

Regulatory transparency, developing countries, and the fate of the WTO

Robert Wolfe
Associate Professor
School of Policy Studies
Queen's University
Kingston, Ontario
J7L 3N6
(613) 533-6689 fax 533-2135
wolfer@qsilver.queensu.ca

Prepared for delivery to the International Studies Association, Portland, March 1, 2003. I am grateful to Michael Heal for preparing the tables, to officials in Geneva for patiently answering my questions, and to Klaus Stegemann for helpful comments. This work was supported by the Social Science and Humanities Research Council of Canada using funds provided by the Law Commission of Canada.

The fate of the World Trade Organization (WTO) hinges on its ability to reconcile two contrasting political imperatives. The WTO must adapt to rapid globalization with the demands that places on the most sophisticated sectors of the advanced economies, and it must integrate developing countries into the trading system. We can see this tension in discussions of one of the central norms of the regime, transparency. Many conceptions of the rule of law as administrative law (often called “good governance”) stress the importance of regulatory autonomy and transparency. This norm is based on the principled belief that democratic governance and efficient markets are enhanced when participants know what is going on, and when administrative agencies have a degree of autonomy. These ideas are now central to the politics of the WTO in three ways. The first is external transparency, meaning how well citizens in general and civil society organizations can see into the work of the organization, and the second is internal transparency, meaning the ability of smaller and developing country members to participate in the organization. In these two modes, debates are about actor identity and capacity: who is an effective and legitimate participant? Efforts to address one of these two forms of transparency sometimes undermine the other, but my concern in this paper is the third mode, regulatory transparency, meaning the incorporation of transparency and autonomy as important aspects of national administrative law. In this mode, transparency is now seen not just as an aspect of good governance, but as a regulatory tool in itself (Blanton, 2002). This new form of regulation seems obvious to the developed countries, but may be non-obvious and difficult for developing countries still struggling to develop command-and-control regulatory agencies. If countries find it hard in principle to be transparent for their own citizens, formalization as an international obligation may provide a new motivation without providing the means. The GATT of 1947 was a compromise between the need to end the managed trade of the 1930s with the equal imperative to preserve the social innovation of the New Deal (Ruggie, 1983). The GATT was self-balancing; the aim was to find a way to change policy at the border, not at home. Global structural change now requires that the rules, domestic and international, adapt, and the requisite policy changes now go far behind the border, but accommodating regulatory diversity is still important. The fate of the WTO will depend, in short, on finding a mode of transparency accessible to all its Members.

The usual approach to the problems of developing countries in the trading system is to discuss whether or how to offer Special and Differential treatment, where the concern is about how developing countries adapt to the trading system either through exemption from their obligations or through technical assistance in meeting them. (Pangestu, 2000 is an excellent treatment of the topic.) My interest, however, is trying to understand the governance implications of WTO agreements—to what extent do advanced countries try to externalize models that may imply governance relationships that do not exist or cannot be created in developing countries? Do understandings of administrative law make sense when transposed to a new context? How should analysts understand the difference between elites that do not want to meet WTO obligations, and societies that cannot adapt alien models quickly?

The governance relations implied by WTO rules are not the only source of foreign constraint on developing countries. ‘Conditionality’, for example, has long been a feature of lending by the international financial institutions (IFIs). Recently, the policy conditions attached

to loans have related to changes in governance thought likely to improve the growth prospects of the borrowers. The claim that IMF conditionality imposes policy models on developing countries that may be inappropriate is familiar (James, 1998; Pauly, 1999); less familiar is the argument that WTO agreements might have similar effects. I do not mean the generalized complaints that the WTO is biased against the poor (Oxfam, 2002); I do mean that few people have looked hard at the governance implications of WTO rules drafted on the basis of models familiar in developed countries that may be conceptually inappropriate. Finger and Schuler (2000) have shown that adopting new WTO rules, whether or not they are conceptually appropriate, can be fiscally irresponsible for a developing country. Stegemann (2000, p. 1246) found, for one example, that “The [TRIPS] Agreement requires only minor changes in the intellectual property regimes of the United States and other Western developed countries, whereas the developing countries, newly industrialised countries and transitional countries had to make radical and costly concessions.” The question for this paper, therefore, is whether the transparency rules of the WTO contribute to the reconciliation of the imperatives of adaptation and integration.

My initial assumption is that the regulatory requirements of the WTO will mirror practice in OECD countries, thereby being easy for those countries to implement, but that adoption will be hard for advanced developing countries, and very difficult for LDCs. This paper examines these propositions through a structured comparison of how Canada, Brazil, South Africa, Thailand and Uganda implement WTO transparency requirements in the domains of telecommunications and food safety. I begin with a discussion of transparency in the WTO.

Transparency in the WTO

Transparency is an essential requirement of western administrative law regimes, and, like non-discrimination, it is one of the fundamental norms of the trading system. In a contractualist approach to international regimes, one reason they are said to exist is to supply the demand for high quality information about the parties to an international bargain. Regimes are said to collect information either to evaluate their own performance or to evaluate the performance of individual parties (Mitchell, 1998, p. 113). Transparency of this sort features in regimes for everything from arms control to climate change. As used in the WTO, transparency shares some features with this widespread usage, but it has an additional dimension.

The transparency requirements found throughout the WTO agreements are aimed at both providing clarity for other WTO Members and predictability for economic actors, or at providing both transparency within a country and transparency between Members. WTO agreements typically mandate at least four levels of transparency: a) publication of laws and regulations; b) notification of new measures to trading partners; c) enquiry points for trading partners; and d) independent administration and adjudication. The agreements typically require publication of all legal requirements affecting trade in sufficient time for anyone affected by the rules to know about them before they come into force, both to allow time to comment and time to prepare to take advantage of the new opportunities created. Transparency also facilitates monitoring of adherence to WTO obligations (WTO, 1999). The WTO secretariat thinks that transparency can be especially important with respect to domestic regulations aimed at legitimate public policy objectives that might have an affect on international competition, such as public health or protection of the environment. The task of balancing the need to defer to domestic policy

objectives while ensuring that such policies are not a disguised restriction on trade may be facilitated by the transparency that allows other Members know what is happening, with a right to comment before an administrative agency that itself has a high degree of autonomy from the executive (WTO, 1999).

Although the various agreements contain dozens of notification requirements, many codified in the Uruguay Round ‘Decision on Notification Procedures’, the most explicit general provisions are in Article X of the GATT 1994 on ‘Publication and Administration of Trade Regulations,’ which requires that ‘Laws, regulations, judicial decisions and administrative rulings of general application [...] shall be published promptly...’ and that they be administered ‘in a uniform, impartial and reasonable manner’ notably by independent administrative tribunals or procedures (WTO, 2002a). Similar requirements for independent as well as transparent regulators are found in the newer agreements on services and intellectual property. (For a detailed discussion of transparency requirements in WTO agreements, see WTO, 2002g; see also Thompson and Iida, 2001, notably the summary of GATS provisions in Box 2.) Some scholars (Ostry, 1998: 16) attribute Article X of GATT to the US *Administrative Procedures Act* of 1946, whose language it appears to replicate, but the GATT provisions, based on earlier international agreements, are traditional. Transparency and independent judicial review had been part of English administrative law since the seventeenth century. By the middle of the nineteenth century, English administrative law had all the features familiar to us today, including independent agencies, regulation-making, and sunset clauses (Arthurs, 1979; Arthurs, 1985).

Transparency and trade facilitation

If the administrative law ideas in the WTO are traditional, their scope is not. When Article X was drafted, it applied largely to the administration of customs rules at the border. Now these requirements for a certain form of due process most familiar in the advanced economies in the Atlantic area have been extended deep into domestic policy. The issues are relevant to many aspects of the Doha Ministerial Declaration, notably Paragraph 27 on “trade facilitation” where Ministers “Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit,” agreed that a decision on negotiations will be made after the Cancun ministerial in September 2003.¹ Similar wording describes the other “Singapore” issues—investment, competition policy, and transparency in government procurement—all of which have a transparency dimension. In the interim, the Council for Trade in Goods was directed inter alia to review Article X of the GATT 1994, a task that it began on the basis of proposals by several delegations² covering “various means to improve transparency such as the installation of enquiry points, the introduction of an advanced ruling system, the more systematic consultation between customs administrations and traders and the establishment of effective appeal procedures.” (WTO, 2002d; For an overview of all proposals by delegations in the discussion on trade facilitation, see WTO, 2002e). The proposals came from Canada, the United

¹ (On the general complexities of trade facilitation, the plumbing of the system, see Staples, 2002).

² Notably Canada (G/C/W/379), the European Communities (G/C/W/363), Japan (G/C/W/376), and Korea (G/C/W/377). The United States (G/C/W/384) contributed an overview of mechanisms used by its authorities in ensuring transparency.

