concluded that it can provide useful information for exporters, however, that it was a resource and time consuming exercise.
- Regarding the classification of international OIML documents according to HS codes it was concluded that it was a useful tool in principle but that it was difficult to allocate codes due to the structure of the HS code system.
- Regarding the new classification of the NTBs/NTMs the following was concluded:
 1. To have a separate classifications for *Packaging requirements* and *Marking requirements* both under TBT and the SPS
 2. To add *Traceability requirement* to the SPS and TBT list.
 3. To eliminate the category *Prescriptive requirement* from the TBT list
 4. Add new item named *Identity requirement* to the TBT list
 5. As a result of an extensive debate in relation to standards under TBT it was agreed to keep the sub-division *Voluntary standards* in the TBT list as well as to introduce it to the SPS list, the difference being that the category *Management system standards* would be omitted from the SPS list. Private standards would only be considered in the case of complaints.
 6. To reproduce the same division under *International Standards* in the TBT list under *National Standards*
 7. To rename *Local standards* to *Subnational standards*
 8. Propose to delete the *No recognition of foreign testing and certification, double testing and certification* category and include all items arising under this category under the category *Certification requirement*
 9. To introduce a new category under the TBT list named *Conformity assessment n.e.s.*
 10. To assign the item *Lack of acceptance of Self Declaration of Conformity (SdoC)* in the category *Lack of recognition* as a separate item under the TBT and then this structure to be translated also to SPS
 11. To include *Requirement to pass through specified port or customs* in the SPS list also to the TBT category
 12. It was agreed to reproduce the same classification under TBT in terms of SPS

It was recommended by the group to seek clarification with FAO on what could be considered *Tolerance limits for residues in foods and feeds* or *Restricted use of certain substances in food and feed* and the differences between them in terms of assigning the classification.