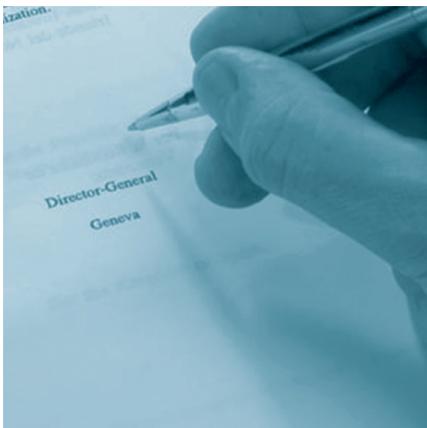




WORLD TRADE  
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## The WTO Agreements Series Technical Barriers to Trade



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# The WTO agreements series

The WTO's agreements are the legal foundation for the international trading system that is used by the bulk of the world's trading nations. This series offers a set of handy reference booklets on selected agreements. Each volume contains the text of one agreement, an explanation designed to help the user understand the text, and in some cases supplementary material. They are intended to be an authoritative aid for understanding the agreements, but because of the legal complexity of the agreements, the introductions cannot be taken as legal interpretations of the agreements.

The agreements were the outcome of the 1986–1994 Uruguay Round of world trade negotiations held under the auspices of what was then the GATT (the General Agreement on Tariffs and Trade). The full set is available in *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*. It includes about 60 agreements, annexes, decisions and understandings, but not the commitments individual countries made on tariffs and services. A full package of agreements that includes over 20,000 pages of commitments is available from WTO Publications in a 34-volume set, as well as a CD-ROM, *The Results of the Uruguay Round*.

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## The volumes in this series

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Agreement Establishing the WTO

Agriculture

GATT 1994 and 1947

Sanitary and Phytosanitary Measures

Technical Barriers to Trade

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# Introduction

The WTO Agreement on Technical Barriers to Trade (the “TBT Agreement”) entered into force with the establishment of the World Trade Organization (WTO) on 1 January 1995. It aims to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles to trade.

This booklet discusses the text of the TBT Agreement as it appears in the Final Act of the Uruguay Round of Multilateral Trade Negotiations, signed in Marrakesh on 15 April 1994. This agreement and others contained in the Final Act, along with the amended General Agreement on Tariffs and Trade (GATT 1994), are part of the treaty which established the WTO. The WTO superseded the GATT as the umbrella organization for international trade.

The WTO Secretariat has prepared this booklet to assist public understanding of the TBT Agreement. The booklet first presents the basic structure of WTO agreements. It then provides a brief overview of the background, purpose and scope of the TBT Agreement, as well as the types of measures it covers. It sets out the key principles of the Agreement, and discusses how these have been addressed in recent disputes brought under the TBT Agreement. It next focuses on transparency, a cornerstone of the TBT Agreement. It also describes the mandate, role and work of the TBT Committee, and considers how TBT-related matters have arisen in the Doha Round negotiations. A separate section addresses a number of frequently asked questions about the Agreement. The booklet also contains the full text of the TBT Agreement, decisions and recommendations by the TBT Committee, a list of observers in the TBT Committee and an example of a typical TBT notification.



# The basic structure of WTO agreements

## The conceptual framework

Broadly speaking, the WTO agreements for the two largest areas of trade — goods and services — share a common three-part outline, even though the details are sometimes different (see Figure 1).

- They start with general disciplines contained in the General Agreement on Tariffs and Trade (GATT) (for goods), the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

**Figure 1: The basic structure of the WTO agreements**

<i>Umbrella</i>	<b>AGREEMENT ESTABLISHING THE WTO</b>		
	<b>Goods</b>	<b>Services</b>	<b>Intellectual property</b>
<i>Basic principles</i>	GATT	GATS	TRIPS
<i>Additional details</i>	Other goods agreements and annexes	Services annexes	
<i>Market access commitments</i>	Countries' schedules of commitments	Countries' schedules of commitments (and MFN exemptions)	
<i>Dispute settlement</i>	<b>DISPUTE SETTLEMENT</b>		
<i>Transparency</i>	<b>TRADE POLICY REVIEWS</b>		

- Then come additional agreements and annexes dealing with the special requirements of specific sectors or issues. These deal with the following:

### For goods (under GATT)

Agriculture

Regulations for food safety, animal and plant health protection (SPS)

Textiles and clothing

Technical regulations and standards for products (technical barriers to trade)

Trade-related investment measures

Anti-dumping measures

Customs valuations methods

Pre-shipment inspection

Rules of origin

Import licensing

Subsidies and countervailing measures

Safeguards

### For services (the GATS annexes)

Movement of natural persons

Air transport

Financial services

Shipping

Telecommunications

- Finally, there are the detailed and lengthy schedules (or lists) of commitments made by individual countries allowing specific foreign products or service providers access to their markets. For GATT, these take the form of binding commitments on tariffs for goods in general, and combinations of tariffs and quotas for

some agricultural goods. For GATS, the commitments state how much access foreign service providers are allowed for specific sectors, and they include lists of types of services where individual countries say they are not applying the “most-favoured-nation” principle of non-discrimination.

Much of the Uruguay Round dealt with the first two parts: general disciplines and disciplines for specific sectors. At the same time, market access negotiations were possible for industrial goods. Once the principles had been worked out, negotiations could proceed on the commitments for sectors such as agriculture and services. Negotiations after the Uruguay Round and before the Doha Round began in 2001 focused largely on market access commitments: financial services, basic telecommunications, maritime transportation (under GATS) and information technology equipment (under GATT).

The agreement in the third area of trade covered by the WTO — on intellectual property (IP) — covers general IP disciplines as well as disciplines covering specific IP areas, such as copyright, patents, trademarks and geographical indications. Other details come from conventions and agreements outside the WTO.

The agreement on dispute settlement contains specific procedural disciplines on how to conduct WTO disputes while the Trade Policy Review Mechanism aims to ensure that WTO members' trade policies and practices are transparent.

### Also important

One other set of agreements not included in the diagram above is also important: the two “plurilateral” agreements not signed by all members: fair trade in civil aircraft and government procurement. (Originally there

were four agreements, but those concerning dairy products and bovine meat were terminated at the end of 1997.)

## The legal framework

The conceptual structure is reflected in the way the legal texts are organized. The short Marrakesh Agreement Establishing the World Trade Organization sets up the legal and institutional foundations. Attached to it is a much lengthier set of four annexes.

- Annex 1 contains most of the detailed rules, and is divided into three sections:
  - 1A, containing the revised General Agreement on Tariffs and Trade, the other agreements governing trade in goods, and a protocol which ties in individual countries' specific commitments on goods
  - 1B, the General Agreement on Trade in Services, texts on specific services sectors, and individual countries' specific commitments and exemptions
  - 1C, the Agreement on Trade-Related Aspects of Intellectual Property Rights.

Collectively, the agreements included in Annex 1 are referred to as the multilateral trade agreements since they comprise the substantive trade policy obligations which all the members of the WTO have accepted.

- Annex 2 sets the rules and procedures for dispute settlement.
- Annex 3 provides for regular reviews of developments and trends in national and international trade policy.
- Annex 4 covers the plurilateral agreements which are within the WTO framework but which have limited membership.

Finally, the Marrakesh texts include a number of decisions and declarations on a wide variety of matters that were adopted at the same time as the WTO Agreement itself.



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# The TBT Agreement

## An overview

### Background and purpose

The WTO Agreement on Technical Barriers to Trade (the "TBT Agreement") entered into force on 1 January 1995 as one of the WTO agreements under Annex 1A of the Agreement Establishing the World Trade Organization. The TBT Agreement strengthened and clarified the provisions of the "Standards Code" – the original plurilateral 1979 Tokyo Round Agreement on Technical Barriers to Trade governing regulations and standards.

The TBT Agreement is binding on all members of the WTO. It shares many of its fundamental principles with other WTO agreements – non-discrimination, promoting predictability of access to markets, and technical assistance and special and differential treatment for developing countries in the implementation of the Agreement. However, the TBT Agreement also includes features specific to the preparation and application of regulatory measures that affect trade in goods: it strongly encourages the use of international standards, and it emphasizes the need to avoid unnecessary barriers to trade. Moreover, it contains detailed provisions to clarify the entire process of preparing, adopting and applying TBT measures (the regulatory life-cycle). These provisions – together with guidance developed by members in a step-by-step fashion over the years – have enabled the TBT Agreement to become a unique multilateral instrument for addressing trade-related regulatory measures.

The TBT Agreement is part of a broader category of WTO agreements dealing with non-tariff measures (NTMs). NTMs, which include technical regulations, standards and conformity assessment procedures, provide the WTO with a number of challenges. On the one hand, governments rely on NTMs to achieve public policy goals, including the protection of human health and the environment – the fact that trade is affected is a normal and legitimate consequence of such regulation. On the other hand, NTMs may be used to shield domestic producers from foreign competitors, or they may be unnecessarily trade restrictive. In addition, NTMs are often technically complex, less transparent and more difficult to quantify than tariffs.

The TBT Agreement was carefully designed with these challenges in mind. Its disciplines help WTO members distinguish between "legitimate" and protectionist motivations for TBT measures. As such, the Agreement is an important tool to improve coherence and mutual supportiveness between open trade, on the one hand, and the internal policies that countries use to achieve public policy objectives, on the other. In short, the disciplines of the TBT Agreement are intended to help governments achieve a balance between upholding legitimate regulatory policy objectives and respecting the key disciplines of multilateral trade under WTO rules, including avoiding the creation of unnecessary obstacles to international trade (see Figure 2).

**Figure 2: Purpose of the TBT Agreement**

avoiding unnecessary obstacles to international trade



allowing for regulatory autonomy to protect legitimate interests

## Scope

The TBT Agreement covers trade in all goods (both agricultural and industrial) – this is explicitly set out in Article 1.3. The following are not covered:

- a. services (Article 1.3 and the opening paragraph of Annex 1 of the TBT Agreement)
- b. purchasing specifications prepared by government bodies for production or consumption requirements of governmental bodies (Article 1.4 of the TBT Agreement)
- c. measures covered by the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) (Article 1.5 of the TBT Agreement, see Figure 3).

## Relation to the SPS Agreement

The scope of the TBT Agreement must be considered in relation to the SPS Agreement. The objectives that a WTO member may pursue under the TBT Agreement are not

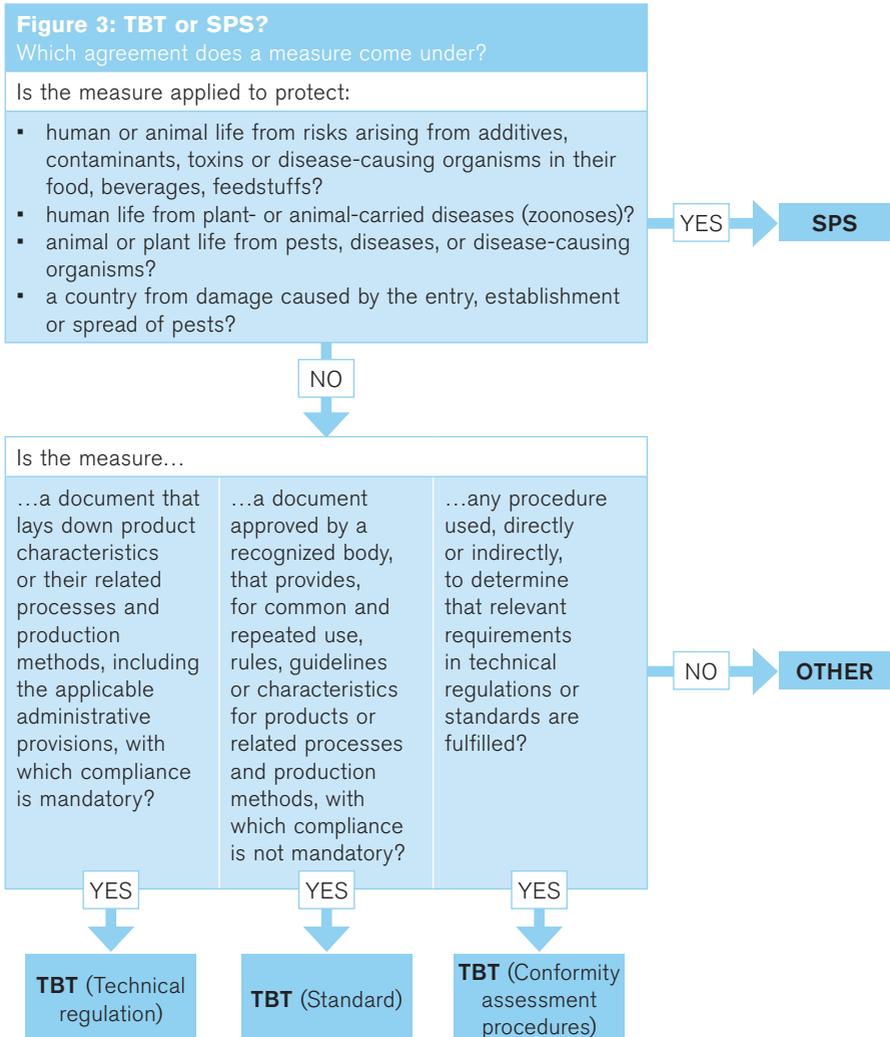
limited in the same way as those that fall under the SPS Agreement. For example, TBT measures can be used to meet requirements related to national security, prevention of deceptive practices, protection of the environment, and protection of human health or safety, or animal or plant life or health. By contrast, the SPS Agreement concerns pre-defined specific risks related to human health (mostly about food safety) and animal/plant health or life or protection from pests. Article 1.5 of the TBT Agreement excludes SPS measures from its scope. This means that a TBT measure cannot be an SPS measure and vice versa.

In practice, this is an artificial distinction. Governments sometimes draft and implement broad regulations that contain some requirements covered by the TBT Agreement and others by the SPS Agreement. For example, a single regulation on food products could establish a requirement concerning the treatment of fruit to prevent the spread of pests (relevant to the SPS Agreement) and other requirements, unrelated to the pest risk, concerning the quality, grading and labelling of the same fruit (relevant to the TBT Agreement).

It is the purpose of a particular measure that determines whether that measure is subject to the disciplines of the SPS or the TBT Agreement, and not the particular product or category of product in question. If the purpose of any measure is not listed in Annex A of the SPS Agreement, it may fall within the scope of the TBT Agreement (See Figure 3).

### Three categories of TBT measures

The TBT Agreement distinguishes between three categories of measures: technical regulations, standards, and conformity assessment procedures. The precise definition of these measures is contained in the TBT Agreement. Box 1 offers a simplified characterization of them.



## Box 1: TBT measures

Technical regulations	Standards	Conformity assessment procedures
<p>Technical regulations lay down product characteristics or their related processes and production methods. Compliance is <i>mandatory</i>. They may also deal with terminology, symbols, packaging, marking and labelling requirements.</p>	<p>Standards are approved by a recognized body which is responsible for establishing rules, guidelines or characteristics for products or related processes and production methods. Compliance is <i>not mandatory</i>. They may also deal with terminology, symbols, packaging, marking and labelling requirements.</p>	<p>Conformity assessment procedures are used to determine that relevant requirements in technical regulations or standards are fulfilled.</p> <p>They include procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; and registration, accreditation and approval.</p>

**Technical regulations** set out requirements with which compliance is mandatory. Types and product coverage may vary widely: they may be specific, for example relating to maximum permitted levels of lead in paint used on toys, or prohibiting the use of certain additives in tobacco products. Other measures may be more general in nature, involving, for example, the establishment of criteria for the labelling of organic agricultural products, or emission requirements for diesel engines. What they have in common is that, through some form of government intervention (law, regulation, decree, act), market access is contingent on fulfilling the requirements set out in the technical regulation.

To ascertain that a technical regulation exists, WTO jurisprudence to date has established three criteria: (i) that the requirements (set out in the document containing the technical regulation) must apply to an identifiable product or group of products (even if this is not expressly identified in the document); (ii) that the requirements must specify one or more characteristics of the product (these may be intrinsic to the product itself, or simply related to it, and they may be prescribed or imposed

in either a positive or a negative form); and, (iii) that compliance with the product characteristics must be mandatory.

**Standards** can be developed by a large number of different entities, including both governmental and non-governmental bodies (see Box 2). Unlike technical regulations, they are not mandatory. Standards are, however, often used as the basis for both technical regulations and conformity assessment procedures and, in such cases, the requirements set out in the standard become mandatory by virtue of government intervention (via technical regulations or conformity assessment procedures).

Standards are addressed by the TBT Agreement in a separate "Code of Good Practice for the Preparation, Adoption and Application of Standards" (the Code) contained in Annex 3 of the TBT Agreement. This Code, which is open to acceptance by any standardizing body, offers guidance on the process of setting standards (e.g. these should be transparent, and standardizing bodies should accept comments and avoid duplication). The TBT Agreement (Article 4)

## Box 2: Private standards

In recent years there has been some discussion in the TBT Committee on the topic of “private standards”. These types of standards are developed by non-governmental entities, for example to manage supply chains or respond to consumer concerns. They may include environmental, social, food-safety, or ethical specifications. Because they are not enforced by law, private standards are considered “voluntary”, yet they may *de facto* affect market access. Thus, some developing countries have raised concerns about the trade-restrictive effects of private standards at the WTO. Among these concerns are the higher level of stringency associated with requirements set out in private standards compared with regulations, rapid proliferation of private standards, and the lack of transparency (because these measures are not notified under the TBT Agreement). In the SPS Committee, members have agreed on certain actions to share information on private standards.

instructs members to ensure that their central government standardizing bodies accept and comply with the Code. To date, 164 standardizing bodies (of all types) have notified their acceptance of the Code.

For the many standardizing bodies that are non-governmental in nature, the TBT Agreement requires that governments “take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories ... accept and comply with this Code of Good Practice”. Thus the TBT Agreement attributes a certain degree of responsibility to governments to ensure that non-governmental entities within their

territories abide by disciplines laid out within the Code that, to a large degree, mirror the principles in the TBT Agreement.

**Conformity assessment procedures** are used to determine whether goods such as toys, electronics, food, and beverages fulfil the requirements established by relevant technical regulations or standards. They give consumers confidence in the integrity of products and add value to manufacturers' marketing claims. Typical conformity assessment procedures include testing, inspection and certification procedures. Given that different types of conformity assessment procedures affect trade differently, a key issue from the perspective of the WTO is the choice of which conformity assessment procedure to use in a particular situation. One factor that might influence this choice is the level of risk: for instance, third-party certification (a form of conformity assessment procedure that tends to be more costly than, for example, a supplier's declaration of conformity) may be the choice of some members in situations in which the risk of harm is sufficiently high.

## Key principles

This section introduces the substantive disciplines of the TBT Agreement: non-discrimination, avoidance of unnecessary barriers to trade, the use of international standards, as well as technical assistance and special and differential treatment for developing countries. Transparency – an additional core element of the TBT Agreement – is dealt with separately (from page 24).

### Non-discrimination

Governments regulate for many reasons: to protect human health and safety, to protect

the environment or to provide consumers with information about various aspects of products. For instance, a government may require household appliances to display a label with information about their energy efficiency, or it may prohibit the sale of toys containing hazardous substances. Some of these regulations inevitably affect international trade. What is important from the trade perspective is to avoid having regulations set arbitrarily and to ensure that they are not used to protect domestic producers from foreign competition. Respecting these fundamental disciplines is an essential means of ensuring that countries can attain their public policy goals while benefitting from open trade.

Under the TBT Agreement, governments must ensure that TBT measures do not discriminate against foreign products (in favour of domestic producers), or between foreign producers (for example, by favouring one country over another): 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. These disciplines apply to all three categories of measures covered by the TBT Agreement: technical regulations (Article 2.1), conformity assessment procedures (Article 5.1.1) and standards (Annex 3.D) (see Box 3 for an overview).

The context in which the conformity assessment procedure takes place is important because of the Agreement's reference to "comparable" situations. The Agreement requires that conformity assessment procedures grant access to suppliers (in other WTO members) under conditions no less favourable than those accorded to suppliers at home or abroad when the situation is "comparable".

The principle of non-discrimination has been addressed in three recent TBT disputes: "US – Clove Cigarettes", "US – Tuna II" and "US – Certain Country of Origin Labelling (COOL)". Although the specifics of each dispute differ with respect to product coverage (tobacco, fish and meat products), and the measures at issue were also different, certain aspects of the analysis were similar and may shed some light on the understanding of non-discrimination in relation to technical regulations under Article 2.1 of the TBT Agreement.

The "US – Clove Cigarettes" dispute concerned a prohibition by the United States on the production or sale of cigarettes containing flavours other than tobacco or menthol. The objective of the measure was to reduce youth smoking. Indonesia, while not disputing the importance of reducing smoking, complained that the measure prevented it from exporting clove-flavoured cigarettes to the United States. It argued, among other things, that the prohibition of one flavour (clove) but not the other (menthol) was discriminatory. Based on the competitive relationship between the products, the final ruling determined that clove cigarettes imported from Indonesia and menthol cigarettes produced in the United States were "like". Ultimately, and as explained in further detail below (see page 18 on "Legitimate Regulatory Distinctions"), the banning of clove-flavoured cigarettes, mostly produced in Indonesia, but not of menthol-flavoured cigarettes, mostly produced in the United States, amounted to discrimination, in violation of TBT Agreement rules.

The "US – Tuna II" dispute concerned various US measures affecting the labelling of tuna products as "dolphin-safe". In particular, the measures at issue determined that the "dolphin-safe" label could not be used on tuna caught with "purse-seine nets"

### Box 3: Non-discrimination

#### Technical regulations (Article 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.

#### Conformity assessment procedures (Articles 5.1 and 5.1.1)

5.1 members shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Members:

5.1.1 conformity assessment procedures are prepared, adopted and applied so as to **grant access** for suppliers of like products originating in the territories of other Members under **conditions no less favourable** than those accorded to suppliers of like products of national origin or originating in any other country, in a **comparable situation**; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system.

#### Standards (paragraph D of Annex 3, under "substantive provisions")

In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO **no less favourable** than that accorded to **like products** of national origin and to like products originating in any other country.

under the fishing technique of "setting on" dolphins. This technique involves chasing and encircling the dolphins with a "purse seine net" in order to catch the tuna swimming beneath the dolphins: it is used in the Eastern Tropical Pacific Ocean, where this phenomenon occurs. Mexico, a purse-seine net user in the Eastern Tropical Pacific Ocean, complained that the US measures were inconsistent with the TBT Agreement and prevented Mexican exporters from labelling their tuna as "dolphin-safe". WTO adjudicators considered that the US measures were not "even-handed" in the way in which they addressed the risks to dolphins arising from different fishing methods in different areas of the ocean (in the Atlantic or Indian oceans, for example) and therefore found a violation of Article 2.1.

Finally, "the US – COOL" dispute concerned various US measures that set out country of origin labelling (COOL) requirements for certain meat products. Canada and Mexico argued that, among other things, the measures were discriminatory. WTO adjudicators considered that, although the US measures did not mandate segregation, in practice, compliance with the measures required segregation of meat and livestock according to their origin, creating an incentive to use domestic (US) livestock by imposing higher segregation costs on "like" imported livestock. They found the measures at issue to lack "even-handedness" because the informational requirements imposed on producers were disproportionate when compared with the level of information communicated to consumers through

the mandatory retail labels. For these reasons, this measure was also found to be discriminatory.

### **"Legitimate regulatory distinction"**

What can be learned from the disputes? To begin with, if a member wishes to claim a violation of Article 2.1 of the TBT Agreement, it needs to show: (i) that the products involved are "like" and (ii) that the imported products have been accorded "less favourable treatment". With respect to the former, WTO adjudicators have referred to the traditional "likeness" criteria (physical characteristics, end-uses, consumer tastes and habits, and tariff classification) and the "competitive relationship" between and among the products being compared. With respect to "less favourable treatment", the Appellate Body has introduced the term "legitimate regulatory distinction".

To understand the term "legitimate regulatory distinction", it is necessary to take a step back and consider that some detrimental impact on imports is not a sufficient basis for a violation of Article 2.1; indeed, some negative impact may be a normal consequence of any regulation that affects trade. For instance, a requirement that meat must be frozen before transport over long distances will entail different costs for local producers as compared with overseas exporters. This does not necessarily imply less favourable treatment (and by extension discrimination) against foreign exporters – it is simply a consequence of doing business in a global environment. Thus, if detrimental impact stems exclusively from a legitimate regulatory distinction, there is not necessarily a violation of the Article 2.1 of the TBT Agreement. To determine the legitimacy of regulatory distinctions, WTO adjudicators established that it is important to consider

the design, architecture, revealing structure, operation, and application of the technical regulation.

### **Avoidance of unnecessary barriers to trade**

Even if a technical regulation is non-discriminatory (thus passing the test described above), it could still fall afoul of the TBT Agreement because it restricts trade unnecessarily. So, when is a measure "unnecessarily" trade-restrictive? Indeed, how can it be ensured that variations in government regulations do not make life unnecessarily difficult for producers, exporters or even consumers? Again, as with non-discrimination, this discipline applies to all three types of TBT measures (see Box 4).

Under the TBT Agreement, WTO members must pursue a legitimate objective when preparing, adopting or applying a TBT measure that restricts trade. The Agreement contains a non-exhaustive list of such legitimate objectives, including the protection of human health or safety, animal or plant life or health, or the environment. Moreover, the Agreement gives members the sole prerogative to determine the level of protection they deem appropriate for their citizens under a legitimate objective. At the same time, this right should be balanced against the need to ensure that TBT measures are not prepared, adopted or applied so as to create unnecessary obstacles to international trade.