States, the EU, and Japan (the Quad), plus Korea. Members often describe their own transparency practices, and suggest that new information technologies allow for easy publication of regulatory information. The European proposal for the amendment of Article X seems to be aimed at further embedding general administrative law principles in trade practice. The Canadian proposal in effect suggests that its experience with regulatory reform (OECD, 2002) can be generalized. The ministerial declaration mentions the need for technical assistance, and Quad countries express willingness to provide help in everything from creating web sites to developing a legalized appeals system for administrative decisions. Many Members seem less enthusiastic about this aspect of the trade facilitation agenda. Codification of ideas current in North America or Europe will not by itself change administrative law practice in countries where these ideas have yet to take root, and technical assistance may therefore be beside the point.

Whether or not the Singapore issues move towards full negotiations after Cancun, the transparency dimension of these and other domestic regulatory issues, notably in the GATS, will only grow in importance for WTO Members. We can learn more about their relevance for the fate of the WTO by looking how existing provisions work in other domains.

Transparency in food safety and telecoms

In order to test my assumptions, I decided to compare the experience of developed and developing countries, and to conduct the comparison in two sectors. I thought that in the domain of administrative law Canada would be a reasonable surrogate for the other advanced economies in the Atlantic area. I know that Canadian officials played a major role in developing the concepts used in the two agreements I chose. It is a reasonable assumption, therefore, that the governance rules implied are ones that reflect Canadian administrative practice. For purposes of comparison, I wanted to choose countries in each of Asia, Africa and Latin America, and I wanted countries that were serious about their participation in the trading system. My first choices, therefore, were Thailand, South Africa, and Brazil, all countries with a sophisticated public administration who are active in the WTO. They are all middle-income countries, however; as a further point of comparison, therefore, I chose an African LDC, Uganda, a country with reasonably good governance in African terms.

When thinking of sectors for closer examination I looked at domains where technological and commercial change alters the legal and institutional setting. In the sectors chosen, new rules must be seen in the dual context of efforts by the trading system to accommodate domestic regulation, and efforts by society to accommodate the trading system. I decided to pick one advanced sector illustrating the new issue of trade in services, and a sector illustrating trade in goods. I chose telecoms in the General Agreement on Trade in Services (GATS) and food safety standards under the Agreement on Sanitary and Phytosanitary Standards (SPS). The telecoms agreement affects economic regulation, “a specialized bureaucratic process that combines aspects of both courts and legislatures to control prices, output and/or the entry and exit of firms in an industry.” (Salamon, 2002b, p. 118). The SPS agreement affects social regulation, which is “aimed at restricting behaviors that directly threaten public health, safety, welfare, or well-being.” (Salamon, 2002b, p. 157). the distinction is artificial, but it does relate to how we see the world differently as a producer, a consumer, and a citizen. The agreements are similar in that

both explicitly cover what are called “process and production methods.” In the traditional GATT context, measures taken at the border concerned only the characteristics of the product itself, but these agreements legitimately encompass those aspects of the domestic regulatory framework that affect how the product or the service was produced. Both agreements, therefore, illustrate contemporary thinking about governance relationships, allowing me to consider whether new trade agreements that conform to governance concerns of developed countries impose governance demands that developing countries cannot meet. The results of the investigation are appended in table form. Before reviewing the results, I first provide more background on the two sectors.

Governing food

Food safety is a dramatic example of the regulatory difficulties states face in reconciling science, health, culture, and trade in the era of globalization (Phillips and Wolfe, 2001). Technological change creates new products faster than our collective ability to assess their implications; new forms of transportation and expanding markets allow these products, and new pathogens, to move rapidly around the world because of the ever increasing exchanges of goods and services in the global economy. Some regulatory decisions are effectively taken within gigantic multinational firms, or within diverse international organizations, while other decisions are effectively preempted by civil society organizations, some of which are big multinationals in their own right. The food safety systems of the advanced economies became more complex in the last few years; Canada is an exemplar.

The sophisticated Canadian food safety system involves all levels of government, along with business, industry associations, academics, and civil society organizations. The Canadian Food Inspection Agency (CFIA) has integrated responsibility for plant and animal health as well as consumer safety. Rather than using older models of command and control regulation based on government inspectors, it is increasingly moving to a newer model of a farm to fork food safety system in which everyone from farmers to retail clerks has a role to play. Inspectors audit the systems in place, rather than specific products (Prince, 2000). The system is deeply embedded in an evolving Canadian administrative law system that depends on guiding the actions of a highly educated and well-informed population; the system also depends on cooperation with other countries. One of the central coordinating sites in the food safety domain is the WTO Committee on Sanitary and Phytosanitary Measures (SPS) which monitors the WTO SPS Agreement (WTO, 1998; Henson and Loader, 1999; Swinbank, 1999).

The premise of SPS is that a “science-based” system is neutral. The assumption of my analysis is that it is anything but. As Atik argues, “Science is a product of what questions are asked of it: a system that requires scientific bases for self-interested positions is likely to find them (Atik, 1997, p. 758).” Countries that are major suppliers of scientific expertise can be expected to have disproportionate influence on the regulation of food safety in other countries. In this study, I ask if SPS as an institution embeds western ideas about governing food, and since the answer is yes, what problems that poses for developing countries. SPS requires sophisticated public administration, advanced administrative law, and an educated public able to implement the myriad details of a farm to fork food safety system, as is arguably the case in Canada. The

problems of developing countries in the SPS are well known (Henson, Preibisch and Masakure, 2001; Henson and Loader, 1999; Jensen, 2002). (For a review of all SPS documents on SPS and developing countries, see WTO, 2002f.) Developing countries continue to face difficulties with respect to their internal regulatory infrastructure, and with active participation in the standard-setting process (WTO, 2001b). It is generally accepted that the benefits of the SPS agreement come both from building effective domestic institutions and from active participation in international institutions, which requires attendance at meetings, engagement in the international standard setting bodies, and use of the challenge procedures under the agreement. Middle and lower income countries in general tend to make fewer notifications, send fewer people to meetings, and those that do go do not necessarily understand all that is said.

Many observers wonder if compliance with SPS measures is a good use of development resources. Developing countries can and should do risk analysis—a one page risk assessment can suffice as well as 200 pages (WTO, 2000b). Good policy analysis requires only that we have a reasoned basis for the decisions we make, not that we hide behind pages of technical detail. Obviously, safe food is good for development, but it is not necessarily the case that Canadian ideas about risk assessment and risk management as transmitted through the WTO are the best means to assure safe food in Uganda. Since the burden of a new standard can fall more on the exporter than the importer, it is important for developing countries to participate in drafting international standards, and then to use the SPS committee to demand justifications from countries that do not use the international standard. Participation in the international standard setting bodies is all the more important because Codex standards, for example, are not neutral, as Victor (2000) shows. Although only governments vote, producers and consumers are able to attend meetings. It has been much easier, however, for producer groups from rich countries to attend meetings than for consumer groups or producers from developing countries. (Developing countries sometimes complain about the amount of time in meetings taken up with listening to northern civil society organizations.) The result of the imbalance is that new international standards sometimes have had a tendency to lock in place existing industry standards and practices from rich countries, which increases the risk that the Codex standard serves a protectionist as well as a food safety purpose. In such cases, even if a national standard is explicitly based on a Codex standard, it may be biased against countries who had been unable to participate in the elaboration of that standard.

The question of compliance with SPS rules arises because of trade: staying aloof from the food safety concerns of the advanced economies is not an option for potential exporters. The question then becomes whether or not food thought to be safe in Uganda will be deemed safe by potential importers, especially in Europe. World Bank studies suggest that food processing is like textiles—it uses local raw materials, and abundant cheap labour, making it an ideal industry in the early stages of industrialization. Yet EU safety measures are concentrated on processed foods not on imports of raw food. The most famous example of the problems with the EU approach is Aflatoxins, a toxin found on improperly stored cereals, dried fruits and nuts. There is a Codex standard on residues, but a proposed EU standard was more stringent. The World Bank estimated that the EU standard would save an additional 1.4 deaths per billion people as compared to the Codex standard, while cutting Africa exports by 64%, or \$670 million. (For the full story, see Otsuki, Wilson and Sewadeh, 2001; Wilson and Otsuki, 2001; WTO, 2000b.) The EU rule was

modified after protests were raised under the “specific trade concerns procedure” in the SPS committee, itself a form of transparency as “right to comment”.

