



Gatuna Border Post is the main border crossing between Rwanda and Uganda.

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WTO's TBT Agreement: technical barriers to trade

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The WTO's TBT Agreement entered into force with the establishment of the WTO on 1 January 1995. It aims to ensure that product requirements in regulations and standards (on safety, quality, health and the environment) as well as procedures for assessing product compliance with such requirements (certification, testing, inspection, accreditation) are not unjustifiably discriminatory and do not create unnecessary obstacles to trade.¹ The TBT Agreement also emphasizes the importance of transparency and contains disciplines that strongly encourage the use of international standards as a basis for harmonizing regulations across WTO members.

COVID-19 and TBT measures

The COVID-19 pandemic has led to the introduction of a spate of temporary and emergency measures, especially to facilitate access to essential COVID-19 medical goods. Some of these measures are trade restrictive, others trade facilitating. In the area of TBT, most COVID-related regulations that have been notified are trade facilitating.

As of 6 October 2016, TBT measures (technical regulations, conformity assessment procedures) make up a large share (174, 41 per cent) of all 420 COVID-related measures notified to the WTO since

↓ The Jwaneng diamond mine, Botswana.



the start of the pandemic, in March 2020. However, it is unlikely that these many TBT measures have had any negative impact on export opportunities of LLDCs for two reasons:

- (1) The top ten products exported by LLDCs concern mostly copper products, oils, metals, petroleum gases, coal, diamonds and electrical energy – sectors which were not the most directly affected by COVID-related measures.
- (2) A significant majority of these notified TBT measures are trade facilitating: they intend to make trade flow more easily, for example by making certification procedures quicker, using digital technology or giving more time for members to comply.

The top ten export markets for LLDCs cover 81 per cent of their exports. These countries issued 84 COVID-related notifications in 2020, of which 59 were issued by one trading partner – Brazil, which is responsible for only 3 per cent of

LLDC exports. In addition, of these 59 TBT measures, the vast majority (50, 85 per cent) deal with medical and sanitary devices and equipment, which is a very specific sector and less relevant for exports from LLDCs. Thus again, it is not likely that the notified TBT measures have had a significant impact on export opportunities of LLDCs.

Participation in the TBT Committee

With the exception of Rwanda and Uganda, LLDCs are not active in the TBT Committee. Very few engage by either submitting notifications or participating in discussions about standards and regulations. Overall, the total number of notifications submitted by LLDCs is low, and even fewer STCs have been raised by LLDCs against other members' regulations or against LLDC regulations at the TBT Committee. Limited capacity to engage in the work of the WTO in general, and in the TBT Committee specifically, may be at the root of limited participation of some LLDCs.

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TBT notifications

From 1995 to October 2021 ...

... over 42,500 TBT notifications have been submitted to the TBT Committee, BUT:

- over half of LLDCs have never notified
- only 6 LLDCs have notified more than 10 measures

... over 700 STCs have been raised and discussed in the TBT Committee, BUT only:

- 10 LLDCs have raised or supported an STC
- 12 LLDCs Members have had their TBT measures challenged in the TBT Committee

Capacity constraints in TBT

Another source of information on the regulatory bottlenecks for LLDCs is technical assistance. The TBT Agreement has special provisions (mostly in Article 11) for the right of a member – LDCs in particular – to request, and the obligation for other members to provide, technical assistance in the area of technical regulations, conformity assessment and setting standards. Indeed, as early as 1997, it was agreed that members requiring technical assistance should inform the TBT Committee and specify their needs. A questionnaire was developed in 2002 to which 53 members have so far responded. The questionnaire highlights infrastructure and in relation to conformity assessment and standardization bodies as one of the top unmet technical assistance needs of responding members (WTO document G/TBT/W/19). In 2005, the TBT Committee found that: “The lack of such infrastructure (or inadequacy of existing ones) would appear to be a core constraint facing many developing country Members in the TBT area” (WTO document JOB(05)/20).