But what, then, is the benchmark for necessity? The Agreement says that technical regulations shall not be *more* trade-restrictive than necessary to fulfil a legitimate objective, and that account must be taken of "the risk of non-fulfilment".

#### Box 4: Necessity

##### Technical regulations (Article 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.

##### Conformity assessment procedures (Articles 5.1 and 5.1.2)

... conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating **unnecessary** obstacles to international trade. This means, inter alia, that conformity assessment procedures shall not be more strict or be applied more strictly than is **necessary** to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

##### Standards (paragraph E of Annex 3, under "substantive provisions")

The standardizing body shall ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating **unnecessary** obstacles to international trade.

This may be seen as involving a degree of proportionality between a measure's trade restrictiveness and the risk that the measure seeks to mitigate. It is important to emphasize that the Agreement is not about removing all barriers to trade, only those that unnecessarily restrict trade.

Looking at TBT cases, in "US – Clove Cigarettes", WTO adjudicators found that Indonesia had not demonstrated that there were less trade-restrictive alternatives available to the United States, and that the measure could, indeed, make a "material contribution" to the objective of reducing youth smoking: there was evidence to suggest that the measure – at least to some degree – contributed to reducing smoking

among the young. In "US – Tuna II", WTO adjudicators found that the US "dolphin-safe" labelling provisions were not more trade-restrictive than necessary to fulfil their legitimate objectives: informing consumers on whether tuna products contained tuna caught in a manner that adversely affects dolphins, and discouraging the use of fishing techniques that are harmful to dolphins. And, finally, in the "US – COOL" case, due to the absence of relevant factual determinations and undisputed facts, WTO adjudicators were unable to determine whether the US measures at issue were "more trade-restrictive than necessary to fulfil a legitimate objective".

Thus, to date, no member has been found (at the appeal stage) to be in violation of Article 2.2 of the TBT Agreement. The jurisprudence does, to a degree, offer guidance on how to approach an assessment of whether a technical regulation is "more trade-restrictive than necessary" as per Article 2.2 of the TBT Agreement. It shows that an evaluation involves several factors, including how much the measure contributes to the achievement of the objective, the types of risks and the potential consequences from the non-fulfilment of the objective, and the trade-restrictiveness of the measure. Considering alternative measures is also part of the assessment. For instance, if a less trade-restrictive alternative measure that would equally fulfil the policy objective were reasonably available, that measure would be preferable.

Article 2.5 of the TBT Agreement is also relevant to the discipline on avoiding unnecessary barriers to trade, as it provides a form of "safe haven"; it states that if a technical regulation is in accordance with a relevant international standard, it is presumed (although this presumption can be challenged) not to create an unnecessary obstacle to international trade. Thus the international standard provides a first line of defence against an eventual challenge that the measure is creating an unnecessary barrier to trade.

### *A word about "uncertainty"*

How about a situation in which not enough is known about a possible risk? Information about a particular risk may be incomplete or even non-existent – and in some situations a country might need to address a perceived risk. The SPS Agreement contains a specific article that

refers to cases "where relevant scientific evidence is insufficient" (Article 5.7 of the SPS Agreement), but the TBT Agreement does not.

Nevertheless, in its preamble, the TBT Agreement recognizes that countries should not be prevented from taking measures (including those that are necessary for the protection of human, animal or plant life or health, or for the protection of the environment) at the level considered appropriate. This may give some scope for implementing preliminary measures in the absence of complete scientific or other information. However, Article 2.3 states that measures may 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. In other words, if, upon reassessment in light of new scientific (or other relevant) information, a perceived risk is deemed to be non-existent, it may be necessary to review the measure.

The TBT Agreement allows members, under certain circumstances, to omit the normal steps of notification in cases where urgent problems arise (Articles 2.10 and 5.7). However, other members can raise any concerns they may have, and the member taking the measure must take these into account.

### **International standards**

The TBT Agreement strongly encourages members to use "relevant" international standards, guides or recommendations "as a basis" for their regulations and standards (Articles 2.4, 5.4 and Annex 3, paragraph F of the TBT Agreement). As mentioned above, this discipline is strengthened by

the presumption that a technical regulation does not create an unnecessary obstacle to international trade if it is prepared in accordance with "relevant" international standards (Article 2.5).

However, harmonization on the basis of international standards may not be desirable in all contexts due to divergent national preferences and circumstances. The TBT Agreement foresees the possibility that some international standards might not be

effective or appropriate in certain cases (e.g. because of climatic, geographical or technological reasons); thus members may decide not to use a standard if it is an ineffective or inappropriate way of fulfilling the public policy objective pursued (see Box 5). The Agreement also recognizes that developing country members should not be expected to use international standards that are not appropriate to their development, financial and trade needs (Article 12.4 of the TBT Agreement).

### Box 5: International standards

#### Technical regulations (Article 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.

#### Conformity assessment procedures (Article 5.4)

In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Members shall ensure that central governments bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Members concerned, for, inter alia, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

#### Standards (paragraph F of Annex 3, under "substantive provisions")

Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate, for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.

## Why is the use of international standards promoted?

When technical requirements vary from market to market, traders must contend with the costs of both product adaptation (or redesign) and conformity assessment associated with each market they wish to enter. This can segment markets, hindering competition and reducing international trade. International standards can help countries overcome these problems. By ensuring compatibility across countries and conveying information to consumers about goods that have been produced abroad or processes that took place in another country, international standards can generate economies of scale and production efficiencies, reduce transaction costs, and facilitate international trade. This is an important means of promoting regulatory convergence. Moreover, because international standards codify the related scientific and technical knowledge developed at the global level, their development and use are important means of disseminating knowledge and fostering innovation.

## One difficulty is establishing "relevance"

WTO disputes have, in varying degrees, addressed the topic of international standards and the TBT Agreement. One of them ("EC – Sardines") focused almost entirely on Article 2.4 of the TBT Agreement: it was about the marketing of "preserved sardines" in the European Union. The measure at issue included a specification that only products prepared from *Sardina pilchardus Walbaum*, which is mainly found in Europe, could be marketed as "preserved sardines" in the EU. Peru complained that this measure was inconsistent with the TBT Agreement because it prevented Peruvian exporters from marketing *Sardinops sagax sagax*,

mainly found in South American waters, as "preserved sardines". The final ruling found that the measure at issue was inconsistent with the TBT Agreement because it was not based on a "relevant international standard" from the FAO/WHO-administered Codex Alimentarius Commission. This was an international standard for preserved sardines and sardine-type products that allowed, under certain conditions, both *Sardinops sagax sagax* and *Sardina pilchardus Walbaum* to be marketed as sardines. This dispute emphasized the importance of using a relevant international standard.

The situation was different in the more recent dispute, "US – Tuna II", where WTO adjudicators focused more on the procedures used by the standardizing body. In this case, it was found that the "dolphin-safe" definition and certification under the framework of the Agreement on the International Dolphin Conservation Program (AIDCP), to which new parties can accede only by invitation, was not a relevant international standard – and that, therefore, the United States was not under the obligation to base its measures on it. Significantly, in this dispute, reference was made to the "Six Principles" (see page 122), which provide guidance in the areas of transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and development. The Six Principles were agreed on by the TBT Committee with a view to guiding members in the development of international standards, and they were referred to as a means of informing the understanding of certain terms and concepts contained in the TBT Agreement (such as "open" and "recognized activities in standardization").

The issue of "relevance" of international standards has also come up in the context of the Doha Round negotiations (see page 32).

## Technical assistance and special and differential treatment

Recognizing the difficulties and challenges that developing-country members may face with implementation, the TBT Agreement contains provisions both on technical assistance (Article 11) and on special and differential treatment (Article 12) – provisions which give developing countries special rights and which give developed countries the possibility to treat developing countries more favourably than other WTO members.

Article 11 of the TBT Agreement requires members to provide advice and technical assistance to other members, and especially developing country members. This includes assistance with the establishment of national standardizing or conformity assessment bodies, and of a legal framework to fulfil the obligations of membership or participation in international or regional systems for conformity assessment. Members are also required to advise on the preparation of technical regulations, how best to meet these technical regulations, and steps to be taken by producers to gain access to systems for conformity assessment. The TBT Agreement also contains a more general obligation to give priority to the needs of least-developed countries.

Article 12 of the TBT Agreement deals with special and differential (S&D) treatment for developing country members. While Articles 12.1 and 12.2 provide the overall context of S&D treatment, subsequent provisions clarify how S&D treatment applies to:

- the preparation and application of technical regulations, standards and conformity assessment procedures (Article 12.3)

- related technical assistance (Article 12.7) and harmonization (Articles 12.4, 12.5 and 12.6)
- time-limited exceptions (Article 12.8), consultations (Article 12.9) and periodic examinations (Article 12.10).

At the Fourth Triennial Review of the Operation of the TBT Agreement, developed countries were encouraged to give information about S&D treatment they provide to developing countries. Developing countries were encouraged to undertake their own assessments of the utility and benefits of S&D treatment (see page 117).

### *What support is available for developing countries?*

WTO members have identified several priority areas for technical assistance. For instance, they have discussed the importance of sustainable technical infrastructure (sometimes referred to as "quality infrastructure") in terms of both its regulatory and physical dimensions. This type of infrastructure is a prerequisite for the efficient and effective development and design of technical regulations, standards and conformity assessment procedures. The lack of adequate technical infrastructure in developing countries constrains the ability of exporters to access foreign markets. This is because meeting a standard is often not enough; it is also necessary to demonstrate compliance in order to build confidence in the quality and safety of exported products. Technical infrastructure, including laboratories and accredited certification bodies, is essential to help domestic firms integrate into global value chains. Members are encouraged to provide technical cooperation in the areas of metrology, testing, certification and

accreditation in order to improve technical infrastructure.

Through its technical assistance activities, the WTO Secretariat helps developing countries improve their understanding of matters such as the disciplines of the TBT Agreement and the implementation thereof, the operation of transparency procedures, and the work of the TBT Committee. This assistance takes the form of regional, sub-regional and national seminars and Geneva-based events, as well as specialized courses, trade policy courses and workshops on specific topics. In addition, the WTO Secretariat helps members take advantage of opportunities provided by the TBT Agreement to pursue their trade interests, including through participation in the TBT Committee, at which specific measures may be discussed and the implementation of the Agreement's provisions are reviewed (see page 28). Other organizations such as the International Electrotechnical Commission (IEC), the International Organization for Standardization (ISO) and the United Nations Industrial Development Organization (UNIDO) also provide assistance.

## Transparency

Transparency is a cornerstone of the TBT Agreement. Transparency in the context of the TBT Agreement consists of three core elements:

- a. provisions on the **notification** of draft technical regulations (Articles 2.9, 2.10, and 3.2) and conformity assessment procedures (Articles 5.6, 5.7 and 7.2), as well as the "one-time" notification of each member's organizational "set-up" for the implementation of the Agreement (Article 15.2)
- b. the establishment of **enquiry points** (Article 10.1) and a notification authority (Article 10.10)
- c. **publication requirements** for technical regulations (Articles 2.9.1 and 2.11), conformity assessment procedures (Articles 5.6.1 and 5.8) and standards (Annex 3, paragraphs J and O).

These three elements have been further developed by the decisions and recommendations of the TBT Committee (see page 84).

### Notifications

The notification provisions in the TBT Agreement, along with the relevant TBT Committee decisions and recommendations, form the backbone of the Agreement's disciplines on transparency. Notifications reveal how members intend to regulate to achieve specific policy objectives and what might be the trade implications of their regulations. Receiving information about new regulations or standards at an early stage, before they are finalized and adopted, gives trading partners an opportunity to provide comments either bilaterally or in the TBT Committee, and to receive feedback from industry. If a member takes regulatory action, the comments can assist in improving the quality of its draft regulation and avoiding potential trade problems. Early notification also helps producers and exporters adapt to the changing requirements.

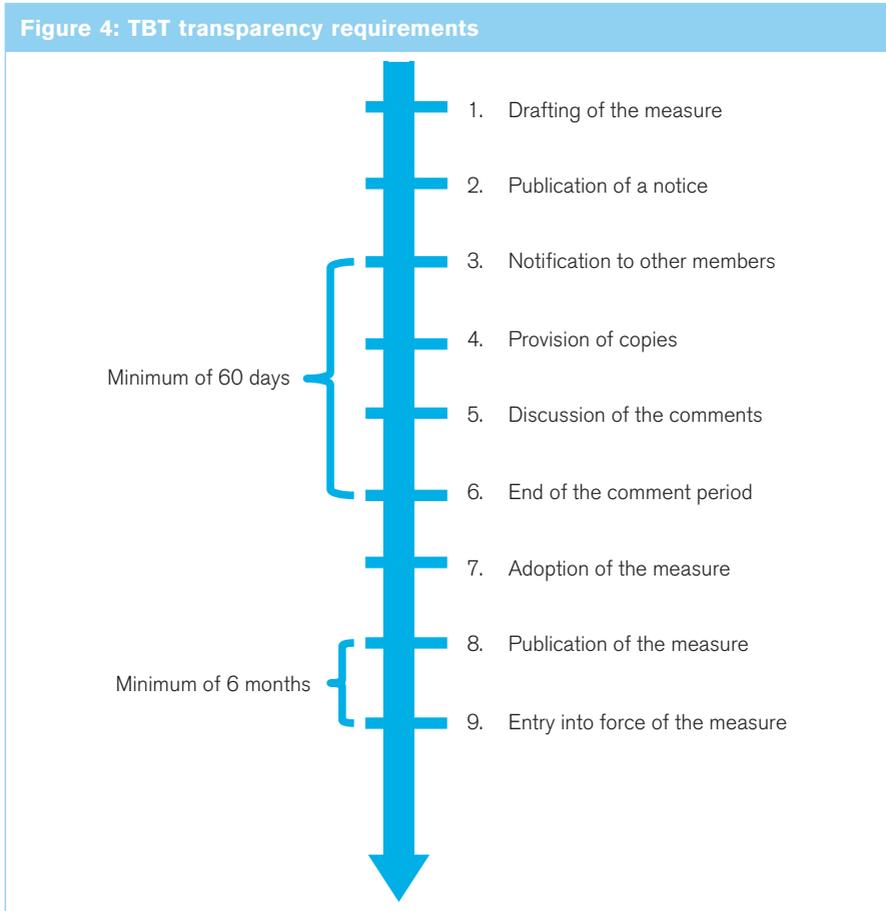
Essentially, governments are required to "notify" other members, through the WTO Secretariat, of proposed measures that may have a significant effect on other members' trade and that are not based on relevant international standards (see Step 3 of Figure 4). This notification requirement

must take place at an early, appropriate stage, when amendments can still be introduced and comments taken into account. Information about new requirements is essential to producers and exporters – it enables industry to transmit its concerns and comments to its government who may then raise the matter bilaterally with trading partners. Indeed, trading partners have an obligation to take these comments into account (Article 2.9.4 of the TBT Agreement). If concerns cannot be resolved through the bilateral informal process, members can raise them as specific

trade concerns (STCs) in the TBT Committee (see page 29).

Once a measure has been notified, the recommended 60-day comment period begins, during which members can request copies of the draft measure and make written comments on the measure to the notifying member (see steps 3 to 6 of Figure 4). The comment period is significant because the notifying member should discuss comments received and take both these and the results of any discussions into account in the final measure.

**Figure 4: TBT transparency requirements**



## Submitting notifications to the WTO

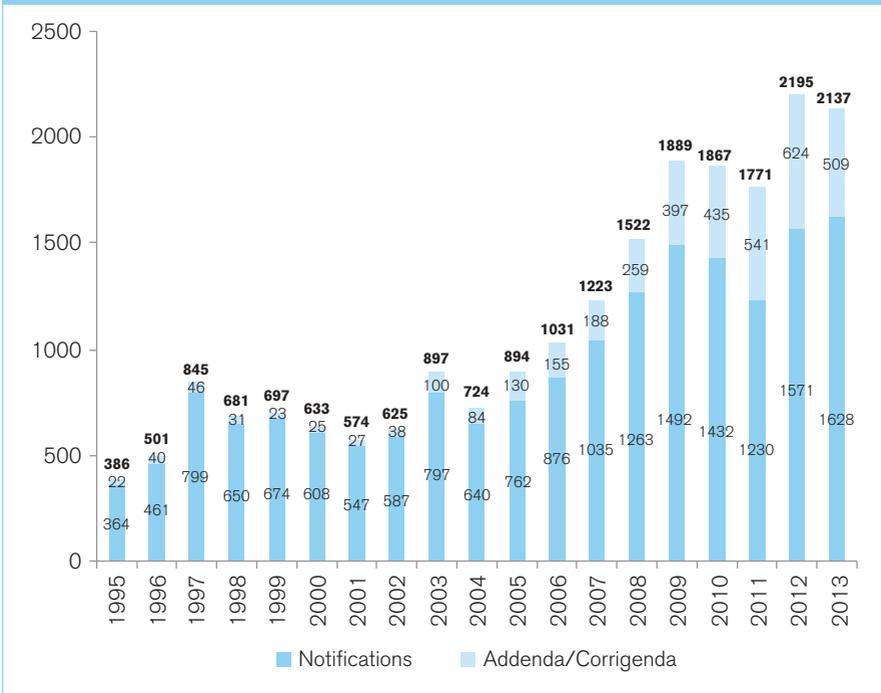
Members are required to designate "a single central government authority" for submitting these notifications (Article 10.10), although other entities may be involved in filling out the notification template (see page 126 for the guidance on how to fill out the notification format). To date (end-2013), 121 WTO members have made at least one notification under the TBT Agreement (see Figure 5). Notifications must be submitted to the WTO in one of the three official WTO languages (English, French, and Spanish).

Typically, a notification is no more than a couple of pages long and may contain hyperlinks to the full text of the measure being notified (an

example of a typical notification can be found on page 152). It provides, among other things, information on products to be covered by the measure – ideally in Harmonized System (HS) or International Code for Standards (ICS) format. Members are also required to give a brief indication of the measure's objective and rationale.

The completed notification may be submitted online (<https://nss.wto.org/tbtmembers>) or by e-mail ([crn@wto.org](mailto:crn@wto.org)) to the WTO Secretariat, which, in turn, circulates it to members. It is also posted on the WTO website and translated into the other official WTO languages. Information on notifications is publicly available through the TBT Information Management System (IMS) (see page 28).

**Figure 5: Total number of notifications from WTO members (1995-2013)**



## Statements on implementation: a "one-time" notification

Besides the regular notifications described above, the TBT Agreement has a separate, "one-time" notification requirement under Article 15.2. This one-time "statement of implementation" that each member submits should include information on relevant laws and regulations, the time period allowed for comments on notifications, contact information for enquiry points and other relevant national authorities, titles of publications on TBT measures, and measures to ensure that national and sub-national authorities provide information on regulatory proposals at an early stage. Subsequent changes must also be notified. These notifications are contained in WTO document series "G/TBT/2/Add" and are available through the WTO website.

## Enquiry point

To facilitate the exchange of information, each member must put in place an enquiry point that is able to answer all reasonable enquiries from other members. This is an office or body mandated to handle incoming comments on notified measures, respond to enquiries and provide relevant information and documents. To date, 149 (of 159) members (and two observers) have notified their enquiry points to the WTO.

Some countries have successfully extended the functions of their enquiry points to provide services to their own government agencies and industries. For instance, some enquiry points have developed web-based "Export Alert" systems, which provide relevant stakeholders with information about new requirements (often derived from notifications by other members) in export markets. The contact information for

notification authorities and enquiry points is available in the TBT IMS (see page 28).

## Publication

The publication requirements in the TBT Agreement are designed to advertise a member's intent to regulate as well as to provide access to the final texts of regulations. With respect to technical regulations and conformity assessment procedures, even before notification, members must publish a notice, usually in an official journal (Step 2 in Figure 4 on page 25) specifying their intention to introduce a particular measure – this is sometimes referred to as "early notice". Once a final measure is adopted, it must promptly be published (Step 8). Moreover, members should provide a reasonable interval (a minimum of six months) between publication of a measure and its entry into force (Step 9 in Figure 4). This gives industry time to adapt to the new requirements (this Decision can be found on pages 95-96).

There are publication requirements for standards too. The transparency provisions on standards are laid out in the TBT Agreement's Code of Good Practice (Annex 3). Standardizing bodies adhering to the Code of Good Practice must:

- communicate to the WTO Secretariat that they are preparing standards
- publish a work programme (specifying standards under preparation and those recently adopted) every six months
- provide a period for comments of at least 60 days prior to adoption of draft standards, and
- promptly publish adopted standards and provide copies on request.

## Accessing information on TBT measures through the WTO website

The TBT Information Management System ("TBT IMS") is an online tool developed by the WTO Secretariat to facilitate access to TBT information (<http://tbtime.wto.org>). It is a publicly available, searchable database in the three official WTO languages. It contains details on members' notifications of technical regulations and conformity assessment procedures (including subsequent revisions), notifications from standardizing bodies relating to the Code of Good Practice, notifications of bi- or plurilateral agreements between members on TBT measures, contact information for members' enquiry points and national notification authorities, and information on specific trade concerns raised in the TBT Committee.

The TBT IMS provides several search facilities. Regular TBT notifications can be searched using basic criteria, such as notifying member, date and products. Searches can be conducted using more refined criteria, including type of measure, type of notification and user-defined keywords. A "What's New" section allows users to access the most recent notifications. The TBT IMS also provides access to information on specific trade concerns raised in the TBT Committee. All information can be extracted from the system in spreadsheet format through the custom reporting function.

## TBT Committee

The transparency disciplines discussed above are closely linked to the work of the TBT Committee. The Committee serves as a platform to discuss concerns that may

arise in the context of the exchanges of information required by the TBT Agreement's transparency provisions. The committee's mandate is broad; it is intended to afford:

"... members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives" (Article 13.1 of the TBT Agreement).

Meetings are open to all WTO members, and countries seeking to join the WTO can participate as observers. Governments choose their representatives at TBT Committee meetings. Representatives include capital-based trade officials and officials from national regulatory and standardizing bodies. There are generally three meetings per year, but delegations also meet informally in between the regular meetings. In addition, there are special meetings and workshops to address particular issues. International intergovernmental organizations – several of them standardizing bodies – participate as observers in the Committee.

TBT Committee work involves two broad areas:

- a. **Review of specific measures.**  
Countries use the TBT Committee to discuss specific trade concerns - specific laws, regulations or procedures that affect their trade
- b. **Strengthening implementation.**  
Members exchange experiences on the implementation of the Agreement with a view to making implementation more effective and efficient. This discussion revolves around generic, cross-cutting themes, including transparency, standards, conformity assessment and good regulatory practice.

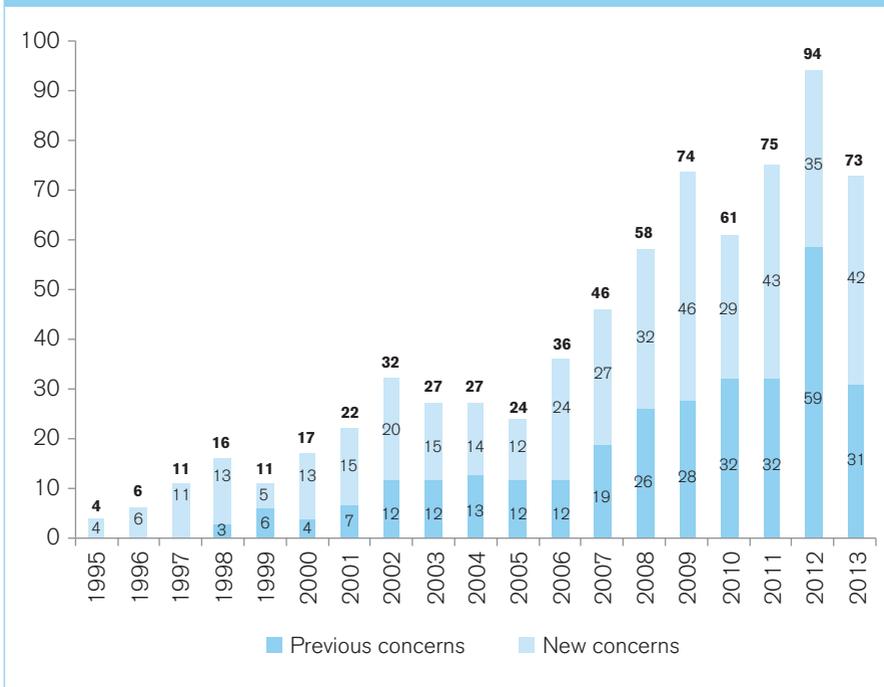
## Review of specific measures

Members use the TBT Committee to discuss trade concerns associated with specific measures being prepared, or that have already been implemented. The number of specific trade concerns discussed in the TBT Committee has increased steadily since the creation of the WTO in 1995, reaching a total of around 400 by end-2013 (see Figure 6). Most (but not all) of these measures have had a prior notification.