Even when standards are reasonable, the sophistication of modern food safety means that meeting the standard may be beyond developing country resources. As an illustration, Gabon in 2001 presented a request to members of the WTO for CFA francs 210 million to help build a fisheries laboratory projected to cost 380 million CFA francs, and for an expert mission to help identify what equipment such a lab might need (WTO, 2001a). Gabon needed this lab if it was to get on List 1 of countries exporting fish to the EU. This document was briefly discussed in an informal meeting on technical assistance as an example of one Member's experience. What was not discussed was whether the EU List 1 was sensible, and if there were other ways for Gabon to export fish safely to Europe. The SPS committee should be a forum for discussing how the EU and Gabon can accommodate themselves to each other, but that requires active and sustained engagement by Gabon, which requires a national administrative structure capable of this kind of participation. One indicator of such administrative complexity is the difficulty for developing countries to meet the regulatory requirements of SPS, notably on transparency.

Developing countries have been concerned that the SPS transparency procedures do not necessarily work to their advantage. In comparison to the advanced economies, they make much less use of the challenge procedures under the SPS agreement.³ Without a scientific establishment at home able to understand the technical basis of another country's notification, it is hard to know whether it should be challenged in the committee. Some developing countries have suggested a mechanism whereby the notifying country would be required to specify which other Members might be affected (WTO, 2002b). The idea has met with little enthusiasm because of the associated complexities.

Governing phone calls

Trade in telecommunications is one of the success stories of the effort to liberalize trade in services. In February 1997, Members of the WTO concluded a major negotiation on trade in basic telecommunications services by making additions to their Schedules under the GATS (Wolfe, 2002a). Negotiating *trade* in basic telecommunications services was of necessity a negotiation about *regulation* of telecommunications. Only common principles on domestic regulation could ensure that the new market access was genuine. Trade in services means the supply of services, which means that the rules must cover all the preceding stages in producing services not just the mode of delivery. GATS does not give states the right to regulate; GATS subtracts from that right to the extent needed for liberalization. The telecoms deal required investment (foreign ownership) and competition policy provisions, because foreign firms needed assurances that regulation will be fair and even-handed, and that former national monopolies would not abuse their once dominant position. Negotiators decided that these principles should

³ Members of the WTO raise ‘specific trade concerns’ with each other under the provisions of Articles 11 and 12.2 of the SPS Agreement, which provides for ad hoc consultations. The secretariat has compiled a list of such discussions and their known outcomes (G/SPS/GEN/204/rev.1). When we analyzed it in terms of who participates in the process, we found very little involvement from developing countries. Of the 74 cases examined, 45 were raised by northern countries, and only 28 by southern countries.

be made a part of the GATS subject to the transparency requirements of the WTO, including the dispute settlement system, as a way of safeguarding the value of the market access commitments. Principles covering domestic regulation are included in a text called the Reference Paper that elaborates such GATS principles as transparency, independent domestic regulatory processes, and elimination of anti-competitive practices. The Reference Paper is not an addition to the GATS; it is a set of principles that has force only to the extent that states incorporated it, in whole or in part, in their Schedules.

The first two headings of the Reference Paper (competitive safeguards and interconnection) cover the regulation of “major suppliers”, with principles designed to ensure that the incumbent and former monopoly telecommunications service providers do not exercise their market power to the detriment of new entrants. The four remaining headings cover universal service, licensing, independence of regulators, and allocation of resources. The Reference Paper was designed to shape *regulatory institutions* (for example, whether the regulator is independent of the incumbent telecommunications operator and national industrial interests); *regulatory processes* (for example, whether there are measures ensuring that the decision-making process is known, and is non-discriminatory); and, substantive *regulatory policies* (for example, policies concerning interconnection between carriers.)

The challenge with respect to services for a developing country is not merely about gaining access to rich country markets, or giving access to their own market, but creating a regulatory framework that allows a strong services industry to develop. Without such a supportive framework, exports will not be possible and the development process will be hindered by the absence of advanced services. Here too the first problem developing countries face is their own—too many do not see services as a sector that requires consistent policy. From a trade perspective they do not see services in terms of enhancing opportunities to import as well as to export. They understand some sectors, and the role of services in development, but they have trouble seeing the horizontal implications of regulatory structures. Many lack proper consultative mechanisms, a form of transparency that would help them to see national interests and trade-offs from the standpoint of users, exporters and incumbent producers.

When I began this project, I wondered how easy it would be for a developing country to create an independent authority that meets the demands for autonomy and transparency of the telecommunications agreement’s Reference Paper. I know that the Reference Paper was pieced together during the negotiations from the ideas in various submissions from among the 16 participating delegations. The first paper was actually submitted by the USA—it was the Federal Communications Commission (FCC) in three pages. Then a paper came from Canada—the Canadian Radio-television and Telecommunications Commission (CRTC) in two pages. Negotiators had long discussions about how countries have different legal traditions—for example, Canada, US, New Zealand and Japan all have different competition law traditions. The *regulatory principles* of the Reference Paper seem to allow enormous national latitude in *practice*. It states that using some policy technique, as opposed to some others, is the best way of meeting commonly shared objectives. Given this background, my supposition was that the Reference Paper would be hard for developing countries to implement, and that regulatory differences might be a subject of dispute.

Investigating Transparency

The results of our investigation of transparency in food safety and telecoms are in the annex. The focus is primarily on regulatory transparency, or measures taken at home. Have countries been able to set up an independent regulator? To whom does the regulator report? How is it funded? Can citizens and producers inform themselves of new rules, and make comments? Are there more general obstacles to effective regulation? In the case of telecoms, I was interested in whether countries had been able to implement their commitments under the Reference Paper. In the case of SPS, the Agreement requires that Members establish transparent mechanisms in order “to achieve a greater degree of clarity, predictability and information about trade policies, rules and regulations of Members.” (WTO, 2000a) In particular, Members must establish an Enquiry Point administered by a single central government authority responsible for implementing – on a national level – the notification requirements of the SPS Agreement. On an international level, the Enquiry Point acts as a liaison with other countries for domestic regulatory and food safety information. It must: i) publish domestic regulations sufficiently early to allow for comments (from both producers and consumers); ii) notify other countries of its domestic regulatory environment via the Secretariat of SPS, using the appropriate notification procedures; iii) provide copies of regulations upon request; and iv) ensure that all comments are handled correctly (WTO, 2000a).⁴

The necessary empirical data is not easy to obtain. I was not able to conduct field work, and I was not able to investigate the extent to which what we found for a given country reflected aspects of its general administrative law regime. My research assistant began with a search of the secondary literature on the two domains, and then used websites and international organization documents to conduct the comparison. We also searched on-line newspaper databases. The internet or web is often touted as a tool to increase the transparency of government in general. In the WTO, the web is often mentioned as a tool for making it easier for developing country officials to obtain information, especially when they are unable to come to Geneva. Most important, it is seen as a tool for improving the operation of national Enquiry Points under the TBT and SPS agreements. The method used in this paper, then, is consistent with the transparency objectives of the WTO. If we are unable to find information about a country on the web, then other Members and their exporters might also have trouble. That the picture for Brazil, for example, remains incomplete may indicate a linguistic problem, but it also suggests how hard it can be for people in one country to get basic regulatory information about another. In some developing countries, very few people would have access to the internet or even, in Uganda, to a phone line. It may therefore not be in the best interests of Uganda to invest heavily in developing a website that explains the transparency of say telecommunications when so few of its citizens would have access to this information in the first place.

What we found was surprising with respect to telecommunications. It seems that administrative law travels fairly well. A search of the secondary literature turned up little

⁴ As a document submitted by Malawi illustrates (WTO, 2002c), it can be a challenge to create an effective Enquiry Point that can store thousands of documents on technical regulations, standards and conformity assessment procedures for the host as well as other Members. Malawi estimated a need for US\$79,000 over two years in order to purchase computers and a fax machine, as well as obtaining consulting services on how to implement the new process.

information on developing country experience with the Reference Paper, and little information is available in WTO documents. Negotiators were reluctant to create a monitoring mechanism, so unlike SPS, there is no telecoms committee, and therefore no place for informal discussion among Members. The transition periods recently expired but so far there has only been one telecoms-related dispute, and that on interconnection not transparency. I then approached the question from the perspective of the International Telecommunications Union (ITU). The WTO has supplanted the ITU for many commercial issues, but the ITU remains the forum for technical matters, and for regulators. I discovered that regulatory cooperation is increasing, but not because of the Reference Paper (ITU, 2002).

