
UNIT 6 WTO IMPLICATIONS

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6.0 OBJECTIVES

After reading this unit, we shall be able to understand:

- 1 SPS Agreement;
- 1 TBT Agreement;
- 1 importance of Codex standards in WTO; and
- 1 dispute Settlement.

6.1 INTRODUCTION TO WTO

In the previous unit, we familiarized ourselves with Codex, an organization focused on developing international food standards. World Trade Organization (WTO) is a trade organization mandated to facilitate trade, not a standard-setting organization. Not all Members of Codex are Members of WTO.

WTO came into existence as a result of the outcomes of the General Agreement on Tariffs and Trade (GATT) Uruguay Round of agreement that was signed in

Marrakesh (Morocco) on 15 April 1994. WTO is the only international organization dealing with the global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. GATT is now the WTO's principal rule-book for trade in goods. The WTO's overriding objective is to help trade flow smoothly, freely, fairly and predictably. It does this by Administering trade agreements, Assisting developing countries in trade policy issues, through technical assistance and training programs, Cooperating with other international organizations, Acting as a forum for trade negotiations, Settling trade disputes, Reviewing national trade policies. The WTO has 150 members, accounting for over 97% of world trade. Around 30 others are negotiating membership. Decisions are made by the entire membership. This is typically by consensus. A majority vote is also possible but it has never been used in the WTO, and was extremely rare under the WTO's predecessor, GATT. The WTO's agreements have been ratified in all members' parliaments. The WTO's top level decision-making body is the **Ministerial Conference** which meets at least once in every two years. Below this is the **General Council** (which normally include ambassadors and heads of delegation in Geneva, but sometimes officials sent from members' capitals) which meets several times a year in the Geneva headquarters. The General Council also meets as the Trade Policy Review Body and the Dispute Settlement Body. At the next level, are the **Goods Council, Services Council and Intellectual Property (TRIPS) Council** which report to the General Council. Numerous **specialized committees, working groups and working parties** deal with the individual agreements and other areas such as the environment, development, membership applications and regional trade agreements. The WTO **Secretariat**, based in Geneva is headed by a Director General. Since decisions are taken by the members themselves, the Secretariat does not have the decision-making role that other international bureaucracies are given. The Secretariat's main duties are to supply technical support for the various councils and committees and the ministerial conferences, to provide technical assistance for developing countries, to analyze world trade, and to explain WTO affairs to the public and media. The Secretariat also provides some forms of legal assistance in the dispute settlement process and advises governments wishing to become members of the WTO.

Trade Agreements

WTO is not just about liberalizing trade, in some circumstances its rules support maintaining trade barriers. For example, to protect consumers, prevent the spread of disease or protect the environment. The WTO agreements cover goods, services and intellectual property. They spell out the principles of liberalization, and the permitted exceptions. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes. They prescribe special treatment for developing countries. They require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted, and through regular reports by the secretariat on countries' trade policies. These agreements are often called the WTO's trade rules, and the WTO is often described as "rules-based", a system based on rules. But it's important to remember that the rules are actually agreements that governments negotiated. There are two specific WTO agreements *viz.* The Agreement on the Application of Sanitary and Phytosanitary Measures (commonly referred to as the SPS Agreement) and the Agreement on Technical Barriers to Trade (commonly referred to as the TBT Agreement). These agreements deal with food safety, animal and plant health and safety and with product standards in general. Both try to identify

how to meet the need to apply standards and at the same time avoid protectionism in disguise. These issues are becoming more important as tariff barriers fall. In both cases, if a country applies international standards, it is less likely to be challenged legally in the WTO than if it sets its own standards. Through these agreements, WTO members operate a non-discriminatory trading system that spells out their rights and their obligations. Each country receives guarantees that its exports will be treated fairly and consistently in other countries' markets. Each promises to do the same for imports into its own market. The system also gives developing countries some flexibility in implementing their commitments.

6.2 UNDERSTANDING SPS AGREEMENTS

The SPS Agreement is concerned with measures applied to protect human, animal and plant health.

6.2.1 Rights of Members under the SPS Agreement

The SPS Agreement states that Members are entitled to establish their own appropriate level of sanitary and phyto-sanitary protection provided such measures are not inconsistent with the provisions of the agreement. Sanitary and phyto-sanitary measures must be science-based, and should not represent an unnecessary or disguised restriction on trade. Members are encouraged to use international standards where they exist, but may impose more stringent measures if required to achieve their appropriate level of protection provided there is scientific justification. Members may be required to justify a stringent measure that results in a barrier to trade.