The opportunity to raise specific trade concerns in an open, multilateral platform composed mostly of technical experts is an effective way of reducing potential trade conflicts. Discussions around these concerns

contribute to an improved understanding by WTO members of the rationale underlying their trading partners' regulations, and present an opportunity for clarification and for delegations to flag potential problems. The meetings of the Committee thus provide a form of regulatory cooperation between countries (see page 30); they are, in this sense, an opportunity for consultations in a transparent, multilateral setting – of both formal and/or informal nature. In certain cases, this has effectively facilitated the resolution of – or diffused at an early stage – issues arising between members. Nevertheless, if trade concerns cannot be settled at the Committee level, delegations are not precluded from using the formal WTO dispute settlement procedures.

**Figure 6: Number of specific trade concerns raised in the TBT Committee**



## Strengthening implementation

Over the years, the TBT Committee has developed a series of decisions and recommendations intended to facilitate implementation of the TBT Agreement (see page 65). The bulk of this work happens during a review that takes place every three years – the "triennial review" (Article 15.4). Although most recommendations adopted as part of a triennial review pertain to transparency, other areas of work are becoming more prominent. For instance, in its early years, the Committee developed guidance on international standards (see page 78) and conformity assessment (see page 73). During its latest review, held in 2012, the Committee considered the issue of "good regulatory practice". Guidance developed during the triennial reviews helps strengthen the implementation of the TBT Agreement by ensuring a more effective application of technical regulations, standards and conformity assessment procedures – which, in turn, contributes to avoiding the creation of unnecessary obstacles to trade.

### *The Committee's discussions on how to improve regulations*

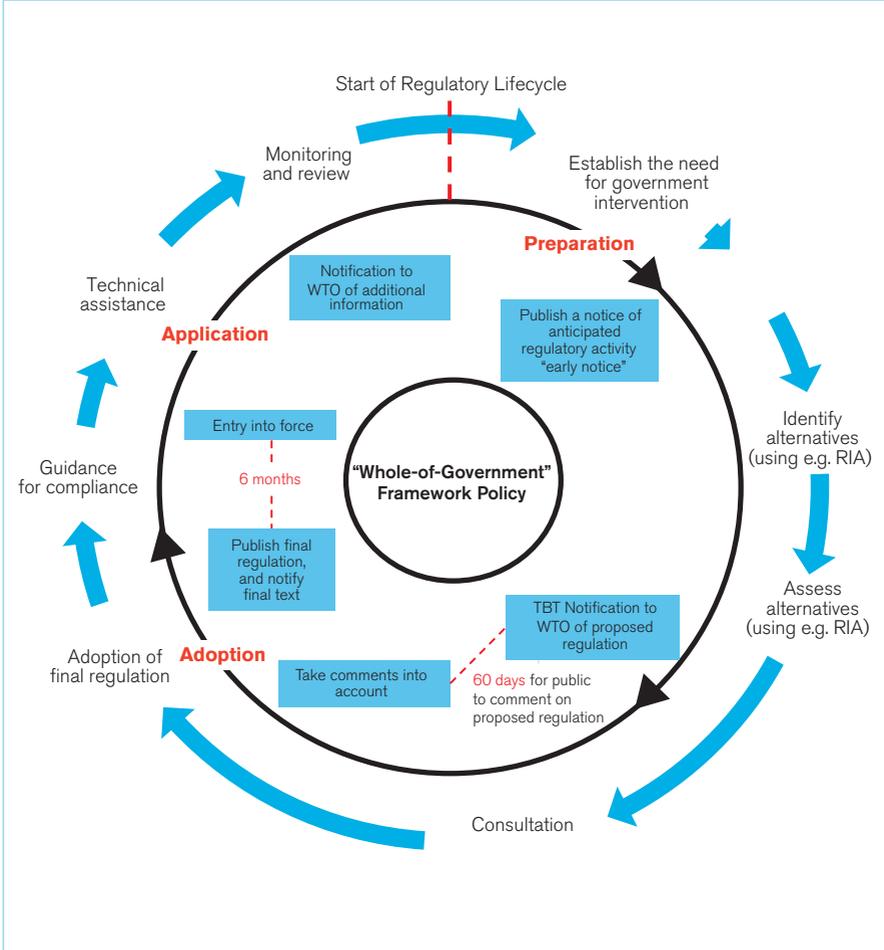
Good regulatory practice (GRP) describes best practices and procedures developed by governments and organizations to improve the quality of regulation. Much work has been done in this area, both at the WTO and elsewhere, including in the context of the Asia-Pacific Economic Cooperation (APEC), the Organisation for Economic Co-operation and Development (OECD) and the World Bank. Application of best regulatory practices and procedures can help ensure the design of high-quality, cost-effective regulations that are consistent with the goal of open trade. Moreover, the wider dissemination of GRP can contribute to the establishment of a common, predictable

framework for regulatory intervention, thereby facilitating global regulatory cooperation and harmonization.

In the TBT Committee, GRP discussions have emphasized the transparency and accountability of regulatory processes. Strengthening transparency and accountability can help avoid unnecessarily trade-restrictive regulatory outcomes. Other areas of GRP considered by the TBT Committee include analysis and review of regulatory alternatives (including the option not to regulate), and the design of regulations, including the advantages of simple, responsive and flexible regulations. Members have also stressed that GRP is an important element of capacity-building initiatives and that preparing GRP guidelines could be particularly helpful for developing countries.

The TBT Agreement's provisions on transparency and discussions on GRP are closely linked. "Early notice", notification, comments, publication and entry into force are all processes that should lead to better regulation. Therefore, incorporating the transparency processes of the TBT Agreement into the regulatory lifecycle of a specific measure is a powerful means of fostering GRP, which has transparency and consultation as one of its fundamental components. Figure 7 is one way to illustrate the regulatory lifecycle for a specific measure. The core inner circle anchors the central importance of a "whole-of-government" approach to GRP; at the next level, Figure 7 shows the procedural obligations contained in the TBT Agreement (blue boxes) that lead to transparency and coordination; finally, the outer circle comprises elements of GRP across the regulatory lifecycle, starting with an analysis of the need to regulate, an assessment of alternatives (including through regulatory impact assessment, RIA), publication, implementation and enforcement, and review.

**Figure 7: Applying good regulatory practice to the lifecycle of a TBT measure: an illustration**



### ***The need to improve international cooperation on regulation***

Even when members' regulations are intended to address the same policy objective, they can differ due to variations in local conditions, preferences and values. Nonetheless, differences are not necessarily

obstacles to cooperation, since regulatory cooperation is not only about reducing unnecessary regulatory diversity across countries, but also about limiting or reducing the costs associated with *necessary* regulatory diversity. Regulatory cooperation contributes to the reduction of unnecessary barriers to trade and associated negative economic impacts.

In practice, regulatory cooperation consists of formal or informal contacts among officials from different governments. The levels of ambition may vary. For example, regulatory cooperation between two major trading partners with strong economic ties may seek to achieve a high level of convergence, possibly resulting in harmonization. Shared regulatory traditions and institutional structures can make deeper convergence easier to achieve. By contrast, regulatory cooperation between two economies with more limited trade flows and/or different levels of development may aim to increase understanding and build confidence to facilitate trade, instead of fostering full regulatory convergence.

A common feature across all forms and degrees of regulatory cooperation is its forward-looking nature. The early identification of potential regulatory frictions is a key part of regulatory cooperation, which seeks to prevent friction-causing regulations from becoming entrenched in national legislation. Once a specific measure has entered into force, it is often more difficult to make changes to it. Effective cooperation should function as a means of pre-empting trade concerns that arise between members, whether informally at a bilateral level, formally in the TBT Committee, or even in a dispute settlement context.

## Negotiations

The Doha Ministerial Declaration of 2001 gave WTO members a mandate to negotiate the reduction of tariffs and non-tariff barriers (NTBs) in international trade of industrial products. These negotiations take place in the Negotiating Group on Non-Agricultural Market Access (NAMA). In the NTB area, where work has been on-going since 2002, several proposals relate to the

implementation of the TBT Agreement. Some of these proposals cover particular sectors (textiles, electronics, automobiles, chemicals), while others address disciplines affecting all products (transparency, conformity assessment and international standards). A number of cross-cutting issues relevant to the implementation of the TBT Agreement have been raised through this work. Two of them are referred to below.

### *International standards – is more clarity needed on the "relevant" bodies?*

Some members have sought to promote the explicit identification of particular standardizing bodies as the "relevant" international standardizing bodies under the TBT Agreement. This would, in their view, facilitate regulatory convergence across borders. Other members oppose the designation of any particular international standardizing body, stressing that the standard itself should be the focus of attention, not the body that sets it.

### *Transparency – is there need for more transparency?*

Some members propose to bolster transparency by promoting the notification of all regulations that have a significant effect on trade, and not only those that are not based on international standards. Other members believe that this would cause too great a burden on notifying authorities. Another proposal is to expand or clarify notification obligations to cover more aspects of the regulatory lifecycle, such as "early notice" (intent) or, at the other end of the lifecycle, the final adopted texts. Some members have also proposed to boost transparency procedures for standardizing bodies.

These negotiations have not been concluded. Some of the issues raised in the negotiations are being discussed in the context of the Committee's regular work.

## Disputes brought under the TBT Agreement

There have been only five disputes brought to the WTO where a significant part of the panel's findings have been on the

TBT Agreement. Nevertheless, since the creation of the WTO, claims of violations of the TBT Agreement have been made in 49 cases. Many of these did not proceed to the report or appeal stages. This is because some were settled between members, or, in other cases, panels exercised judicial economy and did not rule on the TBT claims. The five cases where a significant part of the panel's findings has been on the TBT Agreement, and on which panels or the Appellate Body have ruled, are listed in Box 6. Full information on all 49 disputes can be found on the WTO website ([www.wto.org/disputes](http://www.wto.org/disputes)).

**Box 6: Disputes where the findings focused on the TBT Agreement**

Title of dispute	Complainant	Request for consultation	Dispute number
<b>US – Clove Cigarettes</b> United States — Measures Affecting the Production and Sale of Clove Cigarettes	Indonesia	7 April 2010	DS406
<b>EC – Seals Products*</b> European Communities — Measures Prohibiting the Importation and Marketing of Seal Products <small>* Under appeal at time of writing.</small>	Canada and Norway	2 November 2009 (Canada) and 5 Novembre 2009 (Norway)	DS400 (Canada) DS401 (Norway)
<b>US – COOL</b> United States — Certain Country of Origin Labelling (Cool) Requirements	Mexico and Canada	17 December 2008 and 1 December 2008	DS386 and DS384
<b>US – Tuna II</b> United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products	Mexico	24 October 2008	DS381
<b>EC – Sardines</b> European Communities — Trade Description of Sardines	Peru	20 March 2001	DS231



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# Frequently asked questions

## **What are technical barriers to trade and what are the aims of the WTO Agreement on Technical Barriers to Trade?**

Technical barriers to trade (including technical regulations, standards, and conformity assessment procedures) affect trade in goods. It is common practice for governments to rely on these measures to achieve public policy goals, including the protection of human health and the environment. However, these types of measures are sometimes used to shield domestic producers from foreign competition. The TBT Agreement helps WTO members distinguish between "legitimate" and protectionist motivations for TBT measures. As such, the TBT Agreement is an important tool to improve coherence and mutual supportiveness between open trade, on the one hand, and the internal policies that countries use to achieve public policy objectives, on the other. In short, the disciplines of the TBT Agreement are intended to help governments achieve a balance between upholding legitimate regulatory policy objectives and avoiding the creation of unnecessary obstacles to international trade (see also Figure 2 on page 12).

## **What is the difference between TBT measures and sanitary and phytosanitary (SPS) measures?**

The purpose of a particular measure determines whether the measure is subject

to the disciplines of the SPS Agreement or the TBT Agreement, and not the particular product or category of product in question. The SPS Agreement concerns measures where the objective is related to mitigating specific risks related to protection of human health (mostly food safety) and animal/plant health or life. The scope of the TBT Agreement, on the other hand, is not limited in the same way; it addresses a broader set of policies (see Figure 3 on page 13).

## **What are the TBT Agreement's provisions on non-discrimination?**

Under the TBT Agreement, governments must ensure that TBT measures do not discriminate against foreign producers (in favour of domestic producers), or between foreign producers (for example, by favouring one country over another). 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. This discipline applies to all three categories of measures covered by the TBT Agreement: technical regulations, conformity assessment procedures, and standards (see also page 15).

## When is a measure considered to be unnecessarily trade-restrictive?

Even if a technical regulation is non-discriminatory, it could still run afoul of the TBT Agreement because it restricts trade unnecessarily. Essentially, the Agreement says that technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, and that account must be taken of "the risk of non-fulfilment". This is an attempt to strike a balance between a measure's trade restrictiveness and the risk that the measure seeks to mitigate. In addition, the Agreement says that if a technical regulation is in accordance with a relevant international standard, it is presumed (although this presumption can be challenged) not to create an unnecessary obstacle to international trade (see also page 18).

## Have there been any formal disputes involving the TBT Agreement?

Since 1995, when the WTO was created, 49 disputes have claimed violations of the TBT Agreement, but in only five cases did the panel's findings focus on the TBT Agreement. These disputes were "US – Clove Cigarettes", "US – Certain Country of Origin Labelling (COOL)", "US – Tuna II", "EC – Sardines", and "EC – Seals Products". At the time of writing, other disputes (including implementation-related disputes) were on-going. More detail on TBT-relevant disputes can be found on the WTO website ([www.wto.org/disputes](http://www.wto.org/disputes)).

## Why is transparency on TBT measures important?

Non-tariff measures (NTMs) are often technically complex, less transparent and

more difficult to quantify than tariffs. They have an impact on trade and while mostly used for legitimate public policy objectives – they may be used to shield domestic producers from foreign competitors. This means that transparency on the development and use of these measures is all the more important. Transparency is mostly achieved through "notifications" provided by WTO members. These notifications reveal how members intend to establish regulations to achieve specific policy objectives and what the possible trade implications of their regulations might be. Early notification also helps producers and exporters adapt to the changing requirements. If needed, the TBT Committee serves as a platform (see below) where concerns may be raised about the potential trade effects of draft measures.

## What is the TBT Committee and who sits on it? What are the issues it considers?

The TBT Committee is composed of representatives from each member of the WTO. It meets usually three times a year for "the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives..." (Article 13). The Committee has come to fulfil two main functions: (i) to serve as a forum where delegations may discuss specific trade concerns about particular laws, regulations or procedures that affect their trade, and (ii) to provide an opportunity for members to discuss how to strengthen the implementation of the TBT Agreement, primarily by exchanging experiences on generic, cross-cutting themes, including technical assistance, transparency, standards, conformity assessment and good regulatory practices.

## What are the particular constraints faced by developing countries in the TBT area?

One significant challenge that many developing countries face is in the area of conformity assessment. To effectively implement the TBT Agreement, access to conformity assessment infrastructure – sometimes referred to as "technical infrastructure" or "quality infrastructure" – is essential. This includes, for example, access to bodies (whether national or regional) that have competence in the area of metrology, testing, certification, and accreditation which may be recognized internationally.

A lack of appropriate infrastructure can harm trade competitiveness as firms located in developing country members, in particular SMEs, may face substantial difficulties in demonstrating compliance with requirements in export markets, whether developed or developing. This type of infrastructure is also important for the domestic market: inadequate infrastructure may make it more difficult for developing country regulators to strike an appropriate balance between strictness in their controls at the border and confidence that risks are mitigated. For example, in countries that lack laboratories or other infrastructure, and have limited capacity for market surveillance, a ban may be a more feasible means of addressing a

risk than, for example, implementing testing or certification requirements. In other words, in this scenario, given capacity constraints, a country could find itself implementing a very trade-restrictive policy (compared to countries with more resources) simply because it is the only feasible way of addressing a risk. Thus, the development of a good conformity assessment infrastructure is important for the implementation of the TBT Agreement, both in terms of accessing export markets and avoiding the creation of unnecessary barriers to trade.

## What assistance does the WTO Secretariat provide?

Through its technical assistance activities, the WTO Secretariat helps developing countries improve their understanding of the disciplines of the TBT Agreement and the implementation thereof, the operation of transparency procedures, and the work of the TBT Committee. In addition, the WTO Secretariat helps members take advantage of opportunities provided by the TBT Agreement to pursue their trade interests, including through participation in the TBT Committee. This assistance takes the form of regional, sub-regional and national seminars and Geneva-based events as well as specialized courses, trade policy courses and workshops on specific topics.



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# Agreement on Technical Barriers to Trade (the legal text)

Members,

Having regard to the Uruguay Round of Multilateral Trade Negotiations;

Desiring to further the objectives of GATT 1994;

Recognizing the important contribution that international standards and conformity assessment systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;

Desiring therefore to encourage the development of such international standards and conformity assessment systems;

Desiring however to ensure that technical regulations and standards, including packaging, marking and labelling requirements, and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade;

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, and are otherwise in accordance with the provisions of this Agreement;

Recognizing that no country should be prevented from taking measures necessary for the protection of its essential security interest;

Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;

Recognizing that developing countries may encounter special difficulties in the formulation and application of technical regulations and standards and procedures for assessment of conformity with technical regulations and standards, and desiring to assist them in their endeavours in this regard;

*Hereby agree as follows:*

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# Article 1

## General Provisions

- 1.1 General terms for standardization and procedures for assessment of conformity shall normally have the meaning given to them by definitions adopted within the United Nations system and by international standardizing bodies taking into account their context and in the light of the object and purpose of this Agreement.
- 1.2 However, for the purposes of this Agreement the meaning of the terms given in Annex 1 applies.
- 1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.
- 1.4 Purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Agreement but are addressed in the Agreement on Government Procurement, according to its coverage.
- 1.5 The provisions of this Agreement do not apply to sanitary and phytosanitary measures as defined in Annex A of the Agreement on the Application of Sanitary and Phytosanitary Measures.
- 1.6 All references in this Agreement to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof, except amendments and additions of an insignificant nature.

## Technical Regulations and Standards

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# 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.

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## Article 3

### Preparation, Adoption and Application of Technical Regulations by Local Government Bodies and Non-Governmental Bodies

With respect to their local government and non-governmental bodies within their territories:

- 3.1 Members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Article 2, with the exception of the obligation to notify as referred to in paragraphs 9.2 and 10.1 of Article 2.
- 3.2 Members shall ensure that the technical regulations of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 9.2 and 10.1 of Article 2, noting that notification shall not be required for technical regulations the technical content of which is substantially the same as that of previously notified technical regulations of central government bodies of the Member concerned.
- 3.3 Members may require contact with other Members, including the notifications, provision of information, comments and discussions referred to in paragraphs 9 and 10 of Article 2, to take place through the central government.
- 3.4 Members shall not take measures which require or encourage local government bodies or non-governmental bodies within their territories to act in a manner inconsistent with the provisions of Article 2.
- 3.5 Members are fully responsible under this Agreement for the observance of all provisions of Article 2. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of Article 2 by other than central government bodies.

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# Article 4

## Preparation, Adoption and Application of Standards

- 4.1 Members shall ensure that their central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to this Agreement (referred to in this Agreement as the "Code of Good Practice"). They shall take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with this Code of Good Practice. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such standardizing bodies to act in a manner inconsistent with the Code of Good Practice. The obligations of Members with respect to compliance of standardizing bodies with the provisions of the Code of Good Practice shall apply irrespective of whether or not a standardizing body has accepted the Code of Good Practice.
- 4.2 Standardizing bodies that have accepted and are complying with the Code of Good Practice shall be acknowledged by the Members as complying with the principles of this Agreement.

## Conformity with Technical Regulations and Standards

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# Article 5

## Procedures for Assessment of Conformity by Central Government Bodies

- 5.1 Members shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Members:
- 5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen

by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system;

- 5.1.2 conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, *inter alia*, that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks nonconformity would create.
- 5.2 When implementing the provisions of paragraph 1, Members shall ensure that:
- 5.2.1 conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Members than for like domestic products;
  - 5.2.2 the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request; when receiving an application, the competent body promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of all deficiencies; the competent body transmits as soon as possible the results of the assessment in a precise and complete manner to the applicant so that corrective action may be taken if necessary; even when the application has deficiencies, the competent body proceeds as far as practicable with the conformity assessment if the applicant so requests; and that, upon request, the applicant is informed of the stage of the procedure, with any delay being explained;
  - 5.2.3 information requirements are limited to what is necessary to assess conformity and determine fees;
  - 5.2.4 the confidentiality of information about products originating in the territories of other Members arising from or supplied in connection with such conformity assessment procedures is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected;
  - 5.2.5 any fees imposed for assessing the conformity of products originating in the territories of other Members are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body;

- 5.2.6 the siting of facilities used in conformity assessment procedures and the selection of samples are not such as to cause unnecessary inconvenience to applicants or their agents;
- 5.2.7 whenever specifications of a product are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned;
- 5.2.8 a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified.
- 5.3 Nothing in paragraphs 1 and 2 shall prevent Members from carrying out reasonable spot checks within their territories.
- 5.4 In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Members shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Members concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.
- 5.5 With a view to harmonizing conformity assessment procedures 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 guides and recommendations for conformity assessment procedures.
- 5.6 Whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedure may have a significant effect on trade of other Members, Members shall:
- 5.6.1 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 conformity assessment procedure;
- 5.6.2 notify other Members through the Secretariat of the products to be covered by the proposed conformity assessment procedure, 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;

- 5.6.3 upon request, provide to other Members particulars or copies of the proposed procedure and, whenever possible, identify the parts which in substance deviate from relevant guides or recommendations issued by international standardizing bodies;
- 5.6.4 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.
- 5.7 Subject to the provisions in the lead-in to paragraph 6, 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 6 as it finds necessary, provided that the Member, upon adoption of the procedure, shall:
- 5.7.1 notify immediately other Members through the Secretariat of the particular procedure and the products covered, with a brief indication of the objective and the rationale of the procedure, including the nature of the urgent problems;
- 5.7.2 upon request, provide other Members with copies of the rules of the procedure;
- 5.7.3 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.
- 5.8 Members shall ensure that all conformity assessment procedures 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.
- 5.9 Except in those urgent circumstances referred to in paragraph 7, Members shall allow a reasonable interval between the publication of requirements concerning conformity assessment procedures 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.

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## Article 6

### Recognition of Conformity Assessment by Central Government Bodies

With respect to their central government bodies:

- 6.1 Without prejudice to the provisions of paragraphs 3 and 4, Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures. It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding regarding, in particular:
- 6.1.1 adequate and enduring technical competence of the relevant conformity assessment bodies in the exporting Member, so that confidence in the continued reliability of their conformity assessment results can exist; in this regard, verified compliance, for instance through accreditation, with relevant guides or recommendations issued by international standardizing bodies shall be taken into account as an indication of adequate technical competence;
  - 6.1.2 limitation of the acceptance of conformity assessment results to those produced by designated bodies in the exporting Member.
- 6.2 Members shall ensure that their conformity assessment procedures permit, as far as practicable, the implementation of the provisions in paragraph 1.
- 6.3 Members are encouraged, at the request of other Members, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures. Members may require that such agreements fulfil the criteria of paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned.
- 6.4 Members are encouraged to permit participation of conformity assessment bodies located in the territories of other Members in their conformity assessment procedures under conditions no less favourable than those accorded to bodies located within their territory or the territory of any other country.

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## Article 7

### Procedures for Assessment of Conformity by Local Government Bodies

With respect to their local government bodies within their territories:

- 7.1 Members shall take such reasonable measures as may be available to them to ensure compliance by such bodies with the provisions of Articles 5 and 6, with the exception of the obligation to notify as referred to in paragraphs 6.2 and 7.1 of Article 5.

- 7.2 Members shall ensure that the conformity assessment procedures of local governments on the level directly below that of the central government in Members are notified in accordance with the provisions of paragraphs 6.2 and 7.1 of Article 5, noting that notifications shall not be required for conformity assessment procedures the technical content of which is substantially the same as that of previously notified conformity assessment procedures of central government bodies of the Members concerned.
  - 7.3 Members may require contact with other Members, including the notifications, provision of information, comments and discussions referred to in paragraphs 6 and 7 of Article 5, to take place through the central government.
  - 7.4 Members shall not take measures which require or encourage local government bodies within their territories to act in a manner inconsistent with the provisions of Articles 5 and 6.
  - 7.5 Members are fully responsible under this Agreement for the observance of all provisions of Articles 5 and 6. Members shall formulate and implement positive measures and mechanisms in support of the observance of the provisions of Articles 5 and 6 by other than central government bodies.
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## Article 8

### Procedures for Assessment of Conformity by Non-Governmental Bodies

- 8.1 Members shall take such reasonable measures as may be available to them to ensure that non-governmental bodies within their territories which operate conformity assessment procedures comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures. In addition, Members shall not take measures which have the effect of, directly or indirectly, requiring or encouraging such bodies to act in a manner inconsistent with the provisions of Articles 5 and 6.
- 8.2 Members shall ensure that their central government bodies rely on conformity assessment procedures operated by non-governmental bodies only if these latter bodies comply with the provisions of Articles 5 and 6, with the exception of the obligation to notify proposed conformity assessment procedures.

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# Article 9

## International and Regional Systems

- 9.1 Where a positive assurance of conformity with a technical regulation or standard is required, Members shall, wherever practicable, formulate and adopt international systems for conformity assessment and become members thereof or participate therein.
- 9.2 Members shall take such reasonable measures as may be available to them to ensure that international and regional systems for conformity assessment in which relevant bodies within their territories are members or participants comply with the provisions of Articles 5 and 6. In addition, Members shall not take any measures which have the effect of, directly or indirectly, requiring or encouraging such systems to act in a manner inconsistent with any of the provisions of Articles 5 and 6.
- 9.3 Members shall ensure that their central government bodies rely on international or regional conformity assessment systems only to the extent that these systems comply with the provisions of Articles 5 and 6, as applicable.