The formal members of the ITU in many countries were the old PTTs, but now the holder of the Membership is the “Ministry of Communications” and, increasingly, regulatory bodies are being designated as the formal member—51 regulatory bodies are now the recognized government representatives to the ITU. Canada is an outlier—Industry Canada is the recognized member, not the CRTC. Increasingly the focus is on regulation because 104 Members have at least partially privatized the sector, which changes the focus of the International Telecommunications Union (ITU) to regulatory issues. Members need new ways to accomplish their regulatory objectives because they are no longer in the business of the direct provision of a service. Getting the framework right matters. If we look at the gap between the formal aid available, and the needs for investment to reach the minimal penetration levels called for in national telecommunication plans, then foreign investment is essential. Developing countries now realize that their national interest requires competition and liberalization if they wish to control their own former monopolies and the new entrants to their markets. The GATS telecoms negotiations may simply have reflected the reform process underway, without driving it. Developing countries see sector reform as a way to meet social (universal services) objectives. The driving force is a need to regulate, not a North American view of how to do it.

Degrees of transparency and independence exist, but from the evidence it appears as if all the target countries, with the exception of Thailand, which has yet to adopt the Reference Paper principles, have established an independent regulator, competitive safeguards, and made licensing requirements and decisions publicly available. South African implementation of the Reference Paper, for example, is generally good, although not perfect (Cohen, 2001). The difficulty with the agreement seems to lie in providing consumers and producers with the ability to comment on proposed regulations. In particular, enabling producers to openly comment on licensing decisions appears problematic. Questions also remain about the true independence of some of the regulatory agencies, notably in South Africa. Other problems, like the territorial size of a country like Canada, the various levels of government between the municipal, provincial and federal, or the ability to hire qualified staff in Brazil, hamper effective telecommunications administration. Overall however, convergence in governance models seems easier and more prevalent than I expected.

On SPS however, regulatory convergence is much less evident. First, the level of international involvement by some developing countries is limited in comparison to Canada, for reasons ranging from budgetary constraints to a lack of infrastructure and skill shortages. Brazil has made active use of the notification procedures, and along with Thailand they make good use of the possibilities offered by the SPS committee, but Uganda hardly uses it at all. One result of

this pattern is that developing countries have trouble ensuring that the rules evolve in a compatible direction, which simply accentuates their difficulties in living with the results. Each target country has established an SPS Enquiry Point, but their effectiveness varies. Uganda's is clearly the weakest; Canada and Thailand make best use of the web. We could not assess how well the Enquiry Points work, but we know that in the case of the operation of the related Technical Barriers to Trade Agreement (TBT), developing countries can find it hard to respond if they get a large number of requests, and that language can be a barrier to understanding questions. We know with respect to notifications that it can be hard for the few officials knowledgeable about the WTO to explain to officials in other ministries that a notification requirement even exists, let alone to encourage those officials to draft the necessary document.

Implications of the Tables

The general implication of my case studies is that general implications are hard to draw with respect to administrative law regimes. In telecoms where the numbers of players are few and the stakes large, regulatory independence and transparency are increasingly prevalent. In food safety, where there are millions of players, and the resources available for regulation can be limited, meeting international standards can be hard. Explaining the divergence would require more careful work on the nature of regulatory systems, but some speculation is possible.

It might be possible to distinguish SPS from telecoms on the basis of either the actors affected or the problem to be solved. With respect to who is affected or influenced by the policy, it is likely that the size and heterogeneity of actors matters as does their level of interest and information. Actors also probably differ if they are importers or exporters, producers or consumers. In the telecoms domain, developing countries would have a small number of sophisticated producers and consumers, with a few members of the public with a general interest. In contrast, food safety rules directly affect huge numbers of producers and consumers, with no large player willing to pay the costs of transparency as a public good. With respect to the problem to be solved, where the telecoms agreement is about competition in home and export markets (thus affecting the rights of foreign firms in the domestic market), food safety is about a system that protects the health of citizens, that treats importers fairly, and whose standards will be recognized by importing Members abroad. Implementing WTO rules makes sense for a country trying to attract investment from abroad (telecoms), or trying to export (food, in some sectors of some countries). In a developing country, de facto food safety in daily life may be governed by informal (private, voluntary) standard setting bodies. Such entities may not exist in new domains like telecoms, leaving the terrain open to create regulatory bodies based on prevailing international models. In food safety, what a country may have already works because consumers are close to producers, or at least distributors, and so do not depend on the regulator to decide if food is safe, which increases the costs of international models.

Another factor not considered in this paper is the diffusion process. I do not discuss the optimal form of international governance (Abbott and Snidal, 2001) or even the content of the applicable standards. The focus is on the relative difficulty of the administrative law concepts at stake in the two domains. I assume that countries accept WTO rules in good faith, but then face more or less difficulty in living with the results. Do countries converge on WTO rules because of

bilateral pressure from major donors or major trading partners? Is trade both a vector for learning and a motivation for change? If it is, looking at imports and exports might be relevant: where exports are high, international standards matter; when they are low, why bother? If imports are high, might a country need to use Codex standards to be fair to importers? In any event, this investigation does not challenge my initial assumption that developing countries cannot regulate in the Canadian way any time soon, which will require effort to find ways of governing food that keep everyone healthy while allowing all to prosper.

Conclusion

The only way any country can be an effective participant in the WTO as it evolves in response to globalization is to have an open and transparent public administration based on a broad consultative process. Negotiators cannot find an appropriate rule if they do not engage the people who will have to live with it. People who do not understand or who were not engaged are unlikely to be able or willing to reproduce the rule in their daily life. Since WTO law at best creates guidelines rather than commands for participants in the trading system (Wolfe, 2002b), and since it is not really ‘enforceable’, new rules that participants do not understand may not be worth the time spent on negotiations. Many developing countries have difficulty making effective policy, however, which limits their integration into the world economy more than any rules emanating from the WTO. WTO is designed for democracies, although democracy between states can undermine or support democracy within states, and vice versa. If WTO imposes alien regulatory ideas, contra whatever arises in local interaction, it may undermine the development of democracy.

The WTO cannot regulate the world, and cannot dictate what regulators do. Pascal Lamy, the EU trade commissioner, has a different perspective. He said last year (Lamy, 2002, emphasis added) that “If I want to *impose* respect of my strict environmental, sanitary or phytosanitary rules on developing countries (and I think I have every right and obligation to do so), I have to *offer* in return better effective *access* for their products to my markets - including through better and more focused *technical assistance* to help them meet my sophisticated domestic regulations.” Many Canadians share Lamy’s concerns, but I think his proposed methods are inappropriate. He thinks it acceptable that countries can buy or coerce respect for their own governance model, and he thinks that technical assistance is sufficient to help developing countries live by EU rules. I am dubious on theoretical and practical grounds. Democracy requires mutual respect, and realism demands finding regulatory frameworks that everyone can use. Means and ends are related; tools are more often chosen because they fit the way a country understands the problem and not because they fit a preconceived ideal of optimal policy choice—thus tool sets will differ between countries (Salamon, 2002a: 602). This conclusion reinforces skepticism about the Singapore issues. A better way to square the circle Lamy identifies will be to look for more Reference Papers, which is an analog of looking for a way to think about how good administrative law principles apply in a specific domain, and to do it in a language understood by regulators in that domain.

Telecoms people see themselves in the Reference Paper. It allows countries to implement the new framework in their own way while creating a basis for countries to talk about their mutual obligations. The objective is ensuring that administrative law regimes meet certain norms

for multilateral compatibility, not that they be the same. It is important to create ways for the Ugandan and Canadian administrative law regimes to talk to each other. In specific domestic domains, what are the principles that we would wish to defend? This search for a legal grammar that Canadians will recognize and that Ugandans can deploy will not result in hierarchical norms, but it is one way to strive for good governance at home and abroad. This investigation of transparency in telecoms and food safety shows that the route is not obvious, but the fate of the WTO depends on this search.