The SPS Agreement covers all relevant laws, decrees, regulations; testing, inspection, certification and approval procedures; and packaging and labelling requirements directly related to food safety. Examples of SPS measures include: (i) inspection of products for microbiological contaminants; (ii) mandating a specific fumigation treatment for products; and (iii) setting maximum allowable levels of pesticide residues in food.

6.2.2 Obligations of Members under the SPS Agreement

Members are required to base their national measures on international standards and an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health. SPS measures should be applied only to the extent necessary to protect human, animal or plant life or health. The measures should be applied equally to domestic and imported products so as not to discriminate unjustifiably against foreign sources of supply. Members are also required to participate in the relevant international standards organizations to the extent possible.

Members are expected to promote the review and development of international standards and to accept the SPS measures of other members as equivalent, even if such measures differ from their own, where it is demonstrated that those measures achieve their appropriate level of protection.

6.2.3 Relationship between Codex Standards and the SPS Agreement

The SPS Agreement identifies standards, guidelines and recommendations adopted

by the Codex Alimentarius Commission as the international benchmark for food safety. National regulations consistent with Codex standards are deemed to meet the requirements of the SPS Agreement, i.e. they do not have to be justified. Members of WTO should base their food safety standards on the standards of the Codex Alimentarius Commission, keeping in mind the right of WTO Members to establish their appropriate level of protection. In other words, WTO Members may implement standards that are more stringent than those of the Codex Alimentarius Commission, provided there is scientific justification that the more stringent measure is required to achieve their appropriate level of protection. In doing so, WTO Members must have scientific justification for such variations, as well as being able to demonstrate that the action taken was based on an assessment of risk.

For the purposes of the SPS Agreement, WTO does not differentiate between standards, guidelines and recommendations elaborated by Codex. They all have the same status under WTO. For food safety, the SPS Agreement refers to standards developed by Codex in the following areas:

- 1 codes and guidelines of hygienic practices;
- 1 contaminants;
- 1 food additives;
- 1 methods of analysis and sampling; and
- 1 veterinary drug and pesticide residues.

Although Codex standards are referred to by WTO, Codex does not establish food standards for WTO. It establishes food standards for the use of its (Codex) Member countries.

Check Your Progress Exercise 1



- Note:** a) Use the space given below for your answers.
 b) Check your answers with those given at the end of the unit.

1) Define WTO?

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2) Describe the importance of Trade Agreements?

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3) Define SPS Agreement?

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6.3 UNDERSTANDING TBT AGREEMENTS

The TBT Agreement refers to technical regulations and conformity assessment procedures and applies to all commodities, not just food. The TBT tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles.

The agreement also recognizes countries' rights to adopt the standards they consider appropriate for protecting human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. For example, national regulations requiring motor vehicles to be equipped with seat belts to minimize injury in the event of an accident, or that sockets be manufactured in a manner to prevent the user from electric shocks, fall under the first category. A common example of regulations whose objective is to protect human health is the labelling of cigarettes indicating that they are harmful to health.

Most of the regulations falling under the TBT Agreement aim to protect consumers through information, mainly in the form of labelling requirements, and to promote fair trade practices. Other regulations include classification and definition, essential composition and quality factors, packaging requirements and measurements (size, weight, etc.), so as to avoid deceptive practices.

Moreover, members are not prevented from taking measures necessary to ensure their standards are met. But that is counterbalanced with disciplines. In any case, whatever regulations they use should not discriminate. The agreement also sets out a code of good practice for both governments and non-governmental or industry bodies to prepare, adopt and apply voluntary standards. Over 200 standards-setting bodies apply the code.

The agreement says the procedures used to decide whether a product conforms with relevant standards have to be fair and equitable. It discourages any methods that would give domestically produced goods an unfair advantage. The agreement also encourages countries to recognize each other's procedures for assessing whether a product conforms. Without recognition, products might have to be tested twice, first by the exporting country and then by the importing country.

Manufacturers and exporters need to know what are the standards in their prospective markets. To help ensure that this information is made available conveniently, all WTO member governments are required to establish national enquiry points and to keep each other informed through the WTO — around 900 new or changed regulations are notified each year. The Technical Barriers to Trade Committee is the major clearing house for members to share the information and the major forum to discuss concerns about the regulations and their implementation.