## Information and Assistance

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# Article 10

## Information about Technical Regulations, Standards and Conformity Assessment Procedures

- 10.1 Each Member shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Members and interested parties in other Members as well as to provide the relevant documents regarding:
- 10.1.1 any technical regulations adopted or proposed within its territory by central or local government bodies, by non-governmental bodies which have legal power to enforce a technical regulation, or by regional standardizing bodies of which such bodies are members or participants;
  - 10.1.2 any standards adopted or proposed within its territory by central or local government bodies, or by regional standardizing bodies of which such bodies are members or participants;

- 10.1.3 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by central or local government bodies, or by non-governmental bodies which have legal power to enforce a technical regulation, or by regional bodies of which such bodies are members or participants;
  - 10.1.4 the membership and participation of the Member, or of relevant central or local government bodies within its territory, in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; it shall also be able to provide reasonable information on the provisions of such systems and arrangements;
  - 10.1.5 the location of notices published pursuant to this Agreement, or the provision of information as to where such information can be obtained; and
  - 10.1.6 the location of the enquiry points mentioned in paragraph 3.
- 10.2 If, however, for legal or administrative reasons more than one enquiry point is established by a Member, that Member shall provide to the other Members complete and unambiguous information on the scope of responsibility of each of these enquiry points. In addition, that Member shall ensure that any enquiries addressed to an incorrect enquiry point shall promptly be conveyed to the correct enquiry point.
- 10.3 Each Member shall take such reasonable measures as may be available to it to ensure that one or more enquiry points exist which are able to answer all reasonable enquiries from other Members and interested parties in other Members as well as to provide the relevant documents or information as to where they can be obtained regarding:
- 10.3.1 any standards adopted or proposed within its territory by non-governmental standardizing bodies, or by regional standardizing bodies of which such bodies are members or participants; and
  - 10.3.2 any conformity assessment procedures, or proposed conformity assessment procedures, which are operated within its territory by non-governmental bodies, or by regional bodies of which such bodies are members or participants;
  - 10.3.3 the membership and participation of relevant non-governmental bodies within its territory in international and regional standardizing bodies and conformity assessment systems, as well as in bilateral and multilateral arrangements within the scope of this Agreement; they shall also be able to provide reasonable information on the provisions of such systems and arrangements.

- 10.4 Members shall take such reasonable measures as may be available to them to ensure that where copies of documents are requested by other Members or by interested parties in other Members, in accordance with the provisions of this Agreement, they are supplied at an equitable price (if any) which shall, apart from the real cost of delivery, be the same for the nationals<sup>1</sup> of the Member concerned or of any other Member.
- 10.5 Developed country Members shall, if requested by other Members, provide, in English, French or Spanish, translations of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents.
- 10.6 The Secretariat shall, when it receives notifications in accordance with the provisions of this Agreement, circulate copies of the notifications to all Members and interested international standardizing and conformity assessment bodies, and draw the attention of developing country Members to any notifications relating to products of particular interest to them.
- 10.7 Whenever a Member has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade, at least one Member party to the agreement shall notify other Members through the Secretariat of the products to be covered by the agreement and include a brief description of the agreement. Members concerned are encouraged to enter, upon request, into consultations with other Members for the purposes of concluding similar agreements or of arranging for their participation in such agreements.
- 10.8 Nothing in this Agreement shall be construed as requiring:
- 10.8.1 the publication of texts other than in the language of the Member;
  - 10.8.2 the provision of particulars or copies of drafts other than in the language of the Member except as stated in paragraph 5; or
  - 10.8.3 Members to furnish any information, the disclosure of which they consider contrary to their essential security interests.
- 10.9 Notifications to the Secretariat shall be in English, French or Spanish.
- 10.10 Members shall designate a single central government authority that is responsible for the implementation on the national level of the provisions concerning notification procedures under this Agreement except those included in Annex 3.

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<sup>1</sup> "Nationals" here shall be deemed, in the case of a separate customs territory Member of the WTO, to mean persons, natural or legal, who are domiciled or who have a real and effective industrial or commercial establishment in that customs territory.

10.11 If, however, for legal or administrative reasons the responsibility for notification procedures is divided among two or more central government authorities, the Member concerned shall provide to the other Members complete and unambiguous information on the scope of responsibility of each of these authorities.

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# Article 11

## Technical Assistance to Other Members

- 11.1 Members shall, if requested, advise other Members, especially the developing country Members, on the preparation of technical regulations.
- 11.2 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of national standardizing bodies, and participation in the international standardizing bodies, and shall encourage their national standardizing bodies to do likewise.
- 11.3 Members shall, if requested, take such reasonable measures as may be available to them to arrange for the regulatory bodies within their territories to advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding:
- 11.3.1 the establishment of regulatory bodies, or bodies for the assessment of conformity with technical regulations; and
  - 11.3.2 the methods by which their technical regulations can best be met.
- 11.4 Members shall, if requested, take such reasonable measures as may be available to them to arrange for advice to be given to other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of bodies for the assessment of conformity with standards adopted within the territory of the requesting Member.
- 11.5 Members shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the steps that should be taken by their producers if they wish to have access to systems for conformity assessment operated by governmental or non-governmental bodies within the territory of the Member receiving the request.

- 11.6 Members which are members or participants of international or regional systems for conformity assessment shall, if requested, advise other Members, especially the developing country Members, and shall grant them technical assistance on mutually agreed terms and conditions regarding the establishment of the institutions and legal framework which would enable them to fulfil the obligations of membership or participation in such systems.
- 11.7 Members shall, if so requested, encourage bodies within their territories which are members or participants of international or regional systems for conformity assessment to advise other Members, especially the developing country Members, and should consider requests for technical assistance from them regarding the establishment of the institutions which would enable the relevant bodies within their territories to fulfil the obligations of membership or participation.
- 11.8 In providing advice and technical assistance to other Members in terms of paragraphs 1 to 7, Members shall give priority to the needs of the least-developed country Members.

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## Article 12

### Special and Differential Treatment of Developing Country Members

- 12.1 Members shall provide differential and more favourable treatment to developing country Members to this Agreement, through the following provisions as well as through the relevant provisions of other Articles of this Agreement.
- 12.2 Members shall give particular attention to the provisions of this Agreement concerning developing country Members' rights and obligations and shall take into account the special development, financial and trade needs of developing country Members in the implementation of this Agreement, both nationally and in the operation of this Agreement's institutional arrangements.
- 12.3 Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Members, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Members.
- 12.4 Members recognize that, although international standards, guides or recommendations may exist, in their particular technological and socioeconomic conditions, developing country Members adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their

development needs. Members therefore recognize that developing country Members should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.

- 12.5 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies and international systems for conformity assessment are organized and operated in a way which facilitates active and representative participation of relevant bodies in all Members, taking into account the special problems of developing country Members.
- 12.6 Members shall take such reasonable measures as may be available to them to ensure that international standardizing bodies, upon request of developing country Members, examine the possibility of, and, if practicable, prepare international standards concerning products of special interest to developing country Members.
- 12.7 Members shall, in accordance with the provisions of Article 11, provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members. In determining the terms and conditions of the technical assistance, account shall be taken of the stage of development of the requesting Members and in particular of the least-developed country Members.
- 12.8 It is recognized that developing country Members may face special problems, including institutional and infrastructural problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures. It is further recognized that the special development and trade needs of developing country Members, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement. Members, therefore, shall take this fact fully into account. Accordingly, with a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Technical Barriers to Trade provided for in Article 13 (referred to in this Agreement as the "Committee") is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement. When considering such requests the Committee shall take into account the special problems, in the field of preparation and application of technical regulations, standards and conformity assessment procedures, and the special development and trade needs of the developing country Member, as well as its stage of technological development, which may hinder its ability to discharge fully its obligations under this Agreement. The Committee shall, in particular, take into account the special problems of the least-developed country Members.

- 12.9 During consultations, developed country Members shall bear in mind the special difficulties experienced by developing country Members in formulating and implementing standards and technical regulations and conformity assessment procedures, and in their desire to assist developing country Members with their efforts in this direction, developed country Members shall take account of the special needs of the former in regard to financing, trade and development.
- 12.10 The Committee shall examine periodically the special and differential treatment, as laid down in this Agreement, granted to developing country Members on national and international levels.

## Institutions, Consultation and Dispute Settlement

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### Article 13

#### The Committee on Technical Barriers to Trade

- 13.1 A Committee on Technical Barriers to Trade is hereby established, and shall be composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet as necessary, but no less than once a year, for the purpose of affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives, and shall carry out such responsibilities as assigned to it under this Agreement or by the Members.
- 13.2 The Committee shall establish working parties or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement.
- 13.3 It is understood that unnecessary duplication should be avoided between the work under this Agreement and that of governments in other technical bodies. The Committee shall examine this problem with a view to minimizing such duplication.

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# Article 14

## Consultation and Dispute Settlement

- 14.1 Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the Dispute Settlement Body and shall follow, *mutatis mutandis*, the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.
- 14.2 At the request of a party to a dispute, or at its own initiative, a panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts.
- 14.3 Technical expert groups shall be governed by the procedures of Annex 2.
- 14.4 The dispute settlement provisions set out above can be invoked in cases where a Member considers that another Member has not achieved satisfactory results under Articles 3, 4, 7, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those as if the body in question were a Member.

## Final Provisions

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# Article 15

## Final Provisions

### **Reservations**

- 15.1 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

### **Review**

- 15.2 Each Member shall, promptly after the date on which the WTO Agreement enters into force for it, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement. Any changes of such measures thereafter shall also be notified to the Committee.
- 15.3 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof.

15.4 Not later than the end of the third year from the date of entry into force of the WTO Agreement and at the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12. Having regard, *inter alia*, to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods.

15.5 The annexes to this Agreement constitute an integral part thereof.

## Annex 1

### TERMS AND THEIR DEFINITIONS FOR THE PURPOSE OF THIS AGREEMENT

The terms presented in the sixth edition of the ISO/IEC Guide 2: 1991, General Terms and Their Definitions Concerning Standardization and Related Activities, shall, when used in this Agreement, have the same meaning as given in the definitions in the said Guide taking into account that services are excluded from the coverage of this Agreement.

For the purpose of this Agreement, however, the following definitions shall apply:

#### 1. Technical regulation

Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a product, process or production method.

##### *Explanatory note*

The definition in ISO/IEC Guide 2 is not self-contained, but based on the so-called "building block" system.

#### 2. Standard

Document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

##### *Explanatory note*

The terms as defined in ISO/IEC Guide 2 cover products, processes and services. This

Agreement deals only with technical regulations, standards and conformity assessment procedures related to products or processes and production methods. Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of this Agreement standards are defined as voluntary and technical regulations as mandatory documents. Standards prepared by the international standardization community are based on consensus. This Agreement covers also documents that are not based on consensus.

### **3. Conformity assessment procedures**

Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.

#### *Explanatory note*

Conformity assessment procedures include, *inter alia*, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.

### **4. International body or system**

Body or system whose membership is open to the relevant bodies of at least all Members.

### **5. Regional body or system**

Body or system whose membership is open to the relevant bodies of only some of the Members.

### **6. Central government body**

Central government, its ministries and departments or any body subject to the control of the central government in respect of the activity in question.

#### *Explanatory note*

In the case of the European Communities the provisions governing central government bodies apply. However, regional bodies or conformity assessment systems may be established within the European Communities, and in such cases would be subject to the provisions of this Agreement on regional bodies or conformity assessment systems.

### **7. Local government body**

Government other than a central government (e.g. states, provinces, Länder, cantons, municipalities, etc.), its ministries or departments or any body subject to the control of such a government in respect of the activity in question.

### **8. Non-governmental body**

Body other than a central government body or a local government body, including a non-governmental body which has legal power to enforce a technical regulation.

# Annex 2

## TECHNICAL EXPERT GROUPS

**1.** The following procedures shall apply to technical expert groups established in accordance with the provisions of Article 14. 1. Technical expert groups are under the panel's authority. Their terms of reference and detailed working procedures shall be decided by the panel, and they shall report to the panel.

**2.** Participation in technical expert groups shall be restricted to persons of professional standing and experience in the field in question.

**3.** Citizens of parties to the dispute shall not serve on a technical expert group without the joint agreement of the parties to the dispute, except in exceptional circumstances when the panel considers that the need for specialized scientific expertise cannot be fulfilled otherwise. Government officials of parties to the dispute shall not serve on a technical expert group. Members of technical expert groups shall serve in their individual capacities and not as government representatives, nor as representatives of any organization. Governments or organizations shall therefore not give them instructions with regard to matters before a technical expert group.

**4.** Technical expert groups may consult and seek information and technical advice from any source they deem appropriate. Before a technical expert group seeks such information or advice from a source within the jurisdiction of a Member, it shall inform the government of that Member. Any Member shall respond promptly and fully to any request by a technical expert group for such information as the technical expert group considers necessary and appropriate.

**5.** The parties to a dispute shall have access to all relevant information provided to a technical expert group, unless it is of a confidential nature. Confidential information provided to the technical expert group shall not be released without formal authorization from the government, organization or person providing the information. Where such information is requested from the technical expert group but release of such information by the technical expert group is not authorized, a non-confidential summary of the information will be provided by the government, organization or person supplying the information.

**6.** The technical expert group shall submit a draft report to the Members concerned with a view to obtaining their comments, and taking them into account, as appropriate, in the final report, which shall also be circulated to the Members concerned when it is submitted to the panel.

# Annex 3

## CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS

### General provisions

- A. For the purposes of this Code the definitions in Annex 1 of this Agreement shall apply.
- B. This Code is open to acceptance by any standardizing body within the territory of a Member of the WTO, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Members of the WTO; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Member of the WTO (referred to in this Code collectively as "standardizing bodies" and individually as "the standardizing body").
- C. Standardizing bodies that have accepted or withdrawn from this Code shall notify this fact to the ISO/IEC Information Centre in Geneva. The notification shall include the name and address of the body concerned and the scope of its current and expected standardization activities. The notification may be sent either directly to the ISO/IEC Information Centre, or through the national member body of ISO/IEC or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

### Substantive provisions

- D. In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO no less favourable than that accorded to like products of national origin and to like products originating in any other country.
- E. The standardizing body shall ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.
- F. Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate, for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.
- G. With a view to harmonizing standards on as wide a basis as possible, the standardizing body shall, in an appropriate way, play a full part, within the limits of its resources, in the preparation by relevant international standardizing bodies of international standards

regarding subject matter for which it either has adopted, or expects to adopt, standards. For standardizing bodies within the territory of a Member, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all standardizing bodies in the territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardization activity relates.

- H. The standardizing body within the territory of a Member shall make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies in the national territory or with the work of relevant international or regional standardizing bodies. They shall also make every effort to achieve a national consensus on the standards they develop. Likewise the regional standardizing body shall make every effort to avoid duplication of, or overlap with, the work of relevant international standardizing bodies.
- I. Wherever appropriate, the standardizing body shall specify standards based on product requirements in terms of performance rather than design or descriptive characteristics.
- J. At least once every six months, the standardizing body shall publish a work programme containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding period. A standard is under preparation from the moment a decision has been taken to develop a standard until that standard has been adopted. The titles of specific draft standards shall, upon request, be provided in English, French or Spanish. A notice of the existence of the work programme shall be published in a national or, as the case may be, regional publication of standardization activities.

The work programme shall for each standard indicate, in accordance with any ISONET rules, the classification relevant to the subject matter, the stage attained in the standard's development, and the references of any international standards taken as a basis. No later than at the time of publication of its work programme, the standardizing body shall notify the existence thereof to the ISO/IEC Information Centre in Geneva.

The notification shall contain the name and address of the standardizing body, the name and issue of the publication in which the work programme is published, the period to which the work programme applies, its price (if any), and how and where it can be obtained. The notification may be sent directly to the ISO/IEC Information Centre, or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

- K. The national member of ISO/IEC shall make every effort to become a member of ISONET or to appoint another body to become a member as well as to acquire the most advanced membership type possible for the ISONET member. Other standardizing bodies shall make every effort to associate themselves with the ISONET member.
- L. Before adopting a standard, the standardizing body shall allow a period of at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO. This period may, however, be shortened in cases where urgent problems of safety, health or environment arise or threaten to arise. No later

than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J. Such notification shall include, as far as practicable, whether the draft standard deviates from relevant international standards.

- M. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of a draft standard which it has submitted for comments. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.
- N. The standardizing body shall take into account, in the further processing of the standard, the comments received during the period for commenting. Comments received through standardizing bodies that have accepted this Code of Good Practice shall, if so requested, be replied to as promptly as possible. The reply shall include an explanation why a deviation from relevant international standards is necessary.
- O. Once the standard has been adopted, it shall be promptly published.
- P. On the request of any interested party within the territory of a Member of the WTO, the standardizing body shall promptly provide, or arrange to provide, a copy of its most recent work programme or of a standard which it produced. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.
- Q. The standardizing body shall afford sympathetic consideration to, and adequate opportunity for, consultation regarding representations with respect to the operation of this Code presented by standardizing bodies that have accepted this Code of Good Practice. It shall make an objective effort to solve any complaints.



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# Decisions and recommendations adopted by the TBT Committee since 1 January 1995

The present document (G/TBT/1/Rev.11),<sup>1</sup> published on 16 December 2013, contains the eleventh revision of the compilation of the TBT Committee's Decisions and Recommendations. This revision, which supersedes all previous G/TBT/1 documents, is in two parts. Part 1 contains the Committee's decisions and recommendations adopted since 1 January 1995. Part 2 contains the Committee's Rules of Procedure including Guidelines for Observer Status for Governments and International Intergovernmental Organizations.

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<sup>1</sup> This document has been prepared under the Secretariat's own responsibility and is without prejudice to the positions of Members or to their rights and obligations under the WTO.

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# Part 1: Decisions and recommendations adopted by the Committee on Technical Barriers to Trade

## 1 Good Regulatory Practice

1.1 Good Regulatory Practice (GRP) can contribute to the improved and effective implementation of the substantive obligations under the TBT Agreement. Effective implementation through best practices is seen as an important means of avoiding unnecessary obstacles to trade. Institutionalizing the various mechanisms, processes and procedures of GRP through laws, regulations and guidance, as well as through the creation and designation of institutions within Member governments to oversee regulatory processes, is seen as a means of giving effect to GRP. Effective internal policy coordination, including among regulators, standardizing bodies and trade officials implementing the TBT Agreement, is stressed. Additionally, regulatory cooperation between Members is an effective means of disseminating GRP.<sup>2</sup>

### 1.1 General

#### Recommendation

- a. In 1997, in order to assist the implementation of the relevant provisions of the Agreement, the Committee agreed to the following<sup>3</sup>:
  - i. when considering the preparation of a technical regulation, it is important for Members first to identify the related problem, including its magnitude and the legitimate objective; and then consider all options available consistent with the Agreement, bearing in mind that in accordance with Articles 2.2 and 2.3 a technical regulation shall not be more trade restrictive than necessary to fulfil a legitimate objective, and shall not be maintained if the circumstances or objectives giving rise to its adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade-restrictive manner. If a technical regulation is required, it shall comply with the relevant provisions of the Agreement, including Articles 12.3 and 12.7;

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<sup>2</sup> G/TBT/26, 13 November 2009, paras. 8-9, and 14.

<sup>3</sup> G/TBT/5, 19 November 1997, para. 24 (a)-(c). At the subsequent Triennial Review (the Second), the Committee agreed to continue this exchange of information (G/TBT/9, 13 November 2000, para. 37).

- ii. to avoid duplication of work and to ensure effective implementation of the Agreement, coordination between governmental regulatory authorities, trade officials and national standardizing bodies is essential.
- b. In 2009, with the purpose of enabling Members to ensure improved compliance with the obligations set out in the TBT Agreement in the preparation of technical regulations and conformity assessment procedures, the Committee agreed<sup>4</sup>:
- i. to compile a list of guidelines for GRP taking into account Members' experiences and existing relevant work of other organizations;
  - ii. to prepare an illustrative list of mechanisms used for the implementation of GRP based on contributions from Members including, for instance, mechanisms used for: public consultation; use of RIA tools; use of performance-based regulations; use of relevant international standards, guides or recommendations as a basis for technical regulations and conformity assessment procedures; and methods of referencing standards in regulations; and
  - iii. to continue to share views and experiences on aspects of regulatory coordination and administrative mechanisms to facilitate internal coordination between competent authorities, including between trade policy and regulatory authorities, and interested parties.
- c. In 2012, with a view of furthering its work in the area of GRP, the Committee agreed<sup>5</sup>:
- i. to identify a non-exhaustive list of voluntary mechanisms and related principles of GRP and to guide Members in the efficient and effective implementation of the TBT Agreement across the regulatory lifecycle, including, but not limited to, the following areas:
    - transparency and public consultation mechanisms;
    - mechanisms for assessing policy options, including the need to regulate (e.g. how to evaluate the impact of alternatives through an evidence-based process, including through the use of regulatory impact assessment (RIA) tools);
    - internal (domestic) coordination mechanisms;
    - approaches to minimizing burdens on economic operators (e.g. how to implement mechanisms that ensure reflection of the TBT Agreement's substantive obligations in the design and development of regulations);
    - implementation and enforcement mechanisms (e.g. how to provide practical, timely and informative guidance needed for compliance);

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4 G/TBT/26, 12 November 2009, para. 11.

5 G/TBT/32, 29 November 2012, para. 4.

- mechanisms for review of existing technical regulations and conformity assessment procedures (e.g. how to evaluate the effectiveness and continued adequacy of existing measures, including with a view to assessing the need for amendment, simplification or possible repeal); and,
- mechanisms for taking account of the special development, financial and trade needs of developing Members in the preparation and application of measures, with a view to ensuring that they do not create unnecessary obstacles to exports from developing Members.

## 1.2 Information Exchange

### Recommendations

- a. Since the entry into force of the Agreement, the Committee has engaged in an in-depth exchange of experiences on various aspects of GRP in order to foster a common understanding of the issues involved.<sup>6</sup> In 1997 and in 2000, in order to assist the implementation of the relevant provisions of the Agreement, the Committee agreed<sup>7</sup>:
  - i. to invite Members, on a voluntary basis, to submit descriptions of their approach to technical regulations; and
  - ii. to examine the various approaches to the preparation, adoption and application of technical regulations and their consequences for market access, with a view to assisting regulatory authorities through promoting awareness of their rights and obligations under the Agreement.
- b. In 2003, noting that the issue of GRP is important, evolving, and worthy of further discussion in the TBT Committee, to further its work on GRP, the Committee agreed<sup>8</sup>:
  - i. to invite Members to exchange experiences related to the identification of elements of GRP at the domestic level;
  - ii. to continue its exchanges on Members' experiences and focus its discussion on, *inter alia*, choice of policy instruments, mandatory versus voluntary measures, and the use of regulatory impact assessments to facilitate GRP; and
  - iii. to initiate a process of sharing experiences on equivalency in the Committee particularly with regard to how the concept is implemented in practice.

6 G/TBT/5, 19 November 1997, paras. 23-24; G/TBT/9, 13 November 2000, para. 37; G/TBT/13, 11 November 2003, para. 14; G/TBT/19, 14 November 2006, para. 19; G/TBT/26, 12 November 2009, paras. 11 and 16; G/TBT/32, 29 November 2012, paras. 3-4.

7 G/TBT/5, 19 November 1997, para. 24(c); G/TBT/9, 13 November 2000, para. 37.

8 G/TBT/13, 11 November 2003, para. 14.

- c. In 2006, with a view to deepening understanding of the contribution GRP can make to the implementation of the TBT Agreement, the Committee agreed to share experiences on<sup>9</sup>:
- i. factors used by regulators to determine whether there is a need to regulate in a given situation or whether other instruments are better suited to fulfil the legitimate objective sought;
  - ii. the use of tools, such as regulatory impact assessment, to assist regulatory decision-making (including with respect to (i) above);
  - iii. the use of performance-based regulations by Members;
  - iv. how GRP have been integrated into Members' regulatory structures, including the use of mechanisms to ensure openness, transparency and accountability of the regulatory processes;
  - v. the establishment of domestic administrative mechanisms to facilitate cooperation and coordination between competent authorities and co-ordination with other stakeholders;
  - vi. how regulatory cooperation<sup>10</sup> between Members has contributed to the avoidance of unnecessary regulatory differences; and
  - vii. steps taken and criteria used to arrive at an equivalency decision between Members (Article 2.7), or harmonization on the basis of international standards (Article 2.6).
- d. In 2009, in order to further enhance information on regulatory cooperation between Members, the Committee agreed<sup>11</sup>:
- i. to exchange information on the different approaches to regulatory cooperation between Members that aim at, *inter alia*, enhancing mutual understanding of regulatory systems and identifying, where possible, avenues for greater regulatory convergence; and
  - ii. to hold a workshop on regulatory cooperation.

9 G/TBT/19, 14 November 2006, para. 19.

10 The Committee has noted that regulatory cooperation between Members is an effective means of disseminating GRP and that it can build confidence between trading partners through enhancing mutual understanding of regulatory systems, thereby supporting efforts that aim at removing unnecessary barriers to trade. A fundamental component to regulatory cooperation is the promotion of dialogue between Members, including at senior level. A wide variety of approaches can be employed by regulators to collaborate with each other – from information sharing to negotiating specific agreements. See G/TBT/26, 13 November 2009, paras. 14-15.