References

- Abbott, Kenneth W. and Duncan Snidal, (2001) 'International 'Standards' and International Governance,' Journal of European Public Policy 8:3 (June 2001), 345-70.
- Arthurs, Harry W., (1979) 'Rethinking Administrative Law: A Slightly Dicey Business,' Osgoode Hall Law Journal 17:1 (April 1979), 1-45.
- Arthurs, Harry W., (1985) 'Without the Law': Administrative Justice and Legal Pluralism in Nineteenth-Century England (Toronto: University of Toronto Press).
- Atik, Jeffery, (1997) 'Science and International Regulatory Convergence,' Northwestern Journal of International Law & Business 17:2/3 (Winter 1996/Spring 1997), 736-58.
- Blanton, Thomas, (2002) 'The World's Right to Know,' Foreign Policy 131: (July/August 2002), 50-8.
- Cohen, Tracy, (2001) 'Domestic Policy and South Africa's Commitments under the WTO's Basic Telecommunications Agreement: Explaining the Apparent Inertia,' Journal of International Economic Law 4:4 (December 2001), 725-54.
- Finger, J. Michael and Philip Schuler, (2000) 'Implementation of Uruguay Round Commitments: The Development Challenge,' World Economy 23:4 (April 2000), 511-25.
- Henson, Spencer and Rupert Loader, (1999) 'Impact of Sanitary and Phytosanitary Standards on Developing Countries and the Role of the SPS Agreement,' Agribusiness 15:3 (Summer 1999), 355-69.
- Henson, Spencer, Kerry Preibisch and Oliver Masakure, (2001) 'Review of Developing Country Needs and Involvement in International Standards-Setting Bodies,' Centre for Food Economics Research, Department of Agricultural and Food Economics, The University of Reading: February 2001.
- ITU, (2002) Trends in Telecommunications Reform 2002: Effective Regulation (Geneva: International Telecommunications Union).
- James, Harold, (1998) 'From Grandmotherliness to Governance: The Evolution of IMF Conditionality,' Finance and Development 35:4 (December 1998), 44-8.
- Jensen, Michael Friis, (2002) 'Reviewing the SPS Agreement: A Developing Country Perspective,' Centre for Development Research: CDR Working Paper 02.3, February 2002.
- Lamy, Pascal, (2002) 'From Doha to Cancun,' speech to the Foreign Trade Association, Brussels: DN: SPEECH/02/258, 5 June 2002.
- Mitchell, Ronald B., (1998) 'Sources of Transparency: Information Systems in International Regimes,' International Studies Quarterly 42:1 109-31.
- OECD, (2002) Canada: Maintaining Leadership through Innovation (Paris: Organisation for Economic Co-operation and Development).
- Ostry, Sylvia, (1998) Reinforcing the WTO (Washington: Group of Thirty).
- Otsuki, Tsunehiro, John S. Wilson and Mirvat Sewadeh, (2001) 'A Race to the Top? A Case Study of Food Safety Standards and African Exports,' World Bank: 2001.

Oxfam, (2002) Rigged Rules and Double Standards: Trade, Globalisation, and the Fight against Poverty (London?: Oxfam).

Pangestu, Mari, (2000) 'Special and Differential Treatment in the Millennium: Special for Whom and How Different?,' The World Economy 23:9 (September 2000), 1285-302.

Pauly, Louis W., (1999) 'Good Governance and Bad Policy: The Perils of International Organizational Overextension,' Review of International Political Economy 6:4 (Winter 1999), 401-25.

Phillips, Peter W.B. and Robert Wolfe, eds, (2001) Governing Food: Science, Safety, and Trade (Montreal and Kingston: McGill-Queen's University Press for the School of Policy Studies).

Prince, Michael J., (2000) 'The Canadian Food Inspection Agency: Modernizing Science-Based Regulation,' in Doern, G. Bruce and Edward James Reed, eds, Risky Business: Canada's Changing Science-Based Policy and Regulatory Regime (Toronto: University of Toronto Press),

Ruggie, John Gerard, (1983) 'International Regimes, Transactions, and Change: Embedded Liberalism in the Postwar Economic Order,' in Krasner, Stephen D., ed. International Regimes (Ithaca: Cornell University Press), 195-231.

Salamon, Lester M., (2002a) 'The Tools Approach and the New Governance: Conclusion and Implications,' in Salamon, Lester M., ed. The Tools of Government: A Guide to the New Governance (Oxford, UK ; New York: Oxford University Press), 600-10.

Salamon, Lester M., ed. (2002b) The Tools of Government: A Guide to the New Governance (Oxford, UK ; New York: Oxford University Press).

Staples, Brian Rankin, (2002) 'Trade Facilitation: Improving the Invisible Infrastructure,' in Mattoo, Aaditya, ed. Development, Trade and the WTO: A Handbook (Washington: World Bank), 139-48.

Stegemann, Klaus, (2000) 'The Integration of Intellectual Property Rights into the WTO System,' The World Economy 23:9 (September 2000), 1237-69.

Swinbank, Alan, (1999) 'The Role of the WTO and the International Agencies in SPS Standard Setting,' Agribusiness 15:3 (Summer 1999), 323-33.

Thompson, Rachel and Keiya Iida, (2001) 'Strengthening Regulatory Transparency: Insights for the GATS from the Regulatory Reform Country Reviews,' in OECD, ed. Trade in Services: Negotiating Issues and Approaches (Paris: Organisation for Economic Co-operation and Development), 93-114.

Victor, David G, (2000) 'The Sanitary and Phytosanitary Agreement of the World Trade Organization : An Assessment after Five Years,' New York University Journal of International Law and Politics 32:4 (Summer 2000), 865-937.

Wilson, John S. and Tsunehiro Otsuki, (2001) 'Global Trade and Food Safety: Winners and Losers in a Fragmented System,' (World Bank working paper), http://www1.worldbank.org/wbiep/trade/Std_Africa/Global%20Food%20Safety.pdf accessed September 4, 2001

Wolfe, Robert, (2002a) 'Farms, Phones and Learning in the Trade Regime,' in Gertler, Meric S. and David A. Wolfe, eds, Innovation and Social Learning: Institutional Adaptation in an Era of Change (London: Palgrave),

Wolfe, Robert, (2002b) 'See You in Geneva? Democracy, the Rule of Law and the WTO,' School of Policy Studies, Queen's University: unpublished ms September 2002; available at <http://qsilver.queensu.ca/~wolfer/General/research.html>.

WTO, (1998) WTO Agreement on Sanitary & Phytosanitary Measures (Geneva, Switzerland: World Trade Organization).

WTO, (1999) 'The Fundamental WTO Principles of National Treatment, Most-Favoured-Nation Treatment and Transparency,' World Trade Organization: WT/WGTCP/W/114, 14 April 1999.

WTO, (2000a) 'How to Apply the Transparency Provisions of the SPS Agreement: A Handbook Prepared by the WTO Secretariat,' World Trade Organization: November 2000.

WTO, (2000b) 'Summary Report on the SPS Risk Analysis Workshop, 19-20 June 2000,' Committee on Sanitary and Phytosanitary Measures, World Trade Organization: G/SPS/GEN/209, 3 November 2000.

WTO, (2001a) 'Communication from Gabon,' Committee on Sanitary and Phytosanitary Measures, World Trade Organization: G/SPS/GEN/257, 2 July 2001.

WTO, (2001b) 'Note on Developing Country Participation in Codex Bodies: Submission by the FAO/Who Codex Alimentarius Commission,' Committee on Sanitary and Phytosanitary Measures, World Trade Organization: G/SPS/GEN/236, 9 March 2001.

WTO, (2002a) 'Article X of the GATT 1994 – Scope and Application,' World Trade Organization: G/C/W/374, 14 May 2002.

WTO, (2002b) 'Comments on the Canadian Proposal (Statement by Egypt),' Committee on Sanitary and Phytosanitary Measures, World Trade Organization: 15 November 2002, 2 July 2001.

WTO, (2002c) 'Establishment of National WTO TBT/SPS Enquiry Point,' Committee on Sanitary and Phytosanitary Measures, World Trade Organization: G/SPS/GEN/349, 24 October 2002.

WTO, (2002d) 'Report (2002) of the Council for Trade in Goods,' World Trade Organization: G/C/W/433, 12 November 2002.

WTO, (2002e) 'Review, Clarification and Improvement of GATT Articles V, VIII and X – Proposals Made by Delegations,' World Trade Organization: G/C/W/434, 15 November 2002.

WTO, (2002f) 'Technical Assistance and Capacity Building in the Context of the SPS Committee,' Committee on Sanitary and Phytosanitary Measures, World Trade Organization: G/SPS/GEN/332, 24 June 2002.

WTO, (2002g) 'Transparency,' Working Group on the Relationship between Trade and Investment, World Trade Organization: WT/WGTI/W/109, 27 March 2002.

