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1 ARTICLE 2

1.1 Text of Article 2

Article 2

*Preparation, Adoption and Application of Technical Regulations
by Central Government Bodies*

With respect to their central government bodies:

2.1 Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products.

2.3 Technical regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner.

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

2.5 A Member preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Members shall, upon the request of another Member, explain the justification for that technical regulation in terms of the provisions of paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

2.6 With a view to harmonizing technical regulations on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.

2.7 Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.

2.8 Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall:

- 2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation;
- 2.9.2 notify other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;
- 2.9.3 upon request, provide to other Members particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;
- 2.9.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.10 Subject to the provisions in the lead-in to paragraph 9, where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Member, that Member may omit such of the steps enumerated in paragraph 9 as it finds necessary, provided that the Member, upon adoption of a technical regulation, shall:

- 2.10.1 notify immediately other Members through the Secretariat of the particular technical regulation and the products covered, with a brief indication of the objective and the rationale of the technical regulation, including the nature of the urgent problems;
- 2.10.2 upon request, provide other Members with copies of the technical regulation;
- 2.10.3 without discrimination, allow other Members to present their comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

2.11 Members shall ensure that all technical regulations which have been adopted are published promptly or otherwise made available in such a manner as to enable interested parties in other Members to become acquainted with them.

2.12 Except in those urgent circumstances referred to in paragraph 10, Members shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members, and particularly in developing country Members, to adapt their products or methods of production to the requirements of the importing Member.

1.2 Article 2.6

1.2.1 Related TBT Committee decisions and recommendations

1. See the Decision of the TBT Committee on principles for the development of international standards, guides and recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement.¹

1.3 Article 2.9

1.3.1 Related TBT Committee decisions and recommendations

1.3.1.1 General

2. The TBT Committee has adopted a number of recommendations and decisions concerning notification procedures for draft technical regulations and conformity assessment procedures, as described hereafter.²

3. In 2009, the Committee reiterated the importance of Members fully complying with their transparency obligations under the TBT Agreement and in particular those related to the notification of technical regulations and conformity assessment procedures, as required under Articles 2.9, 2.10, 5.6, 5.7 and 10.7. The Committee stressed that transparency is a fundamental pillar in the implementation of the TBT Agreement and a key element of Good Regulatory Practice.³ The Committee noted the significant stock of decisions and recommendations that it has developed since 1995, and agreed to stress the importance of full implementation of this existing body of decisions and recommendations by Members.⁴

1.3.1.2 "Significant effect on trade of other Members"

4. In 1995, and with a view to ensuring a consistent approach to the selection of proposed technical regulations and procedures for assessment of conformity to be notified, the TBT Committee established the following criteria in order to define the term "significant effect on trade of other Members":

- (i) for the purposes of Articles 2.9 and 5.6, the concept of "significant effect on trade of other Members" may refer to the effect on trade:
 - of one technical regulation or procedure for assessment of conformity only, or of various technical regulations or procedures for assessment of conformity in combination;
 - in a specific product, group of products or products in general; and
 - between two or more Members.

¹ The text of the decision is contained in G/TBT/1/Rev.10, pp. 13, 46-48.

² The text of these recommendations and decisions is contained in G/TBT/1/Rev.10, pp. 18-27.

³ G/TBT/26, 12 November 2009, para. 29.

⁴ G/TBT/1/Rev.10, p. 16.

- (ii) when assessing the significance of the effect on trade of technical regulations, the Member concerned should take into consideration such elements as the value or other importance of imports in respect of the importing and/or exporting Members concerned, whether from other Members individually or collectively, the potential growth of such imports, and difficulties for producers in other Members to comply with the proposed technical regulations.
- (iii) the concept of a significant effect on trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, as long as such effects are significant.⁵

1.3.1.3 Publication requirement

5. In 2006 and 2009, with regard to the publication of a notice of proposed technical regulations and conformity assessment procedures (pursuant to Articles 2.9.1 and 5.6.1), the Committee agreed to examine ways in which the publications for such notices – and their content – are made available, so as to enable all interested parties to become acquainted with them.⁶

6. Information on official publications related to technical regulations, standards and conformity assessment in the form of a list, including website references, is contained in the document series G/TBT/GEN/39/*.