11 G/TBT/26, 12 November 2009, para. 16.

## Events

- a. On 18-19 March 2008, with a view to advancing its work on GRP, the Committee held a Workshop on GRP, which addressed, among other topics, regulatory impact assessment.<sup>12</sup>
- b. On 8-9 November 2011, recognizing the benefits of regulatory co-operation for the dissemination of GRP, the Committee held a Workshop on regulatory co-operation between Members.<sup>13</sup>
- c. On 5 March and on 18 June 2013 the Committee held Thematic Sessions on GRP.

## 2 Conformity Assessment

2.1. Five articles of the TBT Agreement address conformity assessment procedures, and establish obligations of a substantive and procedural nature. Articles 5 and 6 contain disciplines applying to central government bodies. Articles 7, 8 and 9 relate to conformity assessment procedures of local government bodies, non-governmental bodies and international and regional systems. The definition of a conformity assessment procedure is contained in Annex 1, Paragraph 3 of the Agreement.

### 2.1 General

#### Recommendations

- a. In 1997, in order to further the objectives of Articles 5 and 6, including in particular the need to avoid the creation of unnecessary obstacles to international trade due to conformity assessment procedures, and with a view to making recommendations to remove any unnecessary duplication of conformity assessment, the Committee agreed to the following<sup>14</sup>:
  - i. the Committee will pursue further discussions on ISO/IEC Guides. Members are invited, on a voluntary basis, to continue providing information on their experience in using relevant international guides and recommendations on conformity assessment, and the extent to which these guides and recommendations have served as a basis for the recognition of conformity assessment procedures adopted by bodies in their territories and in regional and international conformity assessment systems, or as a harmonized approach to conformity assessment. In the light of this exercise, the Committee will consider ways and means for better implementation of Articles 5 and 6;

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<sup>12</sup> A Summary Report of the Workshop is contained in G/TBT/W/287, 6 June 2008. The Chairman's Report of the Workshop to the TBT Committee is contained in G/TBT/M/44, 10 June 2008, Annex 1. The Workshop was held in response to the recommendation contained in G/TBT/19, 14 November 2006, para. 20.

<sup>13</sup> A Summary Report of the Workshop is contained in G/TBT/W/348, 14 February 2012. A background note by the Secretariat, circulated before the Workshop, is contained in document G/TBT/W/340, 1 September 2011.

<sup>14</sup> G/TBT/5, 19 November 1997, para. 29.

- ii. for transparency purposes and to support the work of the Committee, a list of relevant international guides and recommendations related to conformity assessment procedures will be consolidated, circulated and updated regularly by the Secretariat for the information of Members;
  - iii. the Committee will review the role of regional and international systems for conformity assessment as covered by Article 9 and how these systems could contribute to solving the problems of multiple testing and certification/registration for traders and industries, including in particular small and medium size enterprises. This exercise will also address the extent to which international guides and recommendations contribute to the establishment of these systems, and the possible technical assistance needed for developing countries to develop operational conformity assessment procedures within the context of Articles 11.6, 11.7 and 12.5; and
  - iv. the Committee will review the operation of Articles 6, 10.7 and other relevant provisions which contain disciplines with respect to recognition of the results of conformity assessment procedures. In this regard, Members are invited, on a voluntary basis, to exchange information. The review will also address the possible difficulties and problems associated with MRAs. In the light of this exercise, the Committee may consider the usefulness of drafting guidelines, *inter alia* for MRAs.
- b. In 2000, the Committee developed an indicative list describing different approaches to facilitate acceptance of results of conformity assessment. This list is contained in Annex 1 (on page 120 of this document). The Committee noted the following in respect of this list<sup>15</sup>:
- i. the list was not intended to prescribe particular approaches that Members might choose to adopt as it was recognized that the application of different approaches would depend on the situation of Members and the specific sectors involved; and
  - ii. governments and non-governmental bodies might choose to apply different approaches across different sectors, or apply more than one procedure within individual sectors, taking into account variations in procedures in different Members and perceived levels of risk in the acceptance of results in different sectors.
- c. In 2009 the Committee agreed<sup>16</sup>:
- i. to continue to exchange information on different approaches to facilitating acceptance of conformity assessment results;
  - ii. to exchange information on the criteria, methods of analysis and concepts used by Members to inform their evaluation of the range of choices in conformity assessment procedures, including in the context of a risk management framework;

15 G/TBT/9, 13 November 2000, para. 27 and Annex 5.

16 G/TBT/26, 12 November 2009, para. 19.

- iii. based on these exchanges, and those referred to on page 77 (under "e."), to initiate work on developing practical guidelines on how to choose and design efficient and effective mechanisms aimed at strengthening the implementation of the TBT Agreement, including the facilitation of acceptance of conformity assessment results (*inter alia* MRAs, equivalence agreements and Supplier's Declaration of Conformity (SDoC)); and
  - iv. to consider, in light of the above work, the need to build on the current "Indicative List of Approaches to Facilitate the Acceptance of the Results of Conformity Assessment".
- d. In 2012, in order to initiate work on developing practical guidance on the choice and design of mechanisms aimed at strengthening the implementation of the TBT Agreement, including the facilitation of acceptance of conformity assessment results, the Committee agreed to organize its work in three thematic areas<sup>17</sup>:
- i. Approaches to conformity assessment. With respect to the choice and design of conformity assessment procedures, Members will exchange information on criteria and methods of analysis used to inform their evaluation of the range of choices in conformity assessment procedures. This exchange may include, for instance, how the assessment and management of risk affects the choice of conformity assessment procedure, and how Members' approach to market surveillance may affect this choice. A possible output of this work could be the development of an illustrative list of principles to guide the selection of conformity assessment procedures;
  - ii. Use of relevant international standards, guides or recommendations. Members will exchange information on how they use relevant existing international standards, guides or recommendations, or the relevant parts of them, as a basis for their conformity assessment procedures. To this end, relevant bodies involved in the development of such instruments may be invited to inform the Committee of the current status of their work; and
  - iii. Facilitating the recognition of conformity assessment results. Building on the "Indicative List" (Second Triennial Review), Members will continue their exchange of information on approaches that may facilitate the acceptance of conformity assessment results. For instance, Members may explore how international and regional systems for conformity assessment (e.g. regional and intergovernmental initiatives, voluntary cooperation arrangements between accreditation bodies, and voluntary cooperation arrangements between conformity assessment bodies) can contribute to building globally robust and trade facilitative schemes (as envisaged under Article 9 of the TBT Agreement). To this end, relevant bodies involved in the development of such instruments may be invited to inform the Committee of the current status of their work.

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17 G/TBT/32, 29 November 2012, para. 5.

## 2.2 Information Exchange

### Recommendations

- a. The Committee has regularly engaged in information exchange on the use of conformity assessment procedures with a view to improving Members' implementation and understanding of Articles 5-9.<sup>18</sup>
- b. In 1997, in order to further the objectives of Articles 5 and 6, including in particular the need to avoid the creation of unnecessary obstacles to international trade due to conformity assessment procedures, and with a view to making recommendations to remove any unnecessary duplication of conformity assessment, the Committee agreed to invite Members, on a voluntary basis:
  - i. to exchange information on their experience in the various types of conformity assessment procedures and their conditions of application. In the light of this exercise, the Committee will consider making recommendations aimed at ensuring that procedures for the assessment of conformity avoid the creation of unnecessary obstacles to international trade<sup>19</sup>; and
  - ii. to exchange information on the operation of Articles 6, 10.7 (II.A.(a)(iv), above) and other relevant provisions which contain disciplines with respect to recognition of the results of conformity assessment procedures.<sup>20</sup>
- c. In 2000, the Committee agreed to invite Members, on a voluntary basis:
  - i. to supply further information on the different mechanisms used in their jurisdiction for acceptance of results of conformity assessment and further discuss the different approaches with a view to analysing them in the light of Articles 5 and 6<sup>21</sup>;
  - ii. to further exchange information on their experience in the use of supplier's declaration of conformity (SDoC). Such experience could include the following: an indication of the sectors/product categories where supplier's declaration of conformity is used in relation to technical regulations and standards; a further definition of the conditions supporting effective use of such an approach and the costs of these conditions; considerations that may deem such an approach inappropriate from a regulatory perspective; and an identification of technical infrastructure to support reliance on this approach.<sup>22</sup>

<sup>18</sup> G/TBT/5, 19 November 1997, para. 29(c); G/TBT/9, 13 November 2000, paras. 28 and 33; G/TBT/13, 11 November 2003, para. 40; G/TBT/19, 14 November 2006, para. 46; G/TBT/26, 13 November 2009, para. 19; G/TBT/32, 29 November 2012, para. 5. In 1996, the Committee established a Technical Working Group to examine certain ISO/IEC Guides on conformity assessment procedures (G/TBT/M/6, 6 December 1996, para. 14). The Working Group met three times and the Reports are contained in G/TBT/M/7-8 and 10 (1997).

<sup>19</sup> G/TBT/5, 19 November 1997, para. 29.

<sup>20</sup> G/TBT/5, 19 November 1997, para. 29.

<sup>21</sup> G/TBT/9, 13 November 2000, para. 28.

<sup>22</sup> G/TBT/9, 13 November 2000, para. 33.

- d. In 2003, with a view to improving Members' implementation of Articles 5-9 of the Agreement and promoting a better understanding of Members' conformity assessment systems, the Committee agreed to a work programme<sup>23</sup>:
- i. to exchange information and experiences on existing conformity assessment procedures and practices, the use of relevant international standards, guides and recommendations, and the participation of Members in national, regional and international accreditation schemes;
  - ii. to exchange information and experiences and hold a workshop on SDoC covering issues such as: the regulatory authorities, sectors and suppliers which use SDoC; the surveillance mechanism, liability law and penalties used to ensure that products comply with requirements; the incentives for suppliers to comply with requirements; and the legislation that underpins the relationship between buyers and sellers;
  - iii. to invite representatives from relevant international and regional accreditation fora to provide information on their operation and the participation of Members, in particular, developing country Members, in their systems. Moreover, users, such as certification bodies, should also be invited to share their experiences in this respect;
  - iv. to hold a workshop on the different approaches to conformity assessment, including on the acceptance of conformity assessment results; and
  - v. to take stock of the progress made on this Work Programme and reflect it in its Annual Report to the Council for Trade in Goods.
- e. In 2006, with a view to furthering the understanding of the implementation of Articles 5-9 of the Agreement, the Committee agreed to continue sharing experiences on<sup>24</sup>:
- i. approaches to conformity assessment, and in particular on:
    - various considerations that are relevant when deciding on the need for a conformity assessment procedure and on the type of procedure, including the level of risk associated with products;
    - the use of different types of conformity assessment procedures;
    - the design and implementation of SDoC and situations for which SDoC may be a suitable conformity assessment procedure; and
    - the use of accreditation to qualify the technical competence of conformity assessment bodies.

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23 G/TBT/13, 11 November 2003, paras. 40 and 41.

24 G/TBT/19, 14 November 2006, para. 46.

- ii. the use of international standards, guides or recommendations in Members' domestic conformity assessment procedures;
- iii. recognition of conformity assessment results, and in particular on:
  - unilateral recognition of results of foreign conformity assessment, including on existing government designation schemes in relation to Article 6.1.2;
  - the participation of foreign conformity assessment bodies in domestic conformity assessment procedures pursuant to Article 6.4;
  - the operation of existing MRAs, including cases where implementation has not been deemed satisfactory; and their cost-effectiveness; and
  - voluntary mutual recognition arrangements and on the extent to which results of conformity assessment are accepted by regulators.

## Events

- a. A Symposium on Conformity Assessment Procedures was held on 89 June 1999.<sup>25</sup>
- b. A Special Meeting dedicated to Conformity Assessment Procedures was held on 29 June 2004.<sup>26</sup>
- c. A Workshop on Supplier's Declaration of Conformity (SDoC) was held on 21 March 2005.<sup>27</sup>
- d. A Workshop on the Different Approaches to Conformity Assessment, including on the Acceptance of Conformity Assessment Results, was held on 16-17 March 2006.<sup>28</sup>
- e. A thematic session on Conformity Assessment took place on 29 October 2013.<sup>29</sup>

## 3 Standards

3.1. The provisions concerning the preparation, adoption and application of standards are contained in Article 4 of the TBT Agreement and in the Code of Good Practice for the Preparation, Adoption and Application of Standards (the "Code of Good Practice"). In addition, Articles 2.4, 2.5, 5.4, and Paragraph F of Annex 3 of the Agreement promote

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<sup>25</sup> G/TBT/9, 13 November 2000, Annex 1.

<sup>26</sup> A Report of the special meeting is contained in G/TBT/M/33/Add.1, 21 October 2004.

<sup>27</sup> A Report of the workshop is contained in Annex 1 of G/TBT/M/35, 24 May 2005.

<sup>28</sup> A Report of the workshop is contained in G/TBT/M/38/Add.1, 6 June 2006.

<sup>29</sup> The programme is contained in JOB/TBT/50/Rev.2. The Chairman's summary report is contained in G/TBT/GEN/155.

the use of relevant international standards, guides and recommendations as a basis for standards, technical regulations and conformity assessment procedures. Articles 2.6, 5.5 and Paragraph G of Annex 3 emphasize the importance of Members' participation in international standardization activities related to products for which they have either adopted, or expect to adopt, technical regulations.<sup>30</sup>

3.2. In 2000, at the Second Triennial Review of the Agreement, the Committee noted that in order for international standards to make a maximum contribution to the achievement of the trade facilitating objectives of the Agreement, it was important that all Members had the opportunity to participate in the elaboration and adoption of international standards. Adverse trade effects might arise from standards emanating from international bodies as defined in the Agreement which had no procedures for soliciting input from a wide range of interests. Bodies operating with open, impartial and transparent procedures, that afforded an opportunity for consensus among all interested parties in the territories of at least all Members, were seen as more likely to develop standards which were effective and relevant on a global basis and would thereby contribute to the goal of the Agreement to prevent unnecessary obstacles to trade. In order to improve the quality of international standards and to ensure the effective application of the Agreement, the Committee agreed that there was a need to develop principles concerning transparency, openness, impartiality and consensus, relevance and effectiveness, coherence and developing country interests that would clarify and strengthen the concept of international standards under the Agreement and contribute to the advancement of its objectives. In this regard, the Committee adopted a Decision containing a set of principles it considered important for international standards development.<sup>31</sup> These principles were seen as equally relevant to the preparation of international standards, guides and recommendations for conformity assessment procedures. The dissemination of such principles by Members and standardizing bodies in their territories would encourage the various international bodies to clarify and strengthen their rules and procedures on standards development, thus further contributing to the advancement of the objectives of the Agreement.<sup>32</sup>

## 3.1 General

### Decision

a. In 2000, the Committee adopted a Decision on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2, 5 and Annex 3 of the TBT Agreement. This Decision is contained in Annex 2 (on page 122 of this document)<sup>33</sup>.

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30 G/TBT/26, 12 November 2009, para. 20.

31 The Decision is contained in Annex 2 (page 122).

32 G/TBT/9, 13 November 2000, para. 20.

33 G/TBT/9, 13 November 2000, para. 20 and Annex 4.

## Recommendations

- a. In 1995, the Committee noted that the Agreement contains a number of provisions on regional standardizing bodies and systems for conformity assessment. In order to keep abreast of the activities of such bodies and systems, the Committee agreed<sup>34</sup>:
  - i. that representatives of regional standardizing bodies and systems for conformity assessment may be invited to address the Committee on their procedures and how they relate to those embodied in the Agreement, on the basis of agreed lists of questions.
- b. In 1997, with a view to developing a better understanding of international standards within the Agreement, the Committee agreed<sup>35</sup>:
  - i. to explore ways and means of improving the implementation of Articles 2.6, 5.5, 11.2, 12.5 and paragraph G of the Code with a view to enhancing Members' awareness of, and participation in, the work of international standardizing bodies. As appropriate, the Committee will consider the usefulness of communicating its views to the relevant international standardizing bodies for their consideration;
- c. In 2006, with regard to the acceptance of the Code of Good Practice by regional standardizing bodies, the Committee agreed<sup>36</sup>:
  - i. to encourage regional standardizing bodies to accept the Code of Good Practice and to notify their acceptance of the Code to the ISO/IEC Information Centre.
- d. In 2009, the Committee recognized the need for international standards to be relevant and effectively respond to regulatory and market needs, as well as scientific and technological developments, while not creating unnecessary obstacles to international trade. In light of the above, the Committee<sup>37</sup>:
  - i. encouraged Members, Observer organizations and relevant bodies involved in the development of standards to exchange experiences and circulate case studies – or other research – on the impacts of standards on economic development and international trade;
  - ii. stressed the importance of ensuring the effective application of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the TBT Agreement); and
  - iii. encouraged the full application of the six principles set out in the above-mentioned Decision, and the sharing of experiences in respect of their use.

34 G/TBT/M/3, 5 January 1996, para. 15; G/TBT/W/14, 29 September 1995, page 4.

35 G/TBT/5, 19 November 1997, para. 22(a).

36 G/TBT/19, 14 November 2006, paras. 66-67 and 68 (g)(i). This recommendation is also reproduced in this document on page 98.

37 G/TBT/26, 12 November 2009, para. 25.

- e. In 2009, the Committee noted that several Members had raised concerns regarding "private standards" and trade impacts thereof, including actual or potential unnecessary barriers to trade. The Committee also noted that other Members considered that the term lacks clarity and that its relevance to the implementation of the TBT Agreement had not been established. Without prejudice to the different views expressed, the Committee recalled that Article 4.1 of the TBT Agreement requires that Members shall take such reasonable measures as may be available to them to ensure that standardizing bodies accept and comply with the Code of Good Practice. The Committee further expressed the need to strengthen implementation of Article 4. In view of this, the Committee<sup>38</sup>:
- i. recalled its discussion in the Third Triennial Review<sup>39</sup> regarding standards developed by bodies that are not commonly considered standardizing bodies;
  - ii. reiterated its 1997 invitation to Members to share their experiences with respect to steps taken to fulfil their obligations under Article 4, and to exchange information regarding the reasons some standardizing bodies have not yet accepted the Code of Good Practice<sup>40</sup>; and
  - iii. with a view to facilitating an informed discussion on the development and use of standards in general, including with regard to standards developed by non-governmental bodies, Members were invited to share their experiences related to the implementation of the TBT Agreement, including the Code of Good Practice. Discussions would neither prejudice the role of the TBT Committee nor the scope of the TBT Agreement with respect to any issue that may arise.

## 3.2 Information Exchange

### Recommendations

- a. In 1997, the Committee agreed to seek information from international standardizing bodies regarding their procedures to ensure cooperation with their national members and regional standardizing bodies and to consider the usefulness of communicating the Committee's views to the relevant international standardizing bodies.<sup>41</sup> Also, with a view to developing a better understanding of international standards within the Agreement, the Committee agreed<sup>42</sup>:
  - i. to invite Members, on a voluntary basis, to submit specific examples to the Committee addressing the difficulties and problems they encounter in relation to international standards, including those mentioned in paragraph 18 (of G/TBT/5), taking into

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38 G/TBT/26, 12 November 2009, para. 26.

39 G/TBT/13, para. 25.

40 G/TBT/5, paras. 12(a). This recommendation is also reproduced in this document on page 98.

41 G/TBT/5, 19 November 1997, para. 13.

42 G/TBT/5, 19 November 1997, para. 22 (b)-(d).

account Article 12.4. This information exchange process, as well as the indications obtained through the notifications of draft regulations and conformity assessment procedures, would provide relevant information on the national practices of Members, and on the manner in which international standardizing bodies developed standards. In the light of this experience sharing exercise, the Committee may consider the usefulness of communicating its views to relevant international standardizing bodies for their consideration;

- ii. to consider the appropriate means for the Committee to express its views to relevant international standardizing bodies regarding the preparation of international standards, and to invite international standardizing bodies to follow the relevant principles of the Code of Good Practice; and
  - iii. in accordance with the rules of procedures of the Committee and on an ad hoc basis as agreed, relevant international standardizing bodies will be invited to meetings of the Committee to enable them to take into account the on-going discussions in the WTO, and to increase Members' awareness of the activities of these organizations. Relevant international standardizing bodies will be invited to provide prior information concerning their activities.
- b. In 2009, the Committee recognized the advances made in increasing meaningful participation by developing country Members in standardizing activities in areas of interest to them, but noted that for many developing country Members challenges remain, both financially and technically. In view of achieving further progress, the Committee<sup>43</sup>:
- i. encouraged Members, Observer organizations and relevant bodies involved in the development of standards, to exchange information on initiatives implemented, successes achieved and obstacles encountered.
- c. In 2012, with a view to furthering its work in the area of standards, the Committee agreed to undertake work in the following three thematic areas<sup>44</sup>:
- i. The Code of Good Practice

The Committee reiterates the importance of ensuring the effective application of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the TBT Agreement, hereafter the "Code of Good Practice"), and the importance of strengthening the implementation of Article 4 of the TBT Agreement. It is recalled that in the context of the Fifth Triennial Review, several Members raised concerns regarding "private standards" and the trade impact thereof, while other Members considered that the term lacked clarity and that its relevance to the

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43 G/TBT/26, 12 November 2009, para. 27.

44 G/TBT/32, 29 November 2012, paras. 6-9.

implementation of the TBT Agreement had not been established.<sup>45</sup> During the review period, the Committee reverted to this discussion. The Committee hereby reiterates the recommendations made at the Fifth Triennial Review<sup>46</sup> and, in view of the need to further strengthen implementation of Article 4, agrees:

- to exchange information and experiences on reasonable measures taken by Members to ensure that local government and non-governmental standardizing bodies involved in the development of standards within their territories, accept and comply with the Code of Good Practice.

#### ii. The "Six Principles"

The Committee reiterates the importance of ensuring the full application of the six principles set out in the Committee's 2000 Decision (the "Six Principles"<sup>47</sup>) on the development of international standards, and the sharing of experiences in respect of their use. In this respect, the Committee agrees:

- to exchange information on efforts to promote the full application of the Six Principles set out in the 2000 Committee Decision. The Committee may also invite relevant bodies involved in the development of international standards, guides or recommendations to share their experiences with the use of these same principles; and,
- in the deliberations on the Six Principles, to give particular attention to how the "Development Dimension" is taken into consideration.

#### iii. Transparency in standard-setting<sup>48</sup>

During the review period, the Committee emphasized, in particular, the importance of transparency in the development of standards.<sup>49</sup> It is recalled in this regard that several paragraphs of the Code of Good Practice are relevant to transparency in standard-setting, including paragraphs J through Q.<sup>50</sup> With respect to the development of international standards, the Principle on Transparency contained in the 2000 Committee Decision states, *inter alia*, that transparency procedures

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45 These concerns are reflected in the Fifth Triennial Review Report (G/TBT/26, paragraph 26).

46 The three recommendations contained in G/TBT/26, paragraph 26(a)–(c).

47 The full text of this Decision (hereafter the "2000 Committee Decision") is contained in Annex 2 (page 122).

48 Relevant existing decisions and recommendations are contained in G/TBT/1/Rev.10, Section IV.C.2.(iii) on page 29.

49 The G/TBT/GEN/39/series of documents includes information on Members' publications in relation to technical regulations, conformity assessment procedures and standards. It is also recalled that Members have previously agreed that statements under Article 15.2 of the Agreement should specify the names of publications that are used to announce work relevant to Paragraphs J, L and O of Annex 3 of the Agreement.

50 For example, Paragraph L of the Code of Good Practice states, *inter alia*, that "before adopting a standard, the standardizing body shall allow at least 60 days for the submission of comments on the draft standard by interested parties within the territory of a Member of the WTO".

should, at a minimum, provide an "adequate period of time for interested parties in the territory of at least all members of the international standardizing body to make comments in writing and take these written comments into account in the further consideration of the standard". In light of this, the Committee agrees:

- To exchange information on how relevant bodies involved in the development of standards – whether at the national, regional or international level – provide opportunity for public comment.

## Events

- a. An Information Session of Bodies Involved in the Preparation of International Standards was held on 19 November 1998.<sup>51</sup>
- b. A Workshop on the Role of International Standards in Economic Development was held on 16-17 March 2009.<sup>52</sup>
- c. The Sixth Special Meeting on Procedures for Information Exchange, held on 22 June 2010, included a session on Transparency in Standard Setting.<sup>53</sup>
- d. A Thematic Session on Standards, held on 5 March 2013.<sup>54</sup>

# 4 Transparency

4.1. The TBT Agreement contains transparency provisions in: Articles 2 and 3 (technical regulations); Articles 5, 7, 8 and 9 (conformity assessment procedures); Annex 3, paragraphs J, L, M, N, O & P (standards); and Articles 10 (general transparency provision) and 15 (final provisions). A number of decisions and recommendations have been made with a view to facilitating access to information and further improving the implementation of transparency procedures under the Agreement.

## 4.1 General

### Recommendation

- a. In 2009 and 2012, 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

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51 G/TBT/9, 13 November 2000, Annex 1.

52 G/TBT/M/47, 5 June 2009, pages 81-83.

53 G/TBT/M/51, 1 October 2010, pages 82-88.

54 The moderator's summary is available in G/TBT/GEN/144.

transparency is a fundamental pillar in the implementation of the TBT Agreement and a key element of GRP.<sup>55</sup> The Committee noted the significant stock of decisions and recommendations that it has developed since 1995, and agreed<sup>56</sup>:

- i. to stress the importance of full implementation of this existing body of decisions and recommendations by Members.