Annexes
Part 1 Telecommunications

	CANADA	BRAZIL	SOUTH AFRICA	THAILAND	UGANDA
GNI per capita¹	US\$23,130.00	US\$3,590.00	US\$3,060.00	US\$2,010.00	US\$300.00
Services value added (% of GDP)	64.7 (1997)	54.8	65.9	49.5	38.4
Fixed and mobile lines (per 1000 people)	961.1	318	303.7	142.6	11.2
Telecoms Regulator	Canadian Radio-television and Telecommunications Commission (CRTC)	Agência Nacional de Telecomunicações (ANATEL)	Independent Communications Authority of South Africa (ICASA)	National Telecommunications Commission , Under Post and Telegraph Department, itself under Ministry of Transport and Communications ²	Uganda Communications Commission (UCC) ³
Independent?	Yes	Yes	Yes	No	Yes
Ability for the public to learn what the rules are	Information is available from the CRTC's website. ⁴ Canadian consumers can obtain a fairly extensive understanding of domestic telecoms regulations via their website.	Information available via Anatel's website and self entitled monthly magazine available electronically. ⁵ Difficult for English speakers to learn domestic Brazilian telecoms policies. ⁶	Information is available from ICASA's website, ⁷ or the Government Gazette – also available electronically. ⁸ Electronic information has become accessible in the last few months.	Basic information is available in English from their website. ⁹ English speakers can get a reasonable understanding of Telecoms regulation in Thailand.	Basic information available via the UCC's website. (As few Ugandans have access to the internet, the UCC might focus more on print publications.) ¹⁰
Ability for consumers to comment on proposed laws and current regulations	Comments can be made via their website or independently to either the Canadian Broadcasting Standards Council (CBSC), Cable Television Standards Council (CTSC) or Advertising Standards Canada (ACS). ¹¹ Can comment on proposed laws and regulations via their website. ¹²	Maintains a call center, manned by out-sourced staff, for consumers to air complaints and make comments, all of which can also be accessed via their web-page (ITU, 2002, p. 31). Can comment on proposed laws and regulations via Anatel's website. ¹³	Comments can be made via ICASA's website, via mail, or physically at their main offices near Johannesburg. ¹⁴ Can comment on proposed laws and regulations via website. ¹⁵	Basic telephone contact details available from website. ¹⁶ Nothing mentioned about commenting on proposed regulations	Basic contact phone numbers provided on website. ¹⁷ Nothing mentioned about commenting on proposed regulations.

Ability for private industry to comment on regulations and proposed laws	Their website maintains an active page concerning public proceedings and discussions. Industry can also comment electronically on the same page. ¹⁸	Private sector have representation in Anatel's Advisory Council and Strategic Committees. Private sector can also provide input via public hearings, round table discussions, and an electronic provision on Website (ITU, 2002). ¹⁹	Round tables and public hearings. ²⁰	Not mentioned anywhere on web-page.	Not mentioned anywhere on web-page. ²¹
Transparency and availability of information and decisions	All decisions are posted on the CRTC's website. ²² Additional comments can be made at the same page electronically.	All Anatel's decisions are posted on its website and it publishes all of its decisions in the Official Gazette (ITU, 2002, p. 42). ²³	All decision are published on ICASA's website. ²⁴ There is no mention on their website of where to comment on such decisions.	Not mentioned anywhere on web-page.	Decisions are not posted on their website.
Reporting Procedures	Annual Report delivered to Parliament. ²⁵ Commissioners are indefinite regional appointments from industry and civil service. ²⁶	Annual Report delivered to Legislature. Structurally independent, Councilors appointed by President according to party affiliation for one term of five years (ITU, 2002, p. 25).	Annual Report delivered to Parliament. ²⁷	An Annual Report delivered to Cabinet and Parliament. ²⁸ The Chairperson is appointed for one five year term limit, while Councilors are appointed for a maximum of two four year terms – both need approval by Parliament. ²⁹	None mentioned. Structurally independent, with representation from the Institute of Professional Engineers, the Uganda Law Society, the Broadcasting Council, and two prominent citizens. ³⁰
Funding	Financed through user fees. ³¹	Finances secured through user fees and gov't appropriations (ITU, 2002, p. 22).	Financed through user fees and government appropriations. ³²	Financed though user fees. Nothing mentioned on gov't sponsored funding.	Funded through gov't appropriations and user fees. Lack of investment in infrastructure, due largely because Uganda remains a net payer of international calls. ³³

General	The territorial size of the country provides many obstacles, especially for rural areas. A subsidy is therefore in place to ease the burden placed on increased costs in rural areas. ³⁴	Capacity to regulate hindered by inability to hire qualified staff, help staff adapt to new regulations, and the ability to form good working relationships with new competitors (ITU, 2002, p. 46).	Concerns raised over the ability of the National Assembly and the President's Office to override the authority of the ICASA, and thus reduce its institutional independence. ³⁵	Recently amended Telecoms Bill to limit foreign ownership to 25 per cent or under. ³⁶ Intends to adopt Reference Paper principles provided a proposed telecoms bill passes through the legislature. ³⁷	Stipulation that land line operators increase tele-density by 100,000 lines within five years – or before 2005 (aimed especially at rural areas). ³⁸ Licensed operators can therefore charge a 1 per cent surcharge for the Communications Development Fund. ³⁹
Reference Paper					
Competitive safeguards	Yes	Yes	Yes	No	Yes
Public availability of licensing criteria	Yes	Yes	Yes	No	Yes
Independent regulators	Yes	Yes	Yes	No	Yes
Universal service	Yes	Yes	Yes	No	Yes

Part 2 Food Safety

	<u>CANADA</u>	<u>BRAZIL</u>	<u>SOUTH AFRICA</u>	<u>THAILAND</u>	<u>UGANDA</u>
Food safety Regulator	Canadian Food Inspection Agency. (CFIA–AIRS, under Department of Agriculture and Agri-Food.)	Ministry of Agriculture, Cattle and Supplying (Ministério da Agricultura, Pecuária e Abastecimento.)	Directorate: Food Control. (Under Department of Health.) ⁴⁰	Thai Food and Drug Administration (Thai-FDA is under the Ministry of Public Health.)	Ministry of Agriculture. (Divided into three Directorates: Agriculture, Animal Resources and Fisheries.)
Other government departments involved in regulating/promoting food safety	<ul style="list-style-type: none"> The Department of Agriculture and Agri-Food; Department of Health; The Department of Industry; The Department of Foreign Affairs and International Trade; The Standards Council of Canada, and; Various Provincial departments 	<ul style="list-style-type: none"> Secretaria de Defesa Agropecuária (SDA), and; Brazilian Sanitary Surveillance Agency (ANVISA). <p>[Other departments may be involved, but information in English is not available.]</p>	<ul style="list-style-type: none"> The Department of Trade and Industry; Department of Foreign Affairs; The Department of Agriculture; South African Bureau of Standards; Agricultural Research Council, and; Various Provincial and Municipal departments. 	<ul style="list-style-type: none"> Department of Medical Science; Ministry of Agriculture and Cooperatives; Ministry of Industry; Ministry of Foreign Affairs; Ministry of Commerce; Thai Industrial Standards Institute, and; Provincial Public Health Bureau, and; Various Provincial levels. 	<ul style="list-style-type: none"> Ministry of Health; Ministry of Industry; Ministry of Foreign Affairs; National Agricultural Research Organization; Uganda National Bureau of Standards, and; Various Local and or Provincial Levels.
Enquiry Point (all provide a regular mail address and a phone number. Except for Uganda, all list a fax number and an email address.)	Standards Council of Canada –Ministry of Industry. http://www.scc.ca .	Secretaria de Defesa Agropecuária (SDA) - Ministério da Agricultura e da Reforma Agrária Esplanada dos Ministérios www.agricultura.gov.br OR www.anvisa.gov.br .	The Director: International Trade http://www.nda.agric.za OR http://www.sabs.co.za . ⁴¹	Thai Industrial Standards Institute – Ministry of Industry http://www.tisi.go.th	Uganda National Bureau of Standards
Services provided by the Enquiry Point via their webpage (listed in box above)	<ul style="list-style-type: none"> Provides a list of notifications and proposed regulation changes – often through subscribed email updates; Responds to enquiries on Canadian regulations; 	<ul style="list-style-type: none"> Difficult for English speakers to learn about their services; The Brazilian Sanitary Surveillance Agency (ANVISA) does provide basic information on (pending) food safety 	<ul style="list-style-type: none"> Provides a list of notifications and proposed regulation changes – often through subscribed email updates; Responds to enquiries on SA regulations; Disseminates foreign 	<ul style="list-style-type: none"> Provides a list of notifications and proposed regulation changes – often through subscribed email updates; Responds to enquiries on Thai SPS regulations; 	<ul style="list-style-type: none"> No information available over the web.