1.3.1.4 Notification format and guidelines

7. The procedures for notification under the Agreement have been kept under constant review by the Committee. In order to ensure a uniform and efficient operation of these procedures the Committee has agreed on a format and guidelines for notifications.⁷

8. In order to facilitate access to information by Members, as well as to strengthen the notification process, including the time needed for the publication and circulation of notification by the Secretariat, the TBT Committee has agreed that electronic transmission of information was the preferred method of filing notifications.⁸

1.3.1.5 Decision relating to notifications – labelling requirements

9. In 1995, with the purpose of clarifying the coverage of the Agreement with respect to labelling requirements, the TBT Committee took the following decision:

"In conformity with Article 2.9 of the Agreement, Members are obliged to notify all mandatory labelling requirements that are not based substantially on a relevant international standard and that may have a significant effect on the trade of other Members. That obligation is not dependent upon the kind of information which is provided on the label, whether it is in the nature of a technical specification or not."⁹

1.3.1.6 Timing of notifications

10. In 1995, the TBT Committee issued the following recommendation with respect to the timing of notifications:

"When implementing the provisions of Articles 2.9.2, 3.2 (in relation to Article 2.9.2), 5.6.2 and 7.2 (in relation to Article 5.6.2), a notification should be made when a draft with the complete text of a proposed technical regulation or procedures for

⁵ G/TBT/1/Rev.10, pp. 19-20.

⁶ G/TBT/1/Rev.10, p. 30.

⁷ The text of the relevant recommendations and decisions is contained in G/TBT/1/Rev.10, pp. 20-21, and Annex C.

⁸ G/TBT/1/Rev.10, p. 20.

⁹ G/TBT/1/Rev.10, p. 22.

assessment of conformity is available and when amendments can still be introduced and taken into account."¹⁰

1.3.1.7 Translation of documents relating to notifications and address of body supplying the documents

11. The TBT Committee also agreed on certain procedures designed to address the difficulties that can arise due to the fact that the documentation relevant to technical regulations, standards and procedures for assessment of conformity is not available in one of the WTO working languages and that a body other than the enquiry point may be responsible for such documentation.¹¹

1.3.1.8 Processing of requests for documentation

12. In 1995, when addressing problems of supplying and obtaining requested documentation on notified technical regulations and procedures for assessment of conformity, the Committee agreed that:

- (i) requests for documentation should contain all the elements permitting the identification of the documents and in particular, the WTO TBT notification number symbol to which the requests refer. The same information should appear on the documents supplied in response to such requests;
- (ii) any request for documentation should be processed if possible within five working days. If a delay in supplying the documentation requested is foreseen, this should be acknowledged to the requester, along with an estimate of when the documents can be provided;
- (iii) E-mail requests for documentation should include name, organization, address, telephone and fax numbers, and e-mail address in the request;
- (iv) electronic delivery of documentation is encouraged and requests should indicate whether an electronic version or hard copy is desired.¹²

1.3.1.9 Length of time allowed for comments

13. In 2000 and 2003, with respect to time limits for presentation of comments on notified technical regulations and procedures for assessment of conformity, the Committee agreed:

- (i) the normal time limit for comments on notifications should be 60 days. Any Member which is able to provide a time limit beyond 60 days, such as 90 days, is encouraged to do so and should indicate this in the notification.
- (ii) in order to improve the ability of developing country Members to comment on notifications, and consistent with the principle of special and differential treatment, developed country Members are encouraged to provide more than a 60-day comment period.

14. The Committee made a follow-up recommendation in 2009.¹³

1.3.1.10 Handling of comments on notifications

15. In 1995, in order to improve the handling of comments on proposed technical regulations and procedures for assessment of conformity submitted under Articles 2.9.4, 2.10.3, 3.1 (in relation to 2.9.4 and 2.10.3), 5.6.4, 5.7.3 and 7.1 (in relation to 5.6.4 and 5.7.3) of the Agreement, the Committee agreed on the following procedures:

¹⁰ G/TBT/1/Rev.10, p. 20.

¹¹ G/TBT/1/Rev.10, p. 31-33.