6.4 SIMILARITIES AND DIFFERENCES BETWEEN SPS AND TBT AGREEMENTS

6.4.1 Similarities between the SPS and TBT Agreements

Regulations that address microbiological contamination of food, or set allowable

levels of pesticide or veterinary drug residues, or identify permitted food additives, by definition fall under the SPS Agreement. Some packaging and labelling requirements, if directly related to the safety of the food, are also subject to the SPS Agreement. The TBT Agreement seeks to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and analytical procedures for assessing conformity with technical regulations and standards, do not create unnecessary obstacles to trade. An illustrative example of the SPS and TBT measures that can apply to a food item is as below:

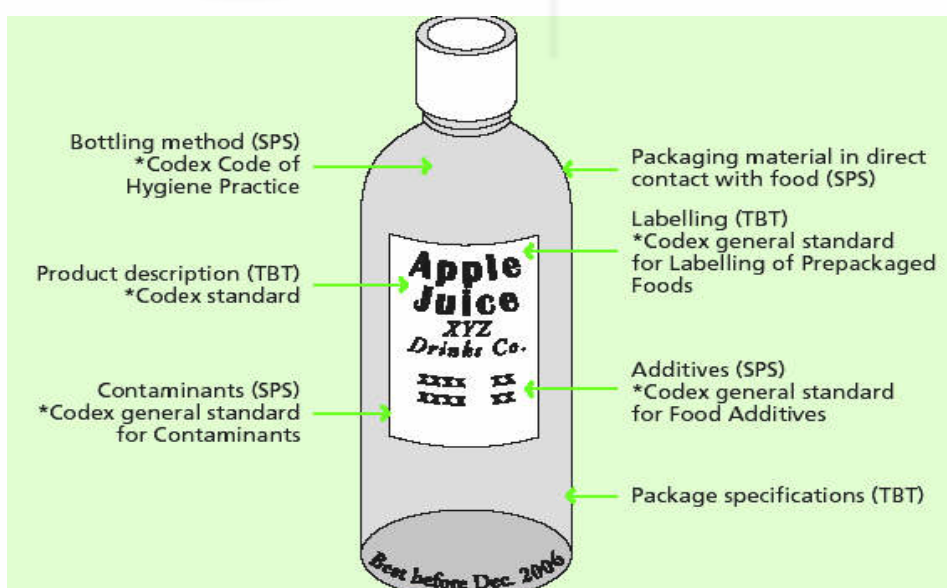
It is noteworthy that the SPS and TBT Agreements both acknowledge the importance of harmonizing standards internationally so as to minimize or eliminate the risk of sanitary, phyto-sanitary and other technical standards becoming barriers to trade.

The TBT Agreement covers all technical regulations, voluntary standards and the procedures to ensure that these are met (conformity assessment procedures), except when these are sanitary or phyto-sanitary measures as defined by the SPS Agreement. It is thus not only the type of measure that determines whether it is covered by the TBT Agreement, but the purpose of the measure that is relevant in determining whether a measure is subject to the SPS Agreement. For this purpose, Annex A of the TBT Agreement defines a technical regulation as follows:

A document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is 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.

6.4.2 Differences between SPS and TBT Agreement

The SPS Agreement covers all relevant laws, decrees, regulations; testing, inspection, certification and approval procedures; and packaging and labelling requirements directly related to food safety. The TBT Agreement refers to technical regulations and conformity assessment procedures and applies to all commodities, not just food.



6.5 RELATIONSHIP BETWEEN CODEX AND WTO

6.5.1 Codex Since the Creation of WTO

Considerable interest in the Commission's activities has been stimulated by the specific recognition of Codex standards, guidelines and recommendations within the SPS Agreement, as well as the importance assumed by Codex standards in the *Technical regulations and standards* provisions of the TBT Agreement.

Consequently, attendance at Codex meetings, especially by developing countries, has markedly increased. This is a welcome development, particularly since both Agreements direct Members, within the limits of their resources, "to play a full part" in the work of international standards organizations and their subsidiaries.

The adoption of Codex standards as scientifically justified norms for the purpose of the SPS and TBT Agreements is of immense significance. The standards have become an integral part of the legal framework within which international trade is being facilitated through harmonization. Already, they have been used as the benchmark in international trade disputes, and it is expected that they will be used increasingly in this regard.

6.5.2 WTO and Codex Standards for Food Safety

A fundamental premise of all Codex standards is that they are based on science. The first principle on Codex decision-making states: "The food standards, guidelines and other recommendations of Codex Alimentarius shall be based on the principle of sound scientific analysis and evidence, involving a thorough review of all relevant information, in order that the standards assure the quality and safety of the food supply."