## 4.2 Statement on Implementation and Administration of the TBT Agreement (Article 15.2)

- a. Pursuant to Article 15.2, Members have an obligation to submit a statement on the measures in existence or taken to ensure the implementation and administration of the Agreement, including the provisions on transparency. Such statements, to be made by a Member promptly after the date on which the WTO Agreement enters into force for it, give a brief overview of how individual Members implement the TBT Agreement. Since the establishment of the Committee, Members have emphasized the importance of fulfilling their obligations under Article 15.2.<sup>57</sup>

### Decision

- a. In 1995, with respect to the contents of Article 15.2 statements, the Committee agreed<sup>58</sup>:
  - i. the statement should cover the legislative, regulatory and administrative action taken as a result of the negotiation of the Agreement or currently in existence to ensure that the provisions of the Agreement are applied. If the Agreement itself has been incorporated into domestic law, the statement should indicate how this has been done. In other cases, the statement should describe the content of the relevant laws, regulations, administrative orders, etc. All necessary references should also be provided.
  - ii. in addition, the statement should specify:
    - the names of the publications used to announce that work is proceeding on draft technical regulations or standards and procedures for assessment of conformity and those in which the texts of technical regulations and standards or procedures for assessment of conformity are published under Articles 2.9.1, 2.11; 3.1 (in relation to 2.9.1 and 2.11); 5.6.1, 5.8; 7.1, 8.1 and 9.2 (in relation to 5.6.1 and 5.8); and paragraphs J, L and O of Annex 3 of the Agreement;

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

56 G/TBT/26, 12 November 2009, para. 32 and G/TBT/32, 29 November 2012, para. 11.

57 G/TBT/5, 19 November 1997, para. 7; G/TBT/9, 13 November 2000, para. 9; G/TBT/13, 11 November 2003, para. 7; G/TBT/19, 14 November 2006, para. 6.

58 G/TBT/M/2, 4 October 1995, para. 5, G/TBT/W/2/Rev.1, 21 June 1995, page 2.

- the expected length of time allowed for presentation of comments in writing on technical regulations, standards or procedures for assessment of conformity under Articles 2.9.4 and 2.10.3; 3.1 (in relation to 2.9.4 and 2.10.3); 5.6.4 and 5.7.3; 7.1, 8.1 and 9.2 (in relation to 5.6.4 and 5.7.3); and paragraph L of Annex 3 of the Agreement;
- the name and address of the enquiry point(s) foreseen in Articles 10.1 and 10.3 of the Agreement with an indication as to whether it is/they are fully operational; if for legal or administrative reasons more than one enquiry point is established, complete and unambiguous information on the scope of responsibilities of each of them;
- the name and address of any other agencies that have specific functions under the Agreement, including those foreseen in Articles 10.10 and 10.11 of the Agreement; and
- measures and arrangements to ensure that national and sub-national authorities preparing new technical regulations or procedures for assessment of conformity, or substantial amendments to existing ones, provide early information on their proposals in order to enable the Member in question to fulfil its obligations on notifications under Articles 2.9, 2.10, 3.2, 5.6, 5.7 and 7.2 of the Agreement.

## Recommendations

- a. In 1997, in order to ensure the submission of statements under Article 15.2 and to improve the implementation and administration of the Agreement, the Committee agreed<sup>59</sup>:
  - i. with due consideration to the obligations under Article 15.2 to inform the Committee of measures in existence or taken to ensure the implementation and administration of the Agreement, Members who have not submitted such information are expected to do so without further delay. They are invited to indicate any difficulties and needs in this respect, so that technical assistance may be provided as appropriate;
  - ii. for the purpose of information exchange, Members are invited, on a voluntary basis, to make oral presentations to further elaborate on the arrangements they have in place to achieve an effective implementation and administration of the provisions of the Agreement, including those under Article 12. This exercise would be a useful means of sharing information with respect to good practices and in meeting the needs of those Members that may be seeking assistance.
- b. In 2000, the Committee agreed<sup>60</sup>:
  - i. to encourage Members to continue sharing their experiences on the arrangements they had in place to achieve an effective implementation and administration of the provisions of the Agreement.

<sup>59</sup> G/TBT/5, 19 November 1997, para. 7.

<sup>60</sup> G/TBT/9, 13 November 2000, para. 9.

- c. In 2003, in order to assist Members in meeting their obligations under Articles 15.2 and 10.1, the Committee<sup>61</sup>:
  - i. invited Members to seek assistance from other Members that had met their 15.2 obligations to share their knowledge and experience in this regard.

## Documents

- a. Members' Statements on Implementation and Administration of the Agreement are contained in the G/TBT/2/Add - series.<sup>62</sup>
- b. A list of Members having submitted their 15.2 Statements is maintained in the G/TBT/GEN/1/ - series.

## Event

- a. On 8 November 2007, the WTO Secretariat organized a Workshop on the Statement on Implementation and Administration of the TBT Agreement under Article 15.2.<sup>63</sup>

## 4.3 Notifications

### 4.3.1 Technical Regulations and Conformity Assessment Procedures

4.2. Articles 2, 3, 5, and 7 of the TBT Agreement contain the notification obligations related to technical regulations and conformity assessment procedures. In addition, the TBT Committee has put in place detailed procedures for the implementation of these provisions (set out below), which have been refined over the years. The importance of fulfilling notification provisions has been regularly reiterated by the TBT Committee, as notifications can make an important contribution towards avoiding unnecessary obstacles to trade and provide Members with the opportunity to influence the development of technical requirements of other Members.

4.3. Article 2.9 of the TBT Agreement provides that Members have an obligation to notify a proposed technical regulation whenever a relevant international standard does not exist or when the technical content of the 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. Similarly, Article 5.6 of the TBT

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61 G/TBT/13, 11 November 2003, para. 7.

62 This information can be downloaded from the TBT IMS, at: <http://tbtims.wto.org/web/pages/search/other/Search.aspx>. See Section 4.4.4 "Online Tools" for further details.

63 G/TBT/M/43, 21 January 2008, para. 3-5.

Agreement provides that Members have an obligation to notify a proposed conformity assessment procedure whenever a relevant international guide or recommendation issued by international standardizing bodies does not exist or the technical content of the proposed conformity assessment procedure is not in accordance with relevant international guides or recommendations issued by international standardizing bodies and if the conformity assessment procedure may have a significant effect on trade of other Members.

## Recommendation

- a. In 2009, based on experience shared between Members on the implementation of notification obligations, the Committee agreed<sup>64</sup>:
  - i. to reiterate the importance of ensuring that Members comply fully with the notification requirements in Articles 2.9 and 5.6 of the TBT Agreement
  - ii. to encourage Members to endeavour to submit those notifications at an early stage, when measures are still in draft form, to ensure time and adequate opportunity for comments, for comments to be taken into account and for proposed measures to be modified; and
  - iii. to reaffirm the importance of establishing mechanisms to facilitate internal coordination for the effective implementation of the TBT Agreement's notifications obligations.

### 4.3.1.1 "Significant effect on trade of other Members"

## Recommendation

- a. In 1995, 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 Committee established the following criteria<sup>65</sup>:
  - 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.

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64 G/TBT/26, 12 November 2009, para. 34.

65 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 8.

- 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.
- b. In 2012, with a view to enhancing the practical application of the concept of "significant effect on trade of other Members", the Committee agreed<sup>66</sup>:
- i. to encourage Members, for the purpose of enhancing predictability and transparency in situations where it is difficult to establish or foresee whether a draft technical regulation or conformity assessment procedure may have a "significant effect on trade of other Members", to notify such measures.

### 4.3.1.2 Timing of Notifications

#### Recommendation

- a. In 1995, the Committee agreed that 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 assessment of conformity is available and when amendments can still be introduced and taken into account.<sup>67</sup>

### 4.3.1.3 Submission of Notification (Format and Guidelines)

#### Decisions

- a. The agreed version of the Guidelines and Format is contained in Annex 3 (on page 126 of this document).<sup>68</sup>

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66 G/TBT/32, 29 November 2012, para. 12.

67 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 8.

68 G/TBT/1/Rev.8, 23 May 2002, page 11.

- b. In 2000, the Committee noted that enhancement of Internet usage can facilitate access to and exchange of information by Members. This would also facilitate and provide the maximum time possible for receiving notifications, obtaining and translating of relevant documents, and the presentation of comments. With a view to facilitating 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 Committee agreed<sup>69</sup>:
- i. whenever possible Members should file notifications by downloading, filling out and returning the complete form by e-mail to the Secretariat. The Committee will continue to explore ways to shorten the time for the submission, publication and circulation of notifications, as well as to examine the steps that would be needed to facilitate the electronic transmission of information among Members to complement the hard copy information exchange.<sup>70</sup>

## Recommendations

- a. In 1995, the Committee recommended that information contained in the notification form should be as complete as possible and no section should be left blank. Where necessary, "not known" or "not stated" should be indicated.<sup>71</sup>
- b. In 2000, the Committee requested that Members transmit their notifications to the Secretariat electronically via the Central Registry of Notifications (CRN) at [crn@wto.org](mailto:crn@wto.org) in order to accelerate their processing.<sup>72</sup>
- c. In 2003, with regard to the electronic transmission of information on proposed standards, technical regulations and conformity assessment procedures, the Committee agreed<sup>73</sup>:
- i. to examine the feasibility of creating a central depository for notifications on the WTO website, which would enable Members to complete notification forms on line. This would complement, not replace, the submission of notifications to the CRN.
- d. In 2009, the Committee noted that, in practice, for the sake of greater transparency, some Members choose to notify draft measures when they are in accordance with relevant international standards, guides or recommendations. With a view to increasing transparency on the use of international standards, the Committee agreed<sup>74</sup>:

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69 G/TBT/9, 13 November 2000, paras. 13, 15 and Annex 3.

70 The TBT NSS was launched in October 2013, and provides Members with an alternative (voluntary) online method for submitting TBT notifications. See Section 4.4.4 "Online Tools" for further details.

71 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 3.

72 G/TBT/M/15, paras. 43 and 45; G/TBT/9, 13 November 2000, paras. 13, 15 and Annex 3; G/TBT/13, 11 November 2003, para. 26.

73 G/TBT/13, 11 November 2003, para. 27.

74 G/TBT/26, 12 November 2009, para. 36.

- i. to encourage Members, whenever possible and on a voluntary basis to indicate in Box 8 of the notification format whether or not they consider that a relevant international standard exists and, if appropriate, to provide information about deviations; and
  - ii. to note the provisions contained in Articles 2.9.3 and 5.6.3 of the TBT Agreement stating that Members, upon request, provide other Members with particulars or copies of a proposed technical regulation or conformity assessment procedure and, whenever possible, identify the parts which, in substance, deviate from relevant international standards or from relevant guides and recommendations issued by international standardizing bodies.
- e. In 2012, with respect to the online submission of notifications, the Committee agreed<sup>75</sup>:
- i. to request the rapid development of a TBT on-line Notification Submission System (TBT NSS) to foster more expedient processing and circulation of notifications by the Secretariat.<sup>76</sup>

## Documents

- a. Notifications under Article 2, 3, 5, and 7 are circulated in the document series G/TBT/N/[Member]/[Number].

### 4.3.1.4 Notification of Labelling Requirements

#### Decision

- a. In 1995, with the purpose of clarifying the coverage of the Agreement with respect to labelling requirements, the Committee took the following decision<sup>77</sup>:
  - i. 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.

#### Event

- a. On 21-22 October 2003, with the objective of improving Members' understanding of the preparation, adoption and application of labelling requirements in the context of the

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<sup>75</sup> G/TBT/32, 29 November 2012, para. 18.

<sup>76</sup> The TBT NSS was launched in October 2013, and is available at: <https://nss.wto.org/tbtmembers>. Members may request access to the system through the WTO Secretariat, by sending an email to: [tbtcss@wto.org](mailto:tbtcss@wto.org). See Section 4.4.4 "Online Tools" for further details.

<sup>77</sup> G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 11.

implementation of the Agreement, as well as of the impact of such requirements on market access, the Committee held a Learning Event on Labelling, which focused on developing country Members' concerns.<sup>78</sup>

### **4.3.1.5 Notifications of Proposed Technical Regulations and Conformity Assessment Procedures of Local Governments at the Level Directly Below that of the Central Government**

#### **Recommendations**

- a. In 2006, with regard to the notification of proposed technical regulations and conformity assessment procedures of local governments at the level directly below that of the central government, the Committee agreed<sup>79</sup>:
  - i. to invite Members to indicate the local government bodies in their jurisdiction that are subject to the notification obligations contained in Articles 3.2 and 7.2.
- b. In 2009, the Committee noted, despite an increase in the number of measures notified under Articles 3.2 and 7.2, that this level remained generally low. In light of this, the Committee agreed<sup>80</sup>:
  - i. to recommend that Members continue to discuss possible ways to improve coordination between relevant authorities at the central level and the local level directly below the central level with respect to notifications under Articles 3.2 and 7.2, including through dissemination of good practices; and
  - ii. to request the Secretariat to remain engaged in providing statistical information with respect to Articles 3.2 and 7.2.
- c. In 2012, the Committee agreed<sup>81</sup>:
  - i. to reaffirm the importance of establishing mechanisms to facilitate internal coordination for the effective implementation of the TBT Agreement's notification obligations, including with respect to the notification of measures in line with Articles 3.2 and 7.2.<sup>82</sup>

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78 G/TBT/13, 11 November 2003, para. 3.

79 G/TBT/19, 14 November 2006, paras. 52 and 68(b)(i).

80 G/TBT/26, 12 November 2009, para. 38.

81 G/TBT/32, 29 November 2012, para. 14.

82 It was noted that the establishment of internal coordination mechanisms is also an important element of GRP. See G/TBT/32, 29 November 2012, para. 14, footnote 28.

### 4.3.1.6 Length of Time Allowed for Comments

#### Recommendations

- a. 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.<sup>83</sup>
  - 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.<sup>84</sup>
- b. In 2009, the Committee agreed<sup>85</sup>:
  - i. to recall its earlier recommendation that the normal time limit for the presentation of comments should be at least 60 days, and its encouragement to Members to provide, whenever possible, a time limit beyond 60 days, such as 90 days;
  - ii. to recall that developed country Members are encouraged to provide more than a 60-day comment period, to improve the ability of developing country Members to make comments on notifications consistent with the principle of special and differential treatment; and
  - iii. to reiterate that an insufficient period of time for presentation of comments on proposed technical regulations and conformity assessment may prevent Members from adequately exercising their right to submit comments.

### 4.3.1.7 Handling of Comments

#### Recommendations

- a. 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<sup>86</sup>:

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83 G/TBT/9, 13 November 2000, para. 13 and Annex 3, page 22.

84 G/TBT/13, 11 November 2003, para. 26.

85 G/TBT/26, 12 November 2009, paras. 39-40.

86 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 10.

- 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 of 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.
- b. In 2003, the Committee agreed<sup>87</sup>:
- i. to invite Members to formulate their requests to enquiry points, on comment periods or on any other matter, in one of the three official languages of the WTO;
  - ii. to encourage Members to voluntarily respond to comments in writing if so requested, and to share their responses with the TBT Committee. Members are also encouraged to draft their responses in one of the three official languages of the WTO;
  - iii. to invite Members, on a voluntary basis, to disseminate their comments and responses by means of national websites and to draw the Committee's attention to these.
- c. In 2006, with a view to facilitating the implementation of transparency procedures under the Agreement, the Committee agreed<sup>88</sup>:
- i. to encourage Members to provide sufficient time between the end of the comment period and the adoption of the notified technical regulations and conformity assessment procedures for the consideration of comments made and the preparation of subsequent responses;
  - ii. to encourage Members to exchange comments and to provide information on websites on which comments received from Members and replies thereto are posted, taking into account the fact that some bilateral communications between Members could be of a confidential nature; and

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87 G/TBT/13, 11 November 2003, para. 26.

88 G/TBT/19, 14 November 2006, paras. 58 and 68(d)(i)-(iii).

- iii. to request the Secretariat to prepare a list of these websites, based on the information provided by Members.
- d. In 2009, the Committee agreed<sup>89</sup>:
  - i. to stress the importance of an efficient and effective handling of comments on notified measures and, in this respect, to reiterate its previous recommendations on the handling of comments, including the recommendation to voluntarily respond to comments in writing, if so requested, and to share these replies with the TBT Committee and to encourage Members to draft their responses in one of the three official languages of the WTO;
  - ii. to note the importance of domestic coordination to ensure that comments received are followed up and taken into account in finalizing the draft measure;
  - iii. to recall its earlier recommendations about the sharing, on a voluntary basis, of comments on notified draft measures and replies thereto, including through the use of websites; and
  - iv. to recommend that the Committee continues to discuss ways to improve the effective implementation of the provisions of the TBT Agreement on handling of comments, including assessing the feasibility of utilizing the TBT Information Management System (TBT IMS) as a platform where comments on notified measures, and replies thereto, could be posted on a voluntary basis.

#### **4.3.1.8 Timing of Entry into Force of Technical Regulations and Understanding of "Reasonable Interval" under Article 2.12**

4.4. 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."<sup>90</sup>

#### **Decision**

- a. In 2002, the Committee took note of the above-mentioned Ministerial Decision regarding the implementation of Article 2.12 of the Agreement, and decided as follows<sup>91</sup>:

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89 G/TBT/26, 12 November 2009, para. 42.

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

91 G/TBT/M/26, 6 May 2002, para. 15; WT/MIN(01)/17, 20 November 2001, para. 5.2.

- i. 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 six months, except when this would be ineffective in fulfilling the legitimate objectives pursued.

## Recommendation

- a. In 2006, with a view to facilitating the implementation of transparency procedures under the Agreement, the Committee agreed<sup>92</sup>:
  - i. to encourage Members to provide an interval of more than six months, when possible, between the publication of technical regulations and their entry into force.

### 4.3.1.9 Follow-up

#### Recommendations

- a. 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<sup>93</sup>:
  - 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.
- b. In 2009, the Committee agreed<sup>94</sup>:
  - 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.

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92 G/TBT/19, 14 November 2006, paras. 61-63 and 68(e)(i).

93 G/TBT/13, 11 November 2003, para. 28.

94 G/TBT/26, 12 November 2009, para. 43(c).

- c. In 2012, with a view to advancing the work of establishing common procedures for the use of notification formats<sup>95</sup>, the Committee agreed<sup>96</sup>:
  - i. To exchange experiences on Members' use of notification formats (addendum, corrigendum, revision, new notification).<sup>97</sup>

#### 4.3.1.10 Monthly Listing of Notifications Issued by the WTO Secretariat

##### Decision

- a. In 2000, the Committee agreed on the following with a view to providing a brief indication of the notifications issued<sup>98</sup>:
  - i. the Secretariat is 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.<sup>99</sup>

#### 4.3.2 Standards

4.5. Article 4 of the Agreement establishes a "Code of Good Practice for the Preparation, Adoption and Application of Standards" (the "Code"). The text of the Code is contained in Annex 3 of the TBT Agreement. The Code provides that, *inter alia*, Members shall ensure that their central government standardizing bodies accept and comply with the Code, and to take such reasonable measures as may be available to them to ensure that local government and non-governmental standardizing bodies within their territories, as well as regional standardizing bodies of which they or one or more bodies within their territories are members, accept and comply with the Code. The Code is open for acceptance to any such bodies (Paragraph B). Standardizing bodies that have accepted or withdrawn from the Code shall notify this fact (Paragraph C), as well as the existence of a work programme (Paragraph J).

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95 G/TBT/26, 12 November 2009, para. 43.

96 G/TBT/32, 29 November 2012, para. 15.

97 It was noted that one possible starting point could be the recommendations developed by the SPS Committee and contained in Section F on "Addenda, Revisions and Corrigenda" of G/SPS/7/Rev.3. See G/TBT/32, 29 November 2012, para. 15, footnote 30.

98 G/TBT/9, 13 November 2000, para. 13 and Annex 3, page 22.

99 These reports can be downloaded from the TBT IMS: <http://tbtime.wto.org/web/pages/report/report13/Report13.aspx>. See Section 4.4.4 "Online Tools" for further details.

### 4.3.2.1 Notification of the Acceptance of, or Withdrawal from, the Code of Good Practice (Paragraph C)

#### Recommendations

- a. In 1997, in order to improve the transparency, acceptance of, and compliance with the Code, the Committee agreed<sup>100</sup>:
  - i. to invite Members to share their experience with respect to the steps taken to fulfil their obligations under Article 4 and to exchange information on the reasons why certain standardizing bodies as identified in Article 4.1 have not yet accepted the Code;
  - ii. that Members should take appropriate action to inform standardizing bodies of the provisions of the Code and the benefits they would gain from accepting it; and
  - iii. that the Secretariat will draw up a list of standardizing bodies on the basis of information provided by Members for this purpose.
- b. In 2006, with a view to facilitating the implementation of transparency procedures under the Agreement, and with regard to the acceptance of the Code of Good Practice by regional standardizing bodies, the Committee agreed<sup>101</sup>:
  - i. to encourage regional standardizing bodies to accept the Code of Good Practice and to notify their acceptance of the Code to the ISO/IEC Information Centre.

#### Documents

- a. Notifications under the Code of Good Practice are circulated by the WTO Secretariat in the document series G/TBT/CS/N/[Number].<sup>102</sup> The agreed format is contained in Annex 8 (on page 137).

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100 G/TBT/5, 19 November 1997, sub-paras. 12(a), (b) and (d).

101 G/TBT/19, 14 November 2006, paras. 66-67 and 68(g)(i). This recommendation is also reproduced on page 80, under "c." of this document.

102 This information can be downloaded from the TBT IMS: <http://tbtime.wto.org/web/pages/search/notification/emergency/Search.aspx>. See Section 4.4.4 "Online Tools" for further details. See Annex 8 for further information on the notification template. Pursuant to the Ministerial Decision taken in Marrakesh on 15 April 1994 on "Proposed Understanding on WTO-ISO Standards Information System", a "Memorandum of Understanding (MoU) on WTO Standards Information Service Operated by ISO" was reached between the Secretary-General of the ISO Central Secretariat and the Director-General of the WTO. This MoU established a WTO-ISO Information System regarding standardizing bodies under Paragraphs C and J of the Code of Good Practice. Pursuant to Paragraph 2 of the MoU and in order to ensure a uniform and efficient operation of the procedures for notifications, the ISO and the WTO Secretariats developed notification formats and related guidelines, which were to be used by standardizing bodies accepting the Code of Good Practice (contained in G/TBT/W/4).

### 4.3.2.2 Notification of the Existence of a Work Programme (Paragraph J)

#### Decision

- a. In 1999, the Committee agreed<sup>103</sup>:
  - i. that the communication of the work programmes of standardizing bodies via the Internet would be another possibility to fulfil paragraph J obligations on transparency. Hard copies of such work programmes would, nevertheless, always be made available on request in accordance with paragraph P of the Code of Code of Good Practice.

#### Recommendations

- a. In 1997, in order to improve the transparency, acceptance of, and compliance with the Code, the Committee agreed<sup>104</sup>:
  - i. to examine any problems faced by Members in the implementation of the provisions of the Code, for example, problems encountered in publishing work programs every six months as required under paragraph J, so that appropriate technical assistance can be provided, if necessary;
- b. In 2006, with a view to facilitating the implementation of transparency procedures under the Agreement, the Committee agreed<sup>105</sup>:
  - i. to invite the ISO/IEC Information Centre to provide information to the Committee on the status of notifications of the existence of a work programme made under Paragraph J when the WTO TBT Standards Code Directory is published, and
  - ii. to encourage standardizing bodies that communicate their work programmes via the internet to specify the exact web pages where the information on work programmes is located under the item "Publication" of the notification form.

#### Documents

- a. The agreed format for notification to the ISO/IEC Information Centre is contained in Annex 8.

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103 G/TBT/M/15, 3 May 1999, paras. 67 and 69.

104 G/TBT/5, 19 November 1997, para. 12(c).

105 G/TBT/19, 14 November 2006, paras. 64-65 and 68(f)(i)-(ii).

### 4.3.2.3 Publishing of a Notice (Paragraph L)

#### Recommendations

- a. In 1997, in order to improve the transparency, acceptance of, and compliance with the Code, the Committee agreed<sup>106</sup>:
  - i. without prejudice to the views of Members concerning the coverage and application of the Agreement, the obligation to publish notices of draft standards containing voluntary labelling requirements under paragraph L of the Code is not dependent upon the kind of information provided on the label.
- b. In 2003, with regard to the electronic transmission of information on proposed standards, technical regulations and conformity assessment procedures, the Committee took note of Paragraph L of the Code of Good Practice which states that: "No later than at the start of the comment period, the standardizing body shall publish a notice announcing the period for commenting in the publication referred to in paragraph J," and agreed<sup>107</sup>:
  - i. that the electronic publication of notices announcing the periods for comments can constitute another possibility for the fulfilment of this transparency obligation.

### 4.3.3 Notification under Article 10.7 of the TBT Agreement

- 4.6. The TBT Agreement contains an obligation to notify agreements between Members on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade (Article 10.7).