Quality infrastructure

Quality infrastructure has been identified as a key challenge inhibiting LDCs and developing country members from diversifying their trade to new markets.²

The World Bank has pointed to the existence of a link between development of quality infrastructure and trade competitiveness: low competitiveness generally correlates with weak quality infrastructure development (Kellermann, 2019); conversely, good quality infrastructure contributes to competitiveness.

The trade issue here is that conformity assessment procedures (such as testing and certification), and the domestic quality infrastructure systems that generate them, are not always recognized by trade partners. This lack of internationally recognized conformity assessment may lead to additional costs (e.g. duplicative testing) and to possible rejection at the border. Meeting product regulations and standards of trading partners is important; more important still is being able to demonstrate to the export market that the products

“Particularly in Africa, standards alignment and an effective quality infrastructure ecosystem with cross border cooperation and recognition will facilitate intra-regional trade.

Quality infrastructure

Quality infrastructure is public and private organizations together with the policies, legal and regulatory framework, and practices needed for the quality, safety and environmental soundness of goods and services. It has the following characteristics:

- required for effective operation of domestic markets;
- international recognition is important to access foreign markets;
- critical element in promoting and sustaining economic development and environmental and social well-being.

For further information, see <https://www.inetqi.net>.

actually conform with their regulations. These are therefore some of the biggest hurdles to expansion and diversification of LLDC and LDC exporters. Business surveys of agricultural and manufacturing exporters in 37 countries, of which 10 were LLDCs, found that conformity assessment procedures are perceived as the most burdensome type of non tariff measure, and that certification and testing are the two types of conformity assessment procedure most often cited as problematic.³ The discussion of STCs among all members in the TBT Committee confirm that conformity assessment is an area of particular trade friction (WTO document JOB/TBT/224).

There is a research gap on the specific challenges faced by LLDCs in standards, regulations and quality infrastructure. Nevertheless, gaps in quality infrastructure are likely to be significant for LLDCs. In very practical terms, this may be about the absence of the institutions themselves (or poor governance when such institutions do exist). This, in turn, can lead to uncertainty about product compliance. This may be particularly for LLDCs where goods may be transiting more frequently than in other places. Gaps in quality infrastructure can translate into fewer opportunities to link into value chains. This uncertainty may undermine international trade, economic growth and development.

At recent discussions at the WTO, a number of developing country members illustrated these gaps (WTO document G/TBT/GEN/278). While these experiences were not reported by LLDCs, they will face similar challenges and constraints in the area of quality infrastructure.

Shifts in the trading environment will also evolve towards more diverse exports (value-added, processed goods) in LLDCs; and at the same time, consumers will become more demanding with regard to quality and standards. A low quality infrastructure development in the region will represented a missed opportunity to facilitate exports. In order to improve this situation and enhance international competitiveness, the promotion of a culture of quality through infrastructure systems needs to be deemed a priority.

It is notable that there has been a stronger response to technical assistance for SPS. The STDF has enabled a coordinated response to technical assistance in the areas of food safety, plant and animal health – including with respect to the upgrading of laboratories and standards and certification bodies. However, a similar, targeted technical assistance in the TBT area is still lacking. Particularly in Africa, standards alignment and an effective quality infrastructure ecosystem with cross border cooperation and recognition will facilitate intra-regional trade. Regional integration on TBT matters, such as in the African Continental Free Trade Area could help to address some of the challenges facing LLDCs in Africa.⁴ It may also be worthwhile considering other forms of technical assistance or Aid for Trade funding windows, such as the EIF for landlocked LDCs.

Endnotes

- 1 See WTO (2021a) for a new handbook on the TBT Agreement.
- 2 The Aid for Trade Global Review 2019 had six sessions devoted to matters relating to quality infrastructure.
- 3 See https://www.wto.org/english/tratop_e/tbt_e/th_sess_280317_e/itc.pdf.
- 4 See <https://www.un.org/ohrls/news/statement-event-leveraging-afcta-promote-smooth-functioning-corridors-sustainable>.