Codex has also adopted statements of principle relating to the role of food safety risk assessment. The first principle states that "health and safety aspects of Codex decisions and recommendations should be based on a risk assessment, as appropriate to the circumstances". The second principle states that "food safety risk assessment should be soundly based on science, should incorporate the four steps of the risk assessment process, and should be documented in a transparent manner".

As WTO Members are obligated to base their SPS measures on an assessment of the risk taking into account all available scientific information, the usefulness of Codex standards to the WTO/SPS Agreement is evident. It is adherence to this principle of science-based standards that provides the rationale for WTO to make reference to Codex standards.

6.6 DISPUTE SETTLEMENT

Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. Without a means of settling disputes, the rules-based system would be less effective because the rules could not be enforced. The WTO's procedure underscores the rule of

law, and it makes the trading system more secure and predictable. The system is based on clearly-defined rules, with timetables for completing a case. First rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. Appeals based on points of law are possible.

However, the point is not to pass judgment. The priority is to settle disputes, through consultations if possible. By July 2005, only about 130 of the 332 cases had reached the full panel process. Most of the rest have either been notified as settled "out of court" or remain in a prolonged consultation phase — some since 1995.

6.6.1 Settling Disputes

Settling disputes is the responsibility of the Dispute Settlement Body (the General Council in another guise), which consists of all WTO members. The Dispute Settlement Body has the sole authority to establish "panels" of experts to consider the case, and to accept or reject the panels' findings or the results of an appeal. It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

First stage: Consultation (up to 60 days). Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves. If that fails, they can also ask the WTO director-general to mediate or try to help in any other way.

Second stage: The Panel (up to 45 days for a panel to be appointed, plus 6 months for the panel to conclude). If consultations fail, the complaining country can ask for a panel to be appointed. The country "in the dock" can block the creation of a panel once, but when the Dispute Settlement Body meets for a second time, the appointment can no longer be blocked (unless there is a consensus against appointing the panel). Officially, the panel is helping the Dispute Settlement Body make rulings or recommendations. But because the panel's report can only be rejected by consensus in the Dispute Settlement Body, its conclusions are difficult to overturn. The panel's findings have to be based on the agreements cited.

The panel's final report should normally be given to the parties to the dispute within six months. In cases of urgency, including those concerning perishable goods, the deadline is shortened to three months.

Time to settle a dispute?

These approximate periods for each stage of a dispute settlement procedure are target figures — the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.

60 days Consultations, mediation, etc.

45 days Panel set up and panelists appointed

6 months Final panel report to parties

3 weeks Final panel report to WTO members

60 days Dispute Settlement Body adopts report (if no appeal)

Total = 1 year (without appeal)

60–90 days Appeals report
30 days Dispute Settlement
Body adopts appeals report
Total = 1 year 3 months (with appeal)

6.6.2 Appeals

Either side can appeal a panel’s ruling. Sometimes both sides do so. Appeals have to be based on points of law such as legal interpretation — they cannot reexamine existing evidence or examine new issues. Each appeal is heard by three members of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO membership. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.

The appeal can uphold, modify or reverse the panel’s legal findings and conclusions. Normally appeals should not last more than 60 days, with an absolute maximum of 90 days. The Dispute Settlement Body has to accept or reject the appeals report within 30 days — and rejection is only possible by consensus.

6.6.3 Final Action

Once the case has been decided, there is more to do before trade sanctions (the conventional form of penalty) are imposed. The priority at this stage is for the losing “defendant” to bring its policy into line with the ruling or recommendations. The dispute settlement agreement stresses that “prompt compliance with recommendations or rulings of the DSB (Dispute Settlement Body) is essential in order to ensure effective resolution of disputes to the benefit of all Members”.