#### Decision

- a. In 1996, the Committee agreed to adopt the format for notifications under Article 10.7 of the Agreement contained in Annex 4 (on page 130 of this document).<sup>108</sup>

#### Documents

- a. Notifications under Article 10.7 are circulated under document symbol G/TBT/10.7/N/[Number].<sup>109</sup>

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<sup>106</sup> G/TBT/5, 19 November 1997, para. 12(e).

<sup>107</sup> G/TBT/13, 11 November 2003, para. 27.

<sup>108</sup> G/TBT/M/5, 19 September 1996, para. 15; G/TBT/W/25, 3 May 1996.

<sup>109</sup> This information can be downloaded from the TBT IMS: <http://tbtims.wto.org/web/pages/search/notification/agreement/Search.aspx>. See Section 4.4.4 "Online Tools" for further details.

## 4.4 Dissemination of Information

### 4.4.1 Publication

4.7. Members are required to publish a notice of a proposed technical regulation or conformity assessment procedure if it may have a significant effect on trade of other Members, and whenever a relevant international standard (or, in the case of a conformity assessment procedure, a relevant guide or recommendation issued by an international standardizing body) does not exist or the proposed measure is not in accordance with the technical content of relevant international standards (or, in the case of a conformity assessment procedure, relevant guides or recommendations issued by international standardizing bodies) (Articles 2.9.1 and 5.6.1).

### Recommendation

- a. 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<sup>110</sup>:
  - i. 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.

### Documents

- a. 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 G/TBT/GEN/39/series.<sup>111</sup>

### 4.4.2 Texts of Notified Technical Regulations and Conformity Assessment Procedures

4.8. Articles 2.9.3 and 5.6.3 of the TBT Agreement state that Members shall, upon request, provide to other Members particulars or copies of the proposed technical regulation or conformity assessment procedures, and wherever possible identify the parts which in substance deviate from relevant international standards, or relevant guides or recommendations issued by international standardizing bodies.

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110 G/TBT/19, 14 November 2006, paras. 51 and 68(a)(i); G/TBT/26, 12 November 2009, para. 46.

111 This information can be downloaded from the TBT IMS, by selecting the predefined report "Publications": <http://tbtime.wto.org/web/pages/report/PreDefined.aspx>.

## Decision

- a. In 2007, with the purpose of facilitating access to notified draft texts, the Committee decided<sup>112</sup>:
- i. 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. (Texts will be stored on a WTO server and accessed through a hyperlink in the notification format.)

## Recommendations

- a. In 2006, with a view to facilitating the implementation of transparency procedures under the Agreement, and with regard to texts of notified technical regulations and conformity assessment procedures, the Committee agreed<sup>113</sup>:
- i. to encourage Members to provide:
    - more detailed information on proposed technical regulations and conformity assessment procedures in Section 6 "Description of content" of the notification form; and
    - the website address where Members can download the full text of the notified measure in Section 11 "Text available from" of the notification form or any other means to quickly and easily access the text.
  - ii. to explore ways to attach to the notification form a copy of the text of the notified measure; and
  - iii. to encourage 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.
- b. In 2009, with a view to improving access to texts of notified measures, the Committee agreed<sup>114</sup>:
- i. to reiterate its earlier recommendation to indicate a website address in Box 11 "Text available from" of the notification format; and
  - ii. 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.

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112 G/TBT/M/43, 21 January 2008, para. 129. Guidelines for the use of this facility are contained in document G/TBT/GEN/65, 14 December 2007.

113 G/TBT/19, 14 November 2006, sub-paras. 68(c)(i)-(iii).

114 G/TBT/26, 12 November 2009, para. 49.

- c. In 2012, with a view to increasing transparency across the regulatory lifecycle, and on methods Members use to assess the potential impact on trade of draft measures, the Committee agreed<sup>115</sup>:
- i. to encourage Members when notifying draft measures to provide access – on a voluntary basis and depending on their individual situations – to assessments, such as regulatory impact assessment (RIA), that they have undertaken on the potential effects of the draft measure, including likely impacts on consumers, industry and trade (e.g. a cost-benefit analysis, analysis of alternative measures). This can be achieved, for instance, through a hyperlink to the assessment in Box 8 of the notification template or by including the assessment in the draft measure itself.

### 4.4.3 Provision of Translations

4.9. Article 10.5 of the TBT Agreement states that developed country Members shall, if requested by other Members, provide in English, French or Spanish, translations of the documents covered by a specific notification, or in case of voluminous documents, of summaries of such documents.

### Decisions

- a. In 1995, in order to avoid difficulties that can arise from 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, the Committee agreed<sup>116</sup>:
- i. when a translation of a relevant document exists or is planned, this fact shall be indicated on the WTO TBT notification form next to the title of the document. If only a translated summary exists, the fact that such a summary is available shall be similarly indicated;
  - ii. upon receipt of a request for documents, any translated summaries that exist in the language of the requester or, as the case may be, in a WTO working language, shall be automatically sent with the original of the documents requested; and
  - iii. Members shall indicate under point 11 of the WTO TBT notification form the exact address, e-mail address, telephone and fax numbers of the body responsible for supplying the relevant documents if that body is not the enquiry point.

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115 G/TBT/32, 29 November 2012, para. 13.

116 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, pages 10-11.

- b. In 2007, with a view to enhancing the sharing of translation of documents referred to in notifications and facilitating information-sharing by Members on the availability of unofficial translations on the Internet, the Committee agreed<sup>117</sup>:
- i. to set up a mechanism whereby Members are invited, on a voluntary basis, to provide information about the availability of unofficial translations of notified measures;
  - ii. that this will be done through the circulation by the Secretariat of a supplement to the original notification submitted by a Member; and
  - iii. that such information should be provided to the Central Registry for Notifications (crn@wto.org) in the format contained in Annex 5 (in this document on pages 131-132).<sup>118</sup>

## Recommendations

- a. In 1995, in order to avoid difficulties that can arise from 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, the Committee agreed<sup>119</sup>:
- i. when a Member seeks a copy of a document relating to a notification which does not exist in that Member's WTO working language, it will be advised, on request, by the notifying Member of other Members that have requested, as of that date, a copy of the document. The Member seeking a copy of a document relating to a notification may then contact such other Members in order to determine whether the latter are prepared to share, on mutually agreed terms, any translation that they have or will be making into relevant WTO working language(s).
- b. In 2003, in the context of the handling of comments, the Committee agreed<sup>120</sup>:
- i. to encourage Members under Article 10.5, to provide translations of the documents covered by specific notifications, in any WTO official language of their choosing without being requested to do so.
- c. In 2006, with a view to facilitating the implementation of transparency procedures under the Agreement, and with regard to texts of notified technical regulations and conformity assessment procedures, the Committee agreed<sup>121</sup>:

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117 G/TBT/M/43, 21 January 2008, para. 131. Guidelines for the use of the facility are contained in document G/TBT/GEN/66, 14 December 2007.

118 The TBT NSS was launched in October 2013, and provides Members with an alternative (voluntary) online method for submitting supplement notifications. See Section 4.4.4 "Online Tools" for further details.

119 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, pages 10-11.

120 G/TBT/13, 11 November 2003, para. 26 (fifth tiret).

121 G/TBT/19, 14 November 2006, sub-para. 68(c)(iv).

- i. to explore ways to enhance the sharing of translation of documents referred to in notifications, such as posting on Members' websites or developing a format to inform other Members of the existence of translations of notified measures.
- d. In 2009, the Committee noted that, in the absence of a translation, Section 6 of the notification format "Description of the content", as well as prompt replies to specific questions on the content, are important sources of information for understanding the proposed measure and the main basis for comments from interested parties. In light of the above, the TBT Committee agreed<sup>122</sup>:
- i. to reaffirm its recommendation that Members share, on a voluntary basis, unofficial translations of documents referred to in notifications, for example by posting them on Members' websites or by providing these unofficial translations to the WTO Secretariat for further dissemination through the agreed mechanism; and
  - ii. to encourage Members, in cases when a notified document is not in one of the WTO official languages, to provide a comprehensive description of the measure in Section 6 "Description of the content" of the notification format.

#### 4.4.4 Online Tools

- 4.10. At the request of Members, the Secretariat launched the web-based application, the TBT Information Management System (TBT IMS)<sup>123</sup> in July 2009. The TBT IMS is a comprehensive source of information on TBT notifications and other transparency-related documents. The system contains information on all types of notifications under the TBT Agreement, such as notifications of technical regulations and conformity assessment procedures, notifications of agreements under Article 10.7 and notifications made under Paragraph C the Code of Good Practice of the TBT Agreement. The system also contains Members' Statements on Implementation and Administration of the TBT Agreement made under Article 15.2, the list of TBT National Enquiry Points and information on specific trade concerns discussed in the TBT Committee. The TBT IMS allows for advanced searching and reporting on notifications based on a variety of criteria, such as, inter alia, geographic grouping, product codes, notification keywords, objectives of the notified measures and dates for comments.
- 4.11. Members are of the view that an efficient and well-functioning WTO-based IT system that provides a common platform for available information will contribute significantly to an improved implementation of the TBT Agreement's transparency provisions, and in particular those relating to notification.<sup>124</sup>

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122 G/TBT/26, 12 November 2009, para. 52.

123 <https://tbtims.wto.org>

124 G/TBT/32, 29 November 2012, para. 17.

- 4.12. In 2012, in order to develop the existing TBT IMS so that it becomes a more effective tool to assist Members in the implementation of the TBT Agreement's transparency provisions, the Committee agreed<sup>125</sup>:
- a. to request the rapid development of a TBT on-line Notification Submission System (TBT NSS)<sup>126</sup> to foster more expedient processing and circulation of notifications by the Secretariat;
  - b. to note that the TBT NSS and TBT IMS should be developed in a flexible manner, to accommodate the particularities of the TBT Agreement. There should, for example, be scope for: the use of a standardized PDF template for uploading notification forms; the development of criteria (e.g. common product categories encompassing different HS codes) to facilitate the indication of the products covered by notification; the development of "standardized" alert systems (dates, products of interest); and the development of systems that allow for improved links with Members' own websites and databases (e.g. web services); and
  - c. to discuss further enhancement of the TBT IMS.

## 4.5 Enquiry Points

### 4.5.1 Establishment of Enquiry Points

- 4.13. Under the TBT Agreement, two provisions mandate Members to create enquiry points. Article 10.1 concerns enquiries regarding, *inter alia*, technical regulations, conformity assessment procedures and standards issued by central or local government bodies, non-governmental bodies which have the legal power to enforce a technical regulation, or regional standardization bodies of which such bodies are members or participants. Article 10.3 relates, *inter alia*, to enquiries on standards and conformity assessment procedures issued by non-governmental bodies and regional bodies of which they are members or participants.

## Recommendations

- a. In 1999, the Committee agreed that e-mail addresses of enquiry points should be provided, where available, in order to be included in document G/TBT/ENQ/- series.<sup>127</sup>
- b. In 2009, in order to improve implementation of provisions related to the work of Enquiry Points, the Committee agreed<sup>128</sup>:

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<sup>125</sup> G/TBT/32, 29 November 2012, para. 18.

<sup>126</sup> The TBT NSS was launched in October 2013, and is available at: <https://nss.wto.org/tbtmembers>. Members may request access to the system through the WTO Secretariat, by sending an email to: [tbtcss@wto.org](mailto:tbtcss@wto.org).

<sup>127</sup> G/TBT/M/15, 3 May 1999, paras. 41 and 45 and Annex 1.

<sup>128</sup> G/TBT/26, 12 November 2009, para. 54.

- i. to stress the importance of operational capacity of Enquiry Points, especially with respect to the provision of answers to enquiries and the promotion of a dialogue; and
- ii. to recommend that developing country Members identify challenges which they face with respect to the establishment and operations of their enquiry points and indicate the nature of the technical assistance needed to overcome these difficulties.

## Documents

- a. A list of national enquiry points is contained in the document G/TBT/ENQ/ - series.<sup>129</sup>

## 4.5.2 Functioning of Enquiry Points

### 4.5.2.1 Handling and Processing of Requests

## Recommendations

- a. In 1995, with the purpose of improving the handling of requests from other Members received under Article 10.1 and 10.3, the Committee agreed<sup>130</sup>:
  - i. an enquiry point should, without further request, acknowledge the receipt of the enquiry.
- b. In 1995, with respect to problems of supplying and obtaining requested documentation on notified technical regulations and procedures for assessment of conformity, the Committee agreed<sup>131</sup>:
  - 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;

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<sup>129</sup> This information can be downloaded from the TBT IMS: <http://tbtims.wto.org/web/pages/settings/country/Selection.aspx>. In addition, a predefined report "Enquiry Point List" is available through the TBT IMS: <http://tbtims.wto.org/web/pages/report/PreDefined.aspx>.

<sup>130</sup> G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 16.

<sup>131</sup> G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 16; G/TBT/M/15, 3 May 1999, para. 45 and Annex 1.

- iii. E-mail requests for documentation should include name, organization, address, telephone and fax numbers, and e-mail address in the request; and
  - iv. electronic delivery of documentation is encouraged and requests should indicate whether an electronic version or hard copy is desired.
- c. In 2012, noting that enquiry points in some contexts faced challenges in responding to comments and requests, the Committee agreed<sup>132</sup>:
- i. to recommend that Members share experiences with regard to challenges faced by enquiry points in responding to comments and requests, with a view to improving their functioning; and
  - ii. to discuss the functioning of enquiry points, including with respect to building support among interested stakeholders in the private sector for the services of the enquiry points.

#### 4.5.2.2 Enquiries which the Enquiry Points Should be Prepared to Answer

##### Recommendation

- a. In 1995, with a view to encouraging a uniform application of Articles 10.1 and 10.3 of the Agreement, the Committee agreed<sup>133</sup>:
- i. an enquiry should be considered "reasonable" when it is limited to a specific product, or group of products, but not when it goes beyond that and refers to an entire business branch or field of regulations, or procedures for assessment of conformity;
  - ii. when an enquiry refers to a composite product, it is desirable that the parts or components, for which information is sought, are defined to the extent possible. When a request is made concerning the use of a product it is desirable that the use is related to a specific field; and
  - iii. the Enquiry Point(s) of a Member should be prepared to answer enquiries regarding the membership and participation of that Member, or of relevant bodies within its territory, in international and regional standardizing bodies and conformity assessment systems as well as in bilateral arrangements, with respect to a specific product or group of products. They should likewise be prepared to provide reasonable information on the provisions of such systems and arrangement.

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<sup>132</sup> G/TBT/32, 29 November 2012, para. 16.

<sup>133</sup> G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 14.

### 4.5.3 Booklets on Enquiry Points

#### Recommendation

- a. In 1995, in order to improve publicity concerning the role of enquiry points in answering queries from Members as provided in Articles 10.1 and 10.3 of the Agreement, the Committee agreed<sup>134</sup>:
  - i. the issuing of brochures on enquiry points would be of value; and
  - ii. all booklets issued by Members should contain the elements and, as far as possible, follow the layout set out in Annex 6 (on page 133 of this document).

### 4.6 Special Meetings on Procedures for Information Exchange

#### Decision

- a. In 1995, in order to give Members the opportunity to discuss the activities and problems relating to information exchange and to review periodically how well notification procedures work, the Committee agreed that<sup>135</sup>:
  - i. Regular meetings of persons responsible for information exchange, including persons responsible for enquiry points and notifications, will be held on a biennial basis. Representatives of interested observers will be invited to participate in such meetings. The meetings will deal only with technical issues, leaving any policy matters for consideration by the Committee itself.

#### Events

- a. A Special Joint Meeting on Procedures for Information Exchange of the Committees on Technical Barriers to Trade and Sanitary and Phytosanitary Measures was held on 6-7 November 1995.<sup>136</sup>
- b. A Workshop and the Second Special Meeting on Procedures for Information Exchange was held on 14 September 1998.<sup>137</sup>

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134 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 14.

135 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, page 14; G/TBT/9, 13 November 2000, para. 13 and Annex 3.

136 The Chairman's Report is contained in document G/TBT/W/16, dated 22 November 1995.

137 G/TBT/9, 13 November 2000, Annex 1.

- c. The Third Special Meeting on Procedures for Information Exchange was held on 28 June 2001.<sup>138</sup>
- d. The Fourth Special Meeting on Procedures for Information Exchanges was held on 23 November 2004.<sup>139</sup>
- e. The Fifth Special Meeting on Procedures for Information Exchange was held on 78 November 2007.<sup>140</sup>
- f. The Sixth Special Meeting on Procedures for Information Exchange was held on 22 June 2010.<sup>141</sup>
- g. The Seventh Special Meeting on Procedures for Information Exchange was held on 18 June 2013.<sup>142</sup>

## 5 Technical Assistance

5.1 Provisions on technical assistance are contained in Article 11 of the TBT Agreement. Technical assistance has been considered an area of priority work for the Committee since its establishment; it figures on the agenda of the Committee on a permanent basis. Members have regularly, on a voluntary basis, exchanged experiences and information on technical assistance in order to enhance the implementation of Article 11 of the TBT Agreement.

### 5.1 General

#### Decisions

- a. In 1995, in considering the ways in which the provisions of Article 11 could be given operational significance, the Committee agreed<sup>143</sup>:
  - i. technical assistance would remain as an item of the agenda of the Committee on a permanent basis and would be included on the agenda of a regular meeting of the Committee when so requested by a Member in accordance with the agreed procedures.

<sup>138</sup> The Chairman's Report is contained in Annex 1 of G/TBT/M/24, dated 14 August 2001.

<sup>139</sup> A Summary Report of the meeting is contained in Annex 2 of G/TBT/M/34, dated 5 January 2005.

<sup>140</sup> A Summary Report as well as the Chairman's Report is contained in Annex 1 and 2, respectively, of G/TBT/M/43, dated 21 January 2008.

<sup>141</sup> A Summary Report as well as the Chairman's Report is contained in Annex 1 and 2, respectively, of G/TBT/M/51, dated 1 October 2010.

<sup>142</sup> A Summary Report is contained in the Annex of G/TBT/M/60.

<sup>143</sup> G/TBT/W/14, 29 September 1995, page 3; G/TBT/M/3, 5 January 1996, paras. 14-15.

- b. In 2005, with a view to increasing transparency in the identification and prioritization of technical assistance needs, the Committee agreed<sup>144</sup>:
- i. to adopt, for use on a trial basis for two years, a Format for the Voluntary Notification of Specific Technical Assistance Needs or Responses. The Format is contained in Annex 7 (on page 135 of this document).

## Recommendations

- a. In 2000, in considering technical assistance, the Committee agreed to develop a demand driven technical cooperation programme related to the Agreement, taking into account existing and proposed technical assistance activities, as well as seeking ways to achieve more effective cooperation and coordination among donors to better target the needs identified by developing country Members. The Committee agreed that the programme would need to evolve on the basis of the following elements<sup>145</sup>:
- i. design of a survey with the assistance of relevant international, regional and bilateral organisations to assist developing countries in needs identification;
  - ii. identification and prioritization by developing and least developed country Members of their specific needs in the TBT field;
  - iii. consideration of existing technical assistance activities by multilateral, regional and bilateral organizations with a view to the effective and efficient development of technical assistance programmes;
  - iv. enhancement of co-operation between donors; and
  - v. reassessment of needs in light of agreed priorities, identification of technical assistance partners and financial considerations.

The Committee also agreed that the progress made in implementing the programme should be assessed by the Committee in the context of the Third Triennial Review and the Committee should also reflect its work on the programme in its Annual Report to the General Council.<sup>146</sup>

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144 G/TBT/16, 8 November 2005; G/TBT/M/37, 22 December 2005, para. 82; G/TBT/19, 14 November 2006, para. 71.

145 G/TBT/9, 13 November 2000, paras. 45 and 46.

146 G/TBT/9, 13 November 2000, para. 46.

- b. In 2003, in light of the work programme<sup>147</sup> on TBT-related technical assistance and in order to assist Members in implementing and operationalizing Article 11, the Committee agreed as follows.<sup>148</sup>
- i. noting the importance of transparency in the provision of technical assistance and the need for coordination at the national, regional and international levels. Recognizing that improvements are needed to facilitate the meeting of demand and supply of technical assistance, and with a view to building on the information received, the Committee agrees:
- to consider the creation of an information coordination mechanism including through the possible development of voluntary notification procedures for donors, and recipient Members to communicate information on current and future activities. To this end, and considering proposals made by Members, the Chair is requested to hold consultations with interested Members to:
    1. examine what extent an Internet facility could serve this purpose;
    2. examine what an appropriate management approach might be; and
    3. report to the Committee by mid-2004;
  - that the survey questionnaire could be a dynamic tool to maintain information on developing country Members' needs and encourages Members, on a voluntary basis, to update responses to the survey questionnaire; and
  - to invite Members to communicate to the Committee pertinent information regarding technical assistance activities of relevant regional and international bodies.
- ii. with regard to technical assistance provided by the Secretariat, the Committee agreed:
- to explore how the results of the Committee's discussions (e.g., on needs identified, lessons learned, gaps in technical assistance activities) could be reflected in the WTO's Technical Assistance and Training Plan; and
  - to request the Secretariat, as part of the Committee's standing agenda item on technical assistance, to regularly deliver information on its recently concluded programmes and future plans on TBT-related technical assistance, and reflect this in the Committee's annual reviews. This should include information on modality, content, participation and any feedback from recipient Members.

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147 With respect to the "work programme", it is noted that in 2001, Ministers confirmed the approach to technical assistance being developed by the Committee on Technical Barriers to Trade, reflecting the results of the Triennial Review work in this area, and mandated this work to continue (WT/MIN(01)/17, 20 November 2001, para. 5.1).

148 G/TBT/13, 11 November 2003, paras. 54-56.

- iii. with regard to the appropriate role of the Committee in relation to technical assistance, the Committee:
- agreed on the need for Members and the Secretariat to raise the profile of TBT issues at the international and national levels;
  - reaffirmed the need for its future work to contribute to enhanced cooperation and coordination between those involved in technical assistance;
  - reaffirmed the need to continue facilitating the exchange of national experiences;
  - should provide a forum for feedback and assessment of the outcomes and effectiveness of technical assistance; and
  - considered, based on Members' experience of technical assistance received and provided, developing further elements of good practice in technical assistance in the TBT field.
- c. In 2006, with a view to facilitating the implementation of the TBT Agreement's provisions on technical assistance, the Committee agreed<sup>149</sup>:
- i. to encourage Members to make use of the Format for the Voluntary Notification of Specific Technical Assistance Needs or Responses contained in G/TBT/16 (contained in Annex 7 on page 135 of this document);
  - ii. to review, in 2007, the use of the Format for the Voluntary Notification of Specific Technical Assistance Needs or Responses, including the possible further development of the demand-driven technical cooperation mechanism.
- d. In 2009, the Committee agreed<sup>150</sup>:
- i. to encourage Members to make use of the Format for the Voluntary Notification of Specific Technical Assistance Needs or Responses as a complement to other bilateral and/or regional means of requesting technical assistance.
- e. In 2012, the Committee reiterated the importance of enhancing the effectiveness of the delivery and receipt of TBT technical assistance and capacity, and agreed<sup>151</sup>:
- i. to request that Members review the effectiveness of TBT technical assistance and capacity building activities among Members, with a view to exploring ways and means to focus such activities on relevant capacity building needs and priorities thereby enhancing their usefulness, particularly in beneficiary developing Members.

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149 G/TBT/19, 14 November 2006, sub-paras. 78(a)-(b).

150 G/TBT/26, 12 November 2009, para. 63.

151 G/TBT/32, 29 November 2012, para. 21.

## Documents

- a. Notifications of Specific Technical Assistance Needs or Responses are contained in the following document series: G/TBT/TA-[number]/[Member].

## 5.2 Information Exchange

### Decision

- a. In 1995, in considering the ways in which the provisions of Article 11 could be given operational significance, the Committee agreed to exchange information on technical assistance as follows<sup>152</sup>:
  - i. specific needs for technical assistance, as well as information that may be provided by potential donor Members on their technical assistance programmes, may be communicated to Members through the Secretariat. Members will take into account the provisions of Article 11.8 of the TBT Agreement when considering requests for technical assistance from the least-developed country Members. In agreement with requesting Members or potential donor Members, as the case may be, the information concerning specific needs and technical assistance programmes would be circulated by the Secretariat to all Members on an informal basis. Whilst information would be multilateralized in this manner, technical assistance would continue to be provided on a bilateral basis. The Secretariat would reflect the information circulated under this procedure in the documentation prepared for annual reviews of the implementation and operation of the Agreement if the Members concerned so agree.

### Recommendations

- a. In 1997, in order to enhance the implementation of Article 11, the Committee agreed<sup>153</sup>:
  - i. to invite Members, on a voluntary basis, to exchange information regarding the implementation of Article 11, including to communicate to the Committee annually any information concerning their national and regional technical assistance programmes; and
  - ii. to invite Members that require technical assistance to inform the Committee of any difficulties they encounter in the implementation and operation of the Agreement, and the kind of technical assistance they may need. Other Members are invited to contribute to the technical assistance process by sharing their experience in the implementation and operation of the Agreement.

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152 G/TBT/W/14, 29 September 1995, page 3; G/TBT/M/3, 5 January 1996, paras. 14-15.