	<ul style="list-style-type: none"> Disseminates foreign notifications for local exporters via a data-base; Solicits feedback on new notifications, and forwards this to foreign enquiry points. 	regulations and legislation in English.	<p>notifications for local exporters via a data-base;</p> <ul style="list-style-type: none"> Solicits feedback on new notifications, and forwards this to foreign enquiry points. 	<ul style="list-style-type: none"> Disseminates foreign notifications for local exporters via a data-base; Solicits feedback on new notifications, and forwards this to interested foreign enquiry points (WTO, 2002a). 	
Ease of application: How easy is it to use their web-based enquiry point?	Enquiry point is easy to find and fairly user-friendly.	The enquiry point is poorly advertised and difficult to find. Their webpage is also complicated, and not very user friendly.	The enquiry point is poorly advertised and difficult to find. Their webpage is also complicated, and some users may find it difficult to use.	Enquiry point is easy to find and fairly user-friendly.	No information available via the web or email.
Number of websites listed in WTO's "Links to members' SPS-related websites." (WTO, 2002b)	Three	None	None	Two	None
Ability for the public to learn what the rules are	Food safety concerns, safety measures and regulations published on the CFIA's website. ⁴² Canadian consumers can obtain a fairly extensive understanding of domestic food safety regulations via their website.	Difficult for English speaking people to learn about Brazilian food safety standards.	Food safety concerns, notifications and regulations published on their website, or in their <i>Food for Thought</i> weekly newsletter – also available Online. ⁴³ You can obtain a fair understanding of food safety regulations in South Africa via their website.	Food safety concerns, regulations and safety measures published on their website. ⁴⁴ Also maintains an awareness program aimed at increasing consumer knowledge about food labels and safety. English speakers can obtain a fair understanding of food safety regulations in Thailand via their website.	Basic info available on website. ⁴⁵ It is difficult to learn exactly what food safety regulations look like in Uganda based on their website.
Ability for consumers to comment on proposed laws and current regulations	Comments can be made via website, or directly to provincial/regional officers. ⁴⁶		Comments can be made via website, or directly through regional officers. ⁴⁷	A consumer hotline is kept open 24 hours a day, and comments can also be sent via website. ⁴⁸	No mention of this on their website. ⁴⁹
Ability for private industry to comment on regulations	Producers can comment via website, or through public seminars. ⁵⁰		Producers can communicate via gov't-sponsored seminars, or communicate in writing	Producers can comment on Thai regulations from the Enquiry point. ⁵²	Limited ability to organize awareness seminars. ⁵³

			communicate in writing on proposed regulations and legislation. ⁵¹ They can also do so through the Enquiry point.		
Transparency and availability of information and decisions	All decisions and prosecutions published via website. Canadian producers can comment directly from this page. ⁵⁴		No mention of this on their website.	None mentioned – although letters are sent to applicants informing them about decisions. ⁵⁵	No mention of this on their website.
Reporting Procedures	Report to Parliament via the Minister of Agriculture and Agri-Food. ⁵⁶	Report to Parliament via Ministry of Agriculture.	Report to Parliament via Minister of Health.	Report to Parliament via Ministry of Public Health.	Report to Parliament via Minister of Agriculture.
Funding	Funded from licensing fees, certifications and inspection fees. ⁵⁷		No mention of this on their website.	No mention of this on their website.	No mention of this on their website.
General	Successful food-safety regulation is dependent on close working relationships between Federal, Provincial and municipal regulators. ⁵⁸ Communication between various levels of gov't, and various departments within the CFIA continues to remain problematic. ⁵⁹		Ability to regulate thwarted by the absence of one overriding food control authority, a manpower shortage at border posts, and the ability to regulate street vendors. ⁶⁰ Limited awareness of food safety regulations ensures that they continue to pose serious regulatory problems. ⁶¹ The Directorate: Food Control is proposing tougher laws, but the infrastructure remains inadequate.	Updating food safety laws, and improving an understanding of the SPS Agreement (both at the technical and policy level) remains difficult. ⁶² Difficult for provincial and national regulatory agencies to co-ordinate policies. ⁶³ Developing adequate inspection, sampling and investigative procedures remains difficult because of a shortage of expertise in analytical laboratory techniques and quality assurance. ⁶⁴	Limited awareness of SPS agreement, coupled with limited ability to organize awareness seminars, and attend international conferences. ⁶⁵ Limited number of technical personnel along with an absence of physical regulations, despite the presence of laws. ⁶⁶

References

- ITU, (2002) 'Effective Regulation Case Study: Brazil 2001,' (International Telecommunications Union), <<http://www.itu.int/itudoc/itu-d/publicat/74954.pdf>> accessed 27 May 2002
- WTO, (2002a) 'Case Studies – Enquiry Points / National Notification Authorities (Presentation Made by Thailand at the Special Meeting of the SPS Committee on Transparency Provisions Held on 9 November 1999),' Committee on Sanitary and Phytosanitary Measures, World Trade Organization: G/SPS/GEN/155, 15 December 1999.
- WTO, (2002b) 'Links to Members' SPS-Related Websites,' (Committee on Sanitary and Phytosanitary Measures, World Trade Organization), http://www.wto.org/english/tratop_e/sps_e/spslinks_e.htm accessed March 16, 2003

Notes

- 1 All figures obtained from the World Bank, "Data By Country," available from: <http://www.worldbank.org/data/countrydata/countrydata.html> (November 2002). Unless specified all figures are from 2000 and in US Dollars.
- 2 See Asia Telecommunications Newsletter, "Update on Telecommunications Reform," <http://www.tiaonline.org/policy/regional/asia/atn/archive.cfm?ID=99> (27 May 2002). The telecommunications Bill, drafted to abolish the state monopoly, passed the House of Representatives in August 2000. Since then progress has been slow however, creating uncertainties on how new telecom services may be licensed, and how to allocate telecom applications. The matter is complicated further by a recent amendment to the Bill that stipulates no more than 25 per cent of foreign investment in telecom investments in Thailand.
- 3 See ITU, The Internet in An African LDC: Uganda Case Study, (January 2001), available from <<http://www.itu.int/ITU-D/ict/cs/ugana/material/uganda.pdf>>. (Last viewed in July 2002). See p. 4.
- 4 See their website at: <<http://www.crtc.gc.ca/>>.
- 5 International Telecommunications Union, Effective Regulation Case Study: Brazil 2001, available from <<http://www.itu.int/itudoc/itu-d/publicat/74954.pdf>> Assessed on 27th May 2002. In particular, see p. 31. The website is available from: <<http://www.anatel.gov.br/>>.
- 6 Much of the info for Brazil comes from a study conducted by the International Telecommunications Union. See ITU, 2002.
- 7 The Website can be accessed at: <<http://www.icasa.org.za/>> (last viewed in July 2002). All information is placed in the publications section. ICASA's Library and Information Services, provided under the publications section, is also a valuable tool for the public to understand recent trends regulatory trends in telecommunications and broadcasting.
- 8 See the Government Gazette at: <<http://www.icasa.org.za/?FromHome=1&Cmd=SiteMap&ContentID=235>> (last accessed in August 2002).
- 9 Post and Telegraph website is available from: <<http://www.ptd.go.th/>>
- 10 With less than 80 per cent of the population having immediate access to telephones, and even less having access to the internet, it is not surprising that the UCC does not aim to adequately broadcast this information to the public via the internet. Although their website has no mention of print publications either. The Ministry of Works, Housing and Communications can be at: <<http://www.miniworks.go.ug/>>. (Last accessed July 2002.)
- 11 <<http://www.crtc.gc.ca/eng/BACKGRND/Brochures/B49903.htm>>.

-
- 12 <http://www.crtc.gc.ca/eng/consumer_t.htm> (last accessed in September 2002).
- 13 See their website at: <<http://www.Anatel.gov.br>>.
- 14 See: <<http://www.icasa.org.za/?FromHome=1&Cmd=ViewContent&ContentID=170>> (last accessed in August 2002).
- 15 See ICASA's website: <<http://www.icasa.org.za/?FromHome=1&Cmd=SiteMap&ContentID=235>> (last accessed in September 2002).
- 16 See: <http://www.ptd.go.th/ptdmain_eng.htm> (last accessed in August 2002).
- 17 See UCC, <<http://www.ucc.co.ug/contact.htm>> (last accessed in August 2002).
- 18 See their website at: <<http://www.crtc.gc.ca/eng/publicpro.htm>> (last accessed in August 2002).
- 19 Also see their website: <http://www.anatel.gov.br/telefonia_fixa/default.asp?CodArea=468&CodPrinc=1> (last access in August 2002).
- 20 See their website: <<http://www.icasa.org.za/Contents/Resources/Whats%20New/INVITE%20to%20discussion%20paper.DOC>> (last accessed in August 2002). This particular example is for sport broadcasting, but others would be planned for the future on different topics.
- 21 The UCC is planning to get increased feedback from civil society organization and business groups. See their UCC Corporate Plan 2000-2002, <<http://www.ucc.co.ug/bplan2.html>> (last accessed in August 2002).
- 22 See: <<http://www.crtc.gc.ca/eng/dno.htm#Decisions>> (last accessed in August 2002).
- 23 Also see their website: <http://www.anatel.gov.br/telefonia_fixa/default.asp?CodArea=468&CodPrinc=1> (last access in August 2002).
- 24 See: <<http://www.icasa.org.za/?FromHome=1&Cmd=ViewContent&ContentID=180>> (last accessed in August 2002).
- 25 See <<http://www.crtc.gc.ca/ENG/BACKGRND/Dpr2001/dpr2001.htm>> for the CRTC's report to the Minister for the 2001.
- 26 See: <http://www.crtc.gc.ca/ENG/INFO_SHT/G2.HTM> (last accessed in August 2001).
- 27 See <<http://www.icasa.org.za/?FromHome=1&Cmd=SiteMap&ContentID=235>> for their 2001 Annual Report (accessed in August 2002).
- 28 See the NTC's website: <<http://www.ptd.go.th/Ntc.html>> (last accessed in August 2002).
- 29 See ICASA: Structure and Responsibilities, available from their website: <<http://www.icasa.org.za/?FromHome=1&Cmd=SiteMap&ContentID=235>> (last accessed in September 2002).
- 30 See their website for more details, <<http://www.ucc.co.ug/organisation.htm>> (last accessed in August 2002).
- 31 For a description on how user fees are obtained, consult their annual reports to parliament. The 2001 report can be viewed at: <http://www.crtc.gc.ca/ENG/BACKGRND/Dpr2001/dpr2001.htm#Section%20I:%20CRTC%20Strategic%20Context>. For telecommunications, one can also consult Lemay – Yates and Associates Inc., Monitoring the Telecommunications Industry: Background Report, May 2001, available from: <http://www.crtc.gc.ca/PartVII/Eng/8623/Reports/_Toc515771348> 2nd version, (last viewed on 20 July 2002).
- 32 See ICASA, Annual Report: 1 June 2000 – 31 March 2001, Available from: <<http://www.icasa.org.za/Contents/Resources/Events&%20Publications/ICASA%20AR%202001.pdf>> (Last Accessed in August 2002). See pg 27 –37 for their financial details for 200 – 2001.