¹² G/TBT/1/Rev.10, p. 27.

¹³ G/TBT/1/Rev.10, p. 23.

- (i) each Member should notify the WTO secretariat of the authority or agency (e.g. its enquiry point) which it has designated to be in charge for handling of comments received; and
- (ii) a Member receiving comments through the designated body should without further request
 - acknowledge the receipt of such comments,
 - explain within a reasonable time to any Member from which it has received comments, how it will proceed in order to take these comments into account and, where appropriate, provide additional relevant information on the proposed technical regulations or procedures for assessment of conformity concerned, and
 - provide to any Member from which it has received comments, a copy of the corresponding technical regulations or procedures for assessment of conformity as adopted or information that no corresponding technical regulations or procedures for assessment of conformity will be adopted for the time being.

16. The Committee made follow-up recommendations in 2003, 2006 and 2009.¹⁴

1.3.1.11 Copies of proposed technical regulations

17. In 2007, with the purpose of facilitating access to notified draft texts, the Committee decided to establish a facility whereby Members may, on a voluntary basis, provide the WTO Secretariat with an electronic version of the notified draft text (attachment) together with the notification format. In 2009, with a view to improving access to texts of notified measures, the Committee agreed to encourage Members to use the facility provided by the WTO Secretariat and to send electronic versions of notified texts together with the notification format to be hyperlinked in the notification itself.¹⁵

1.3.1.12 Monthly listing of notifications issued

18. With a view to providing a brief indication of the notifications issued, the TBT Committee agreed that the Secretariat be requested to prepare a monthly table of notifications issued, indicating the notification numbers, notifying Members, Articles notified under, products covered, objectives and final dates for comments.¹⁶ Monthly lists of notifications are contained in the document series G/TBT/GEN/N/*.

1.3.1.13 Follow-up notifications, amendments, addenda, etc.

19. In 2003, in order to facilitate the follow-up on Members' technical regulations and conformity assessment procedures brought to the attention of the Committee, the Committee agreed:

- (i) to have amendments to notifications carry the same document symbol as that of the original notification to allow them to be adequately traced;
- (ii) to encourage Members to share, on a voluntary basis, with the Committee any follow-up information on issues that have been previously brought to its attention.¹⁷

20. In 2009, the Committee agreed:

¹⁴ G/TBT/1/Rev.10, pp. 24-25.

¹⁵ G/TBT/1/Rev.10, pp. 30-31.

¹⁶ G/TBT/1/Rev.10, p. 23.

¹⁷ G/TBT/1/Rev.10, p. 26.

- (i) to recall its earlier recommendation encouraging Members to notify the availability of the adopted final text as an addendum to the original notification and to provide information on where the final text can be obtained, including website address;
- (ii) to stress the importance of making such addenda when a proposed regulation is either adopted, published or enters into force and especially in cases where the relevant dates have not been provided in the original notification or have been changed; and
- (iii) to recommend that the Committee establish common procedures on how and under which format (addendum, corrigendum, revision) to notify modifications or any other information relevant to previously notified measures.¹⁸

1.4 Article 2.12

1.4.1 Ministerial Decision and related TBT Committee decisions and recommendations

21. In the 2001 Ministerial Decision on Implementation-related Issues and Concerns, Ministers stated that "Subject to the conditions specified in paragraph 12 of Article 2 of the Agreement on Technical Barriers to Trade, the phrase 'reasonable interval' shall be understood to mean normally a period of not less than 6 months, except when this would be ineffective in fulfilling the legitimate objectives pursued."¹⁹

22. At its meeting of 15 March 2002, the Committee took note of the Ministerial Decision regarding the implementation of Article 2.12.²⁰

23. At its meeting in November 2006, with a view to facilitating the implementation of transparency procedures under the Agreement, the Committee agreed to encourage Members to provide an interval of more than 6 months, when possible, between the publication of technical regulations and their entry into force.²¹

Current as of: September 2011

¹⁸ G/TBT/1/Rev.10, p. 26.

¹⁹ WT/MIN(01)/17, 20 November 2001, para. 5.2.

²⁰ G/TBT/1/Rev.10, p. 26.

²¹ G/TBT/1/Rev.10, p. 26.