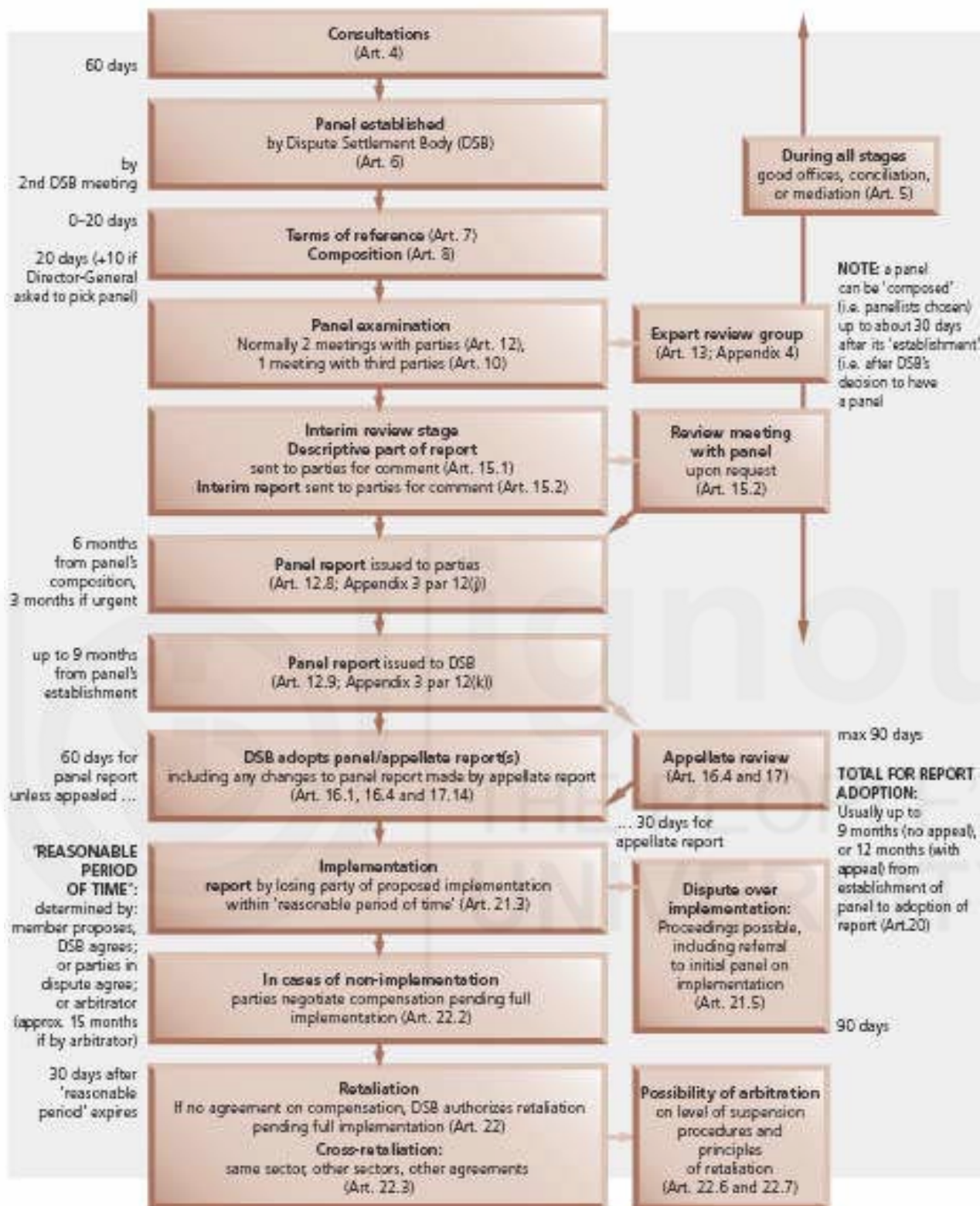
If the country that is the target of the complaint loses, it must follow the recommendations of the panel report or the appeal report. It must state its intention to do so at a Dispute Settlement Body meeting held within 30 days of the report’s adoption. If complying with the recommendation immediately proves impractical, the member will be given a “reasonable period of time” to do so. If it fails to act within this period, it has to enter into negotiations with the complaining country (or countries) in order to determine mutually-acceptable compensation — for instance, tariff reductions in areas of particular interest to the complaining side.

If after 20 days, no satisfactory compensation is agreed, the complaining side may ask the Dispute Settlement Body for permission to impose limited trade sanctions (“suspend concessions or obligations”) against the other side. The Dispute Settlement Body must grant this authorization within 30 days of the expiry of the “reasonable period of time” unless there is a consensus against the request.

Panel Process:

In principle, the sanctions should be imposed in the same sector as the dispute. If this is not practical or if it would not be effective, the sanctions can be imposed in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the action can be taken under another agreement. The objective is to minimize the chances of actions

spilling over into unrelated sectors while at the same time allowing the actions to be effective.



In any case, the Dispute Settlement Body monitors how adopted rulings are implemented. Any outstanding case remains on its agenda until the issue is resolved.