-
- 33 See ITU, The Internet in An African LDC: Uganda Case Study, (January 2001), available from <<http://www.itu.int/ITU-D/ict/cs/ugana/material/uganda.pdf>>. (Last viewed in July 2002). See p. 13. The lack of international income from telecommunications hampers telecommunication development in Uganda as it reduces the overall amount of investment available for infrastructure upgrades throughout the country. When compared to Kenya, Uganda receives less than half of the settlement rate for an international phone call - Kenya receives 55 cents from each minute, while Uganda receives only 25 cents. See p. 14.
- 34 See the CFIA, Performance Report: 2000 - 2001, March 2001, available from: <<http://www.crtc.gc.ca/ENG/BACKGRND/Dpr2001/dpr2001.htm>> accessed in July 2002.
- 35 Media Monitoring Project, Independence, ICASA and the Telecommunications Bill, 26 September 2001, available from: <<http://www.sn.apc.org/mmp/updates/2001/26-9-2001.0.htm>> (27th May 2002).
- 36 See Asia Telecommunications Newsletter, "Private Sector Telecommunications Executives Oppose New Telecommunications Bill," 6 Nov. 2001, available from: <<http://www.tiaonline.org/policy/regional/asia/atn/atn.cfm?ID=100>> (27 May 2002).
- 37 See the WTO, Highlights of the Basic Telecommunication Commitments and Exemptions, available from <http://www.wto.org/english/tratop_e/serv_e/telecom_e/telecom_highlights_commit_exempt_e.htm#country> (last accessed in August 2002).
- 38 See the ITU, The Internet in An African LDC: Uganda Case Study, (January 2001), available from <<http://www.itu.int/ITU-D/ict/cs/ugana/material/uganda.pdf>>. (Last viewed in July 2002). See p. 8-9. 30,000 subscriber lines, and a further 3,000 pay phones must be within rural (designated) areas.
- 39 See ITU, The Internet in An African LDC: Uganda Case Study available from <<http://www.itu.int/ITU-D/ict/cs/ugana/material/uganda.pdf>>. (Last viewed in July 2002). See p. 4. The one per cent levy has to date not been collected, but is nonetheless designed to fund the Communications Development Fund, which aims to connect rural areas. It is believed the UCC will begin using this strategy in the near future though.
- 40 Their website is available at: <http://196.36.153.56/doh/department/index.html> (last accessed in August 2002).
- 41: <<http://www.sabs.co.za>>. see the Commercial section.
- 42 <<http://www.inspection.gc.ca/>>.
- 43 Food for thought is available Online: <<http://196.36.153.56/doh/department/index.html>>.
- 44 See Thai FDA, <http://www2.fda.moph.go.th/exporters/lawlink.asp?product=3&lawnm=FOOD&arg_language=e&historylink=/law&v_call=#ch3> (last accessed in July 2002).
- 45 As few Ugandans have access to the internet, it may be that the Ministry of Agriculture broadcasts this information in other traditional ways, which are not mentioned on their website.
- 46 See their website at: <http://www.inspection.gc.ca/english/tools/feedback/commene.shtml> (last accessed in August 2002).
- 47 See their website at: <http://196.36.153.56/doh/department/index.html>.
- 48 See their website at: <http://www.fda.moph.go.th/fda-net/html/product/other/kbs3/homepage1.htm#Central%20Officers> (last accessed in August 2002).
- 49 Their website, available at: <<http://www.agriculture.go.ug>>, has no mention of a newsletter, journal or webpage listing any food safety concerns for consumers and manufacturers. The only evidence of this is found through a consumer awareness program. See Ministry of Agriculture, Achievements, <http://www.agriculture.go.ug/achievements.htm> (last accessed in July 2002).
- 50 See their website at: <http://www.inspection.gc.ca/english/tools/feedback/commene.shtml> (last accessed in August 2002).
- 51 See their website at: <http://www.inspection.gc.ca/english/tools/feedback/commene.shtml> (last accessed in August 2002).

52 See TISI's webpage at: www.tisi.go.th (last accessed in March 2003).

53 The limited ability t is mostly attributed to funding shortages. See World Trade Organization, "Committee on Sanitary and Phytosanitary Measures. Technical Assistance: Response to Questionnaire," G/SPS/GEN/295/Add.5, (8 February 2002).

54 See the CFIA-AIRS website: <http://www.inspection.gc.ca/english/reg/consultation/reginite.shtml> (last accessed in August 2002).

55 See the Thai FDA,

http://www2.fda.moph.go.th/law/Law_Book_1.asp?productcd=3&lawid=300009_12&lawname=PROCEDURE%20IN%20APPROVAL%20REGISTRATION%20NO.%20AND%20LABEL%20APPROVAL%20NUMBER%20OF%20FOOD%20PRODUCT&language=e&Contents=1&v_call=lawlink&historylink=/law&arg_language=e (last accessed in August 2002).

56 Annual Reports are available from: <http://www.inspection.gc.ca/english/corpaffr/ar/artoce.shtml#ar> (last accessed in August 2002).

57 See their financial details for 2000 - 2001at: <http://www.inspection.gc.ca/english/corpaffr/ar/ar01/4e.shtml> (last accessed in August 2002).

58 See CFIA, The Canadian Food Safety System, <http://www.inspection.gc.ca/english/corpaffr/publications/prog/systeme.shtml> (last accessed in July 2002).

59 See Chartier, Jean and Sandra Gabler, Risk Communication and Government: Theory and Application for the Canadian Food Inspection Agency, (Spring 2001), Available from: <http://www.inspection.gc.ca/english/corpaffr/publications/riscomm/riscomm.shtml> (last accessed in July 2002). In particular, see section 1.1.2.

60 Bobby Jordan, "Crackdown on Dodgy Food Labels," in The Sunday Times, 07 April 2002, available from: <http://www.sundaytimes.co.za/2002/04/07/news/news12.asp>. (20 May 2002).

61 Bobby Jordan, "Crackdown on Dodgy Food Labels," in The Sunday Times, 07 April 2002, available from: <http://www.sundaytimes.co.za/2002/04/07/news/news12.asp>. (20 May 2002).

62 See World Trade Organization, "Committee on Sanitary and Phytosanitary Measures. Technical Assistance: Response to Questionnaire," G/SPS/GEN/295/Add.9, (8 February 2002).

63 See Thai Food and Drug Administration, Office of Health Consumer Protection, Available from: <http://www.fda.moph.go.th/fda-net/html/product/other/kbs3/homepage1.htm> (22 May 2002).

64 See World Trade Organization, "Committee on Sanitary and Phytosanitary Measures. Technical Assistance: Response to Questionnaire," G/SPS/GEN/295/Add.9, (8 February 2002).

65 See World Trade Organization, "Committee on Sanitary and Phytosanitary Measures. Technical Assistance: Response to Questionnaire," G/SPS/GEN/295/Add.5, (8 February 2002).

6666 See World Trade Organization, "Committee on Sanitary and Phytosanitary Measures. Technical Assistance: Response to Questionnaire," G/SPS/GEN/295/Add.5, (8 February 2002).