Check Your Progress Exercise 2



Note: a) Use the space given below for your answers.

b) Check your answers with those given at the end of the unit.

1) Define TBT Agreement?

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2) Briefly describe differences between SPS and TBT Agreements?

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3) Define relationship between Codex and WTO?

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6.7 LET US SUM UP

World Trade Organization (WTO) is a trade organization mandated to facilitate trade, not a standard-setting organization. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible. GATT is now the WTO's principal rule-book for trade in goods. The WTO's Secretariat supplies technical support for the various councils and committees and the ministerial conferences, to provide technical assistance for developing countries, to analyze world trade, to explain WTO affairs to the public and media, to provide legal assistance in the dispute settlement process.

There are two specific WTO agreements *viz.* The Agreement on the Application of Sanitary and Phyto-sanitary Measures (commonly referred to as the SPS Agreement) and the Agreement on Technical Barriers to Trade (commonly referred to as the TBT Agreement). These agreements deal with food safety, animal and plant health and safety and with product standards in general. Both agreements adopt Codex standards as scientifically justified norms.

The SPS Agreement covers all relevant laws, decrees, regulations; testing, inspection, certification and approval procedures; and packaging and labelling requirements directly related to food safety. The TBT Agreement refers to technical regulations and conformity assessment procedures and applies to all commodities, not just food. It is noteworthy that the SPS and TBT Agreements both acknowledge the importance of harmonizing standards internationally so as to minimize or eliminate the risk of sanitary, phyto-sanitary and other technical standards becoming barriers to trade.

Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. The point is not

to pass judgement. Once the case has been decided, the dispute settlement agreement stresses that “prompt compliance with recommendations or rulings of the DSB (Dispute Settlement Body) is essential in order to ensure effective resolution of disputes to the benefit of all Members”.

6.8 KEY WORDS

World Trade Organization (WTO) : Mandated to facilitate trade, not a standard-setting organization.

General Agreement on Tariffs and Trade (GATT) : A strong and prosperous multilateral trading system.

Codex Alimentarius Commission : It is an intergovernmental body whose purpose is to develop international food standards. It is commonly referred as Codex.

Panels : Panels are like tribunals. But unlike in a normal tribunal, the panelists are usually chosen in consultation with the countries in dispute. Only if the two sides cannot agree does the WTO Director-General appoint them. Panels consist of three (possibly five) experts from different countries who examine the evidence and decide who is right and who is wrong. They cannot receive instructions from any government.

GATS : General Agreement on Trade in Services.

MFN : Most Favoured Nation.

TRIPS : Trade-related aspects of intellectual property rights.

6.9 ANSWERS TO CHECK YOUR PROGRESS EXERCISES

Your answer should include following points:

Check Your Progress Exercise 1

- 1) World Trade Organization is an international trade organization mandated to facilitate trade, not a standard-setting organization.
 - 1 Describes its functions.
 - 1 Describe briefly WTO Structure.
- 2) WTO is not just about liberalizing trade, in some circumstances its rules support maintaining trade barriers.
 - 1 Agreements are referred to as WTO trade rules.
 - 1 Describe briefly objectives of SPS and TBT agreements

- 3)
 - 1 Rights of Members under the SPS Agreement
 - 1 Obligations of Members under SPS Agreement
 - 1 Role of Codex standards in SPS Agreement

Check Your Progress Exercise 2

- 1) The TBT Agreement refers to technical regulations and conformity assessment procedures and applies to all commodities, not just food. The TBT tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles. Most of the regulations falling under the TBT Agreement aim to protect consumers through information.
- 2) Application of rules under SPS and TBT agreements
- 3) Codex standards are based on science.
Role of Codex standards in SPS agreements

6.10 SUGGESTED READING

Codex Procedural Manual, 17th Edition (www.codexalimentarius.net)

Codex e-Learning centre (http://www.fao.org/ag/agn/agns/capacity_elearning_codex_en.asp)

Enhancing participation in Codex activities, a FAO/WHO training package. (<http://www.fao.org/docrep/008/y5884e/y5884e00.htm>)

The World Trade Organization by the World Trade Organization Information and Media Relations Division (May 2007) (also available at WTO website <http://www.wto.org>)

Understanding the WTO by the World Trade Organization Information and Media Relations Division (Third Edition, 2007) (also available at WTO website <http://www.wto.org>)

10 common misunderstandings about the WTO by the World Trade Organization Information and Media Relations Division (July 2007) (also available at WTO website <http://www.wto.org>)