153 G/TBT/5, 19 November 1997, para. 31.

- b. In 2000, the Committee invited Members on a voluntary basis to further communicate information on technical assistance programmes they proposed, provided or received.<sup>154</sup>
- c. In 2006, with a view to facilitating the implementation of the TBT Agreement's provisions on technical assistance, the Committee agreed:
  - i. to exchange experiences in respect of the delivery and receipt of technical assistance with a view to identifying good practices in this regard<sup>155</sup>, and
  - ii. to invite observer international standardizing bodies and other international standardizing bodies to provide information on steps taken to ensure effective participation of developing country Members in their work.<sup>156</sup>
- d. In 2009, building on the previous recommendation that Members exchange experiences in respect of the delivery and receipt of technical assistance with a view to identifying good practices in this regard, the Committee agreed<sup>157</sup>:
  - i. to encourage Members and relevant bodies involved in the provision of technical assistance to exchange information to identify such practices.
- e. In 2009, consistent with the Committee's agreement on a demand-driven approach to technical assistance, the Committee encouraged Members to review their capacity building needs and priorities in the following areas in particular<sup>158</sup>:
  - i. GRP: The Committee considers that experience gained in the area of GRP for the effective implementation of the TBT Agreement should be shared. Technical assistance in the area of GRP should be considered an integral element of capacity building activities to strengthen implementation of the TBT Agreement and draw on the expertise of both Members and other relevant organizations;
  - ii. Conformity assessment: Members are encouraged to participate in technical cooperation activities in the area of conformity assessment consistent with sector-specific national priorities. Capacity building activities – at the national or regional level as appropriate – aimed at improving technical infrastructure (e.g. metrology, testing, certification, and accreditation) as well as capacity to enforce (including with respect to market surveillance and product liability) should be consistent with national priorities and take into account the existing level of technical infrastructure development;
  - iii. Standards development: Members should undertake efforts to build understanding of the strategic importance of standardization activities through increased outreach in

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154 G/TBT/9, 13 November 2000, para. 45.

155 G/TBT/19, 14 November 2006, para. 78(c).

156 G/TBT/19, 14 November 2006, para. 77.

157 G/TBT/26, 12 November 2009, para. 57.

158 G/TBT/26, 12 November 2009, para. 59.

sectors of priority interest. It may be beneficial to explore incentives to increase support and promotion of such activities, particularly in developing country Members; and

- iv. Transparency: Members stress the importance of reinforcing the operation of enquiry points.

## Events

- a. On 19-20 July 2000, the Committee held a Workshop on Technical Assistance and Differential Treatment in the context of the TBT Agreement.<sup>159</sup>
- b. On 18 March 2003, with the objectives of further developing the technical cooperation programme and providing an opportunity for further information exchange on technical assistance, on both the demand and supply sides, a special workshop on TBT-related technical assistance was held.<sup>160</sup>
- c. On 29 October 2013, the Committee held a Thematic session on Special and Differential Treatment and Technical Assistance.

# 6 Special and Differential Treatment

6.1 Article 12 of the TBT Agreement addresses Special and Differential Treatment of Developing Country Members. Members have, on various occasions, exchanged information and views on the operation and implementation of this Article, including in the context of other items on the TBT Committee's agenda.

## 6.1 General

### Recommendations

- a. In 1997, with a view to operationalize and implement the provisions of Article 12, the Committee agreed to the following<sup>161</sup>:
  - i. the Committee will consider including the following matters in its future programme of work, which could be taken up during the next three years and reviewed during the Second Triennial Review of the Agreement:
    - the use of measures to engender capacity building in developing country Members, including the consideration of measures relevant to transfer of technology to these

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<sup>159</sup> G/TBT/9, 13 November 2000, Annex 1.

<sup>160</sup> A Summary Report by the Chairperson is contained in Annex A of G/TBT/M/29, 19 May 2003.

<sup>161</sup> G/TBT/5, 19 November 1997, para. 33.

countries, for the purpose of preparation and adoption of technical regulations, standards or conformity assessment procedures, taking into account their special development, financial and trade needs;

- the preparation of a study by the Secretariat to establish the state of knowledge concerning the technical barriers to the market access of developing country suppliers, especially small and medium sized enterprises (SMEs), as a result of standards, technical regulations and conformity assessment procedures;
- inviting representatives of relevant international standardizing bodies and international systems for conformity assessment procedures to make written and oral presentations to the Committee with a view to assessing whether and how account is taken of the special problems of developing countries in such bodies and systems. The Secretariat will circulate a compendium of the written contributions by the relevant organisations; and
- the encouragement of the organization of international meetings relevant to the provisions of the Agreement in the territories of developing country Members to give greater representative participation by such Members to the deliberations and recommendations of such international meetings, and the electronic dissemination of information.

## 6.2 Information Exchange

### Recommendations

- a. In 1997, with a view to operationalize and implement the provisions of Article 12, the Committee agreed<sup>162</sup>:
  - i. to invite Members, on a voluntary basis, to exchange information on the implementation of Article 12, including information related to Articles 12.2, 12.3, 12.5, 12.6, 12.7 and 12.9; and
  - ii. to invite Members, on a voluntary basis, to exchange information on any specific problems they face in relation to the operation of Article 12.
- b. In 2006, in order to have a more focused exchange of information, the Committee agreed<sup>163</sup>:
  - i. to encourage Members to inform the Committee of special and differential treatment provided to developing country Members, including information on how they have taken into account special and differential treatment provisions in the preparation of technical regulations and conformity assessment procedures; and

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<sup>162</sup> G/TBT/5, 19 November 1997, para. 33.

<sup>163</sup> G/TBT/19, 14 November 2006, para. 82.

- ii. to encourage developing country Members to undertake their own assessments of the utility and benefits of such special and differential treatment.
- c. In 2012, with a view to furthering discussion in the area of special and differential treatment, the Committee agreed<sup>164</sup>:
  - i. to exchange views and explore ideas on the implementation of Article 12 of the TBT Agreement with respect to the preparation of technical regulations, standards and conformity assessment procedures, and the enhancement of the effective operation of Article 12, in coordination with the WTO Committee on Trade and Development.

## Events

- a. On 19-20 July 2000, the Committee held a Workshop on Technical Assistance and Differential Treatment in the context of the TBT Agreement.<sup>165</sup>
- b. On 29 October 2013, the Committee held a Thematic Session on Special and Differential Treatment and Technical Assistance.<sup>166</sup>

# 7 Operation of the Committee

## 7.1 General

### 7.1.1 Consideration of Specific Trade Concerns

7.1. Pursuant to Article 13 of the TBT Agreement, the TBT Committee was established with the purpose of: "affording Members the opportunity of consulting on any matters relating to the operation of this Agreement or the furtherance of its objectives, and shall carry out such responsibilities as assigned to it under this Agreement or by the Members". Since its first meeting, Members have used the TBT Committee as a forum to discuss issues related to specific measures (technical regulations, standards or conformity assessment procedures) maintained by other Members. These are referred to as "specific trade concerns" (STCs) and relate normally to proposed draft measures notified to the TBT Committee or to the implementation of existing measures.

## Decisions

- a. In 2009, noting the accelerated growth in the number of specific trade concerns raised at Committee meetings, as well as in the number of WTO Members raising concerns

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164 G/TBT/32, 29 November 2012, para. 22.

165 G/TBT/9, 13 November 2000, Annex 1.

166 The programme is contained in JOB/TBT/50/Rev.2. The Chairman's summary report is contained in G/TBT/GEN/156.

or substantively supporting those of other Members, the Committee emphasized the importance of making the discussion more efficient in order to secure a more prompt response to concerns raised. In order to streamline the consideration of STCs, the TBT Committee agreed to apply the following procedures, to the extent practicable<sup>167</sup>:

- i. Members wishing to propose the inclusion of a specific trade concern in the annotated draft agenda should directly inform both the Secretariat and the Member(s) involved of their intention to do so no less than fourteen calendar days prior to the convening of the TBT Committee meeting;
  - ii. the annotated draft agenda issued by the Secretariat in advance of each Committee meeting will include all specific trade concerns communicated by Members to the Secretariat; it will indicate which concerns are being raised for the first time and which have been previously raised. It should be circulated as early as possible but no less than ten calendar days before the meeting;
  - iii. requests to include specific trade concerns on the agenda should be accompanied by a reference to the symbol of the notification. In cases where the measure has not been notified, the request should provide a brief description of the measure, including relevant references; and
  - iv. there may be instances where a Member wishes to bring a concern to the Committee's attention after the deadline has passed. In this case, additional specific trade concerns can still be included in the agenda of the TBT Committee meeting under "Specific Trade Concerns", provided that Members wishing to raise the relevant concerns have previously informed the Member(s) involved of their intention to do so. However such concerns will only be addressed after all specific trade concerns contained in the annotated draft agenda have been discussed.
- b. In 2012, in order to respond to the substantive body of recommendations and decisions before the Committee and in order to press for greater progress on these issues, the Committee agreed to hold thematic discussions on specific topics in conjunction with upcoming meetings<sup>168</sup>:

## Recommendation

- a. In 2012, in order to ensure the efficiency of the discussion of STCs, the Committee agreed<sup>169</sup>:
- i. to further reflect on ways to streamline the work of the Committee in the consideration of STCs.

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167 G/TBT/26, 12 November 2009, paras. 67-68.

168 G/TBT/32, 29 November 2012, para. 26.

169 G/TBT/32, 29 November 2012, para. 24.

## Documents

- a. In 2009, the Committee encouraged the Secretariat to continue to compile information about the status of specific trade concerns and to make this available to Members regularly with a view to providing a useful database for Members to track concerns of importance to them.<sup>170</sup> The G/TBT/GEN/74/-series of documents contain an overview of specific trade concerns raised in the TBT Committee.<sup>171</sup> It provides statistical information on the concerns raised since the first meeting of the TBT Committee in 1995 and lists the specific trade concerns sorted by date, frequency and the number of Members that have expressed concern.

# Annexes to Part 1

## 1 Indicative List of Approaches to Facilitate Acceptance of the Results of Conformity Assessment

### 1. Mutual Recognition Agreements (MRAs) for Conformity Assessment to Specific Regulations

Governments may enter into agreements which will result in the acceptance of the results of conformity assessment originating in the territory of either party.

### 2. Cooperative (Voluntary) Arrangements between Domestic and Foreign Conformity Assessment Bodies

This includes arrangements among accreditation bodies as well as arrangements between individual laboratories, between certification bodies, and between inspection bodies. Such arrangements have been common for many years and have been developed for the commercial advantage of the participants. Some of these agreements have been recognized by governments from time to time as the basis for acceptance of test results and certification activities in the mandatory sector.

### 3. The Use of Accreditation to Qualify Conformity Assessment Bodies

Accreditation bodies have been working towards harmonization of international practices for accreditation of conformity assessment bodies. This has resulted in the development of global

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<sup>170</sup> G/TBT/26, 12 November 2009, para. 69.

<sup>171</sup> The information is now available on the TBT IMS (<http://tbtims.wto.org>).

networks to facilitate recognition and acceptance of results of conformity assessment. These networks take the form of multilateral recognition agreements or arrangements (MLAs) whereby each participant undertakes to recognize the accreditation granted or certificates issued by any other party to the agreement or arrangement as being equivalent to that granted by itself and to promote that equivalence throughout its territory of operation. There are international standards and guides for such arrangements.

## 4. Government Designation

Governments may designate specific conformity assessment bodies, including bodies located outside their territories, to undertake conformity assessment.

## 5. Unilateral Recognition of Results of Foreign Conformity Assessment

A government may unilaterally recognize the results of foreign conformity assessment procedures. In this it may be guided by Article 6.1 of the TBT Agreement. The conformity assessment body may be accredited abroad under recognized regional or international accreditation systems. In the absence of accreditation, the conformity assessment body may prove its competence by other means. On the basis of equivalent competence of the conformity assessment body, foreign test reports and certificates are recognized unilaterally.

## 6. Manufacturer's/Supplier's Declarations (SDoC)

Manufacturer's/supplier's declaration of conformity is a procedure by which a supplier (as defined in ISO/IEC Guide 22:1996, a supplier is the party that supplies the product, process or service and may be a manufacturer, distributor, importer, assembler, service organization, etc.) provides written assurance of conformity to the specified requirements. The declaration identifies the party responsible for making the declaration of conformity and for the conformity of the product/process/service itself. Under this approach, the manufacturer/supplier, rather than the regulatory authority, takes on the responsibility for ensuring that products entering a market comply with the mandatory technical regulations. Assessment may be undertaken either by the suppliers own internal test facility or by an independent test facility.

This system is often predicated on:

- a. adequate market surveillance;
- b. substantial penalties for false or misleading declarations;
- c. an appropriate regulatory environment; and
- d. an appropriate product liability regime.

## 2 Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement

### Decision<sup>1</sup>

The following principles and procedures should be observed, when international standards, guides and recommendations (as mentioned under Articles 2, 5 and Annex 3 of the TBT Agreement for the preparation of mandatory technical regulations, conformity assessment procedures and voluntary standards) are elaborated, to ensure transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and to address the concerns of developing countries.

The same principles should also be observed when technical work or a part of the international standard development is delegated under agreements or contracts by international standardizing bodies to other relevant organizations, including regional bodies.

### 1. Transparency

All essential information regarding current work programmes, as well as on proposals for standards, guides and recommendations under consideration and on the final results should be made easily accessible to at least all interested parties in the territories of at least all WTO Members. Procedures should be established so that adequate time and opportunities are provided for written comments. The information on these procedures should be effectively disseminated.

In providing the essential information, the transparency procedures should, at a minimum, include:

- a. the publication of a notice at an early appropriate stage, in such a manner as to enable interested parties to become acquainted with it, that the international standardizing body proposes to develop a particular standard;
- b. the notification or other communication through established mechanisms to members of the international standardizing body, providing a brief description of the scope of the draft standard, including its objective and rationale. Such communications shall take place

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<sup>1</sup> G/TBT/9, 13 November 2000, para. 20 and Annex 4.

at an early appropriate stage, when amendments can still be introduced and comments taken into account;

- c. upon request, the prompt provision to members of the international standardizing body of the text of the draft standard;
- d. the provision of an adequate period of time for interested parties in the territory of at least all members of the international standardizing body to make comments in writing and take these written comments into account in the further consideration of the standard;
- e. the prompt publication of a standard upon adoption; and
- f. to publish periodically a work programme containing information on the standards currently being prepared and adopted.

It is recognized that the publication and communication of notices, notifications, draft standards, comments, adopted standards or work programmes electronically, via the Internet, where feasible, can provide a useful means of ensuring the timely provision of information. At the same time, it is also recognized that the requisite technical means may not be available in some cases, particularly with regard to developing countries. Accordingly, it is important that procedures are in place to enable hard copies of such documents to be made available upon request.

## 2. Openness

Membership of an international standardizing body should be open on a non-discriminatory basis to relevant bodies of at least all WTO Members. This would include openness without discrimination with respect to the participation at the policy development level and at every stage of standards development, such as the:

- a. proposal and acceptance of new work items;
- b. technical discussion on proposals;
- c. submission of comments on drafts in order that they can be taken into account;
- d. reviewing existing standards;
- e. voting and adoption of standards; and
- f. dissemination of the adopted standards.

Any interested member of the international standardizing body, including especially developing country Members, with an interest in a specific standardization activity should be provided with meaningful opportunities to participate at all stages of standard

development. It is noted that with respect to standardizing bodies within the territory of a WTO Member that have accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards by Standardizing Bodies (Annex 3 of the TBT Agreement) participation in a particular international standardization activity takes place, wherever possible, through one delegation representing all standardizing bodies in the territory that have adopted, or expected to adopt, standards for the subject-matter to which the international standardization activity relates. This is illustrative of the importance of participation in the international standardizing process accommodating all relevant interests.

### 3. Impartiality and Consensus

All relevant bodies of WTO Members should be provided with meaningful opportunities to contribute to the elaboration of an international standard so that the standard development process will not give privilege to, or favour the interests of, a particular supplier/s, country/ies or region/s. Consensus procedures should be established that seek to take into account the views of all parties concerned and to reconcile any conflicting arguments.

Impartiality should be accorded throughout all the standards development process with respect to, among other things:

- a. access to participation in work;
- b. submission of comments on drafts;
- c. consideration of views expressed and comments made;
- d. decision-making through consensus;
- e. obtaining of information and documents;
- f. dissemination of the international standard;
- g. fees charged for documents;
- h. right to transpose the international standard into a regional or national standard; and
- i. revision of the international standard.

### 4. Effectiveness and Relevance

In order to serve the interests of the WTO membership in facilitating international trade and preventing unnecessary trade barriers, international standards need to be relevant and to effectively respond to regulatory and market needs, as well as scientific and technological

developments in various countries. They should not distort the global market, have adverse effects on fair competition, or stifle innovation and technological development. In addition, they should not give preference to the characteristics or requirements of specific countries or regions when different needs or interests exist in other countries or regions. Whenever possible, international standards should be performance based rather than based on design or descriptive characteristics.

Accordingly, it is important that international standardizing bodies:

- a. take account of relevant regulatory or market needs, as feasible and appropriate, as well as scientific and technological developments in the elaboration of standards;
- b. put in place procedures aimed at identifying and reviewing standards that have become obsolete, inappropriate or ineffective for various reasons; and
- c. put in place procedures aimed at improving communication with the World Trade Organization.

## 5. Coherence

In order to avoid the development of conflicting international standards, it is important that international standardizing bodies avoid duplication of, or overlap with, the work of other international standardizing bodies. In this respect, cooperation and coordination with other relevant international bodies is essential.

## 6. Development Dimension

Constraints on developing countries, in particular, to effectively participate in standards development, should be taken into consideration in the standards development process. Tangible ways of facilitating developing countries' participation in international standards development should be sought. The impartiality and openness of any international standardization process requires that developing countries are not excluded de facto from the process. With respect to improving participation by developing countries, it may be appropriate to use technical assistance, in line with Article 11 of the TBT Agreement. Provisions for capacity building and technical assistance within international standardizing bodies are important in this context.

### 3 Format and Guidelines for Notification Procedures for Draft Technical Regulations and Conformity Assessment Procedures

Item	Description
<b>1. Notifying Member</b>	Government, including the competent authorities of the European Union, which has acceded to the Agreement and which is making the notification; if applicable, name of local government involved Articles 3.2 and 7.2).
<b>2. Agency responsible</b>	Body elaborating a proposal for or promulgating a technical regulation or procedures for assessment of conformity. The authority or agency designated to handle comments regarding the specific notification shall be indicated if different from above.
<b>3. Notified under<sup>2</sup></b>	<p>Relevant provision of the Agreement:</p> <p>Article 2.9.2: proposed technical regulation by central government body;</p> <p>Article 2.10.1: technical regulation adopted for urgent problems by central government body;</p> <p>Article 3.2: proposed technical regulation or technical regulation adopted for urgent problems by local government (on the level directly below that of the central government);</p> <p>Article 5.6.2: proposed procedures for assessment of conformity by central government body;</p> <p>Article 5.7.1: conformity assessment procedure adopted for urgent problems by central government body;</p> <p>Article 7.2: proposed procedure for assessment of conformity or conformity assessment procedure adopted for urgent problems by local government (on the level directly below that of the central government)</p>

<sup>2</sup> Notifiers are requested to check the relevant box or indicate relevant information under “other”.

Item	Description
	<p>Other Articles under which notification can arise in cases of urgency set out in those Articles are:</p> <p>Article 8.1: adopted procedures for assessment of conformity by non-governmental body,</p> <p>Article 9.2: adopted procedures for assessment of conformity by international or regional organization.</p>
<b>4. Products covered</b>	<p>HS or CCCN (chapter or heading and number) where applicable. National tariff heading if different from HS or CCCN. ICS numbers may be provided in addition, where applicable. A clear description is important for an understanding of the notification by delegations and translators. Abbreviations should be avoided.</p>
<b>5. Title and number of pages</b>	<p>Title of the proposed or adopted technical regulation or procedure for the assessment of conformity that is notified. Number of pages in the notified document. The language(s) in which notified documents are available. If a translation of the document is planned, this should be indicated. If a translated summary is available, this too should be indicated.</p>
<b>6. Description of content</b>	<p>An abstract of the proposed or adopted technical regulation or procedures for assessment of conformity clearly indicating its content. A clear comprehensible description stating the main features of the proposed or adopted technical regulation or procedures for assessment of conformity is important for an understanding of the notification by delegations and translators. Abbreviations should be avoided.</p>
<b>7. Objective and rationale, including the nature of urgent problems where applicable</b>	<p>For instance: health, safety, national security, ... etc.</p>

Item	Description
<b>8. Relevant documents</b>	(1) Publication where notice appears, including date and reference number; (2) Proposal and basic document (with specific reference number or other identification) to which proposal refers; (3) Publication in which proposal will appear when adopted; (4) Whenever practicable, give reference to relevant international standard. If it is necessary to charge for documents supplied, this fact should be indicated.
<b>9. Proposed dates of adoption and entry into force</b>	The date when the technical regulation or procedures for assessment of conformity is expected to be adopted, and the date from which the requirements in the technical regulation or procedures for assessment of conformity are proposed or decided to enter into force, taking into consideration the provisions of Article 2.12.
<b>10. Final date for comments</b>	The date by which Members may submit comments in accordance with 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. A specific date should be indicated. The Committee has recommended a normal time limit for comments on notifications of 60 days. Any Member which is able to provide a time limit beyond 60 days is encouraged to do so. Members are encouraged to advise of any extension to the final date for comments.
<b>11. Texts available from<sup>3</sup></b>	If available from national enquiry point, put a cross in the box provided. If available from another body, give its address, e-mail, telex and telefax number. If available in a web-site, provide the web-site address. Such indications should not in any way discharge the relevant enquiry point of its responsibilities under the provisions of Article 10 of the Agreement.

<sup>3</sup> Notifiers are requested to check the relevant box or indicate relevant information under "other".



**Committee on Technical Barriers to Trade**

**NOTIFICATION<sup>4</sup>**

The following notification is being circulated in accordance with Article 10.6.

1.	Notifying Member: If applicable, name of local government involved (Articles 3.2 and 7.2):
2.	Agency responsible: Name and address (including telephone and fax numbers, e-mail and web-site addresses, if available) of agency or authority designated to handle comments regarding the notification shall be indicated if different from above:
3.	Notified under Article 2.9.2 [ ], 2.10.1 [ ], 5.6.2 [ ], 5.7.1 [ ], other:
4.	Products covered (HS or CCCN where applicable, otherwise national tariff heading. ICS numbers may be provided in addition, where applicable):
5.	Title, number of pages and language(s) of the notified document:
6.	Description of content:
7.	Objective and rationale, including the nature of urgent problems where applicable:
8.	Relevant documents:
9.	Proposed date of adoption: Proposed date of entry into force:
10.	Final date for comments:
11.	Texts available from: National enquiry point [ ] or address, telephone and fax numbers, e-mail and web-site addresses, if available of the other body:

<sup>4</sup> Where boxes appear under Items 3 and 11 of the format, notifiers are requested to check the relevant box or indicate relevant information under "other".

# 4 Notification Format under Article 10.7



G/TBT/10.7/N/XX

Date

(00-0000)

Page:

Committee on Technical Barriers to Trade

Original: English

## AGREEMENT REACHED BY A MEMBER WITH ANOTHER COUNTRY OR COUNTRIES ON ISSUES RELATED TO TECHNICAL REGULATIONS, STANDARDS OR CONFORMITY ASSESSMENT PROCEDURES

### NOTIFICATION

Under Article 10.7 of the Agreement "Whenever a Member has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade, at least one Member party to the agreement shall notify other Members through the Secretariat of the products to be covered by the agreement and include a brief description of the agreement." The following notification under Article 10.7 has been received.

<b>1. Notifying Member :</b>
<b>2. Title of the bilateral or plurilateral Agreement:</b>
<b>3. Parties to the Agreement:</b>
<b>4. Date of entry into force of Agreement:</b>
<b>5. Products covered (HS or CCCN where applicable, otherwise national tariff heading):</b>
<b>6. Subject matter covered by the Agreement (technical regulations, standards or conformity assessment procedures):</b>
<b>7. Description of measures of Agreement:</b>
<b>8. Further information available from:</b>

# 5 Unofficial Translations (Notification Format)



WORLD TRADE ORGANIZATION  
ORGANISATION MONDIALE DU COMMERCE  
ORGANIZACIÓN MUNDIAL DEL COMERCIO

G/TBT/N/COUNTRY/#/Suppl.#

Date

(00-0000)

Page:

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## Committee on Technical Barriers to Trade

### AVAILABILITY OF TRANSLATIONS

#### NOTE BY THE SECRETARIAT

##### *Supplement*

The Secretariat has been informed that an unofficial translation into [language] of the document referenced in this notification is available for consultation at:

http://www. ....  
or can be requested from: .....

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## Comité des obstacles techniques au commerce

### TRADUCTIONS DISPONIBLES

#### NOTE DU SECRÉTARIAT

##### *Supplément*

Le Secrétariat a été informé qu'une traduction non officielle en [langue] du document auquel renvoie la présente notification pouvait être consultée à l'adresse suivante:

http://www. ....  
ou peut être obtenue à l'adresse suivante: .....

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## Comité de Obstáculos Técnicos al Comercio

### ACCESO A TRADUCCIONES

#### NOTA DE LA SECRETARÍA

##### *Suplemento*

Se ha comunicado a la Secretaría que en la dirección:

http://www. ....  
se puede consultar una traducción no oficial al [idioma] del documento a que se hace referencia en la presente notificación.  
o puede solicitarse a: .....



**AVAILABILITY OF TRANSLATIONS**

NOTE BY THE SECRETARIAT<sup>5</sup>

*Supplement*

The delegation of \_\_\_\_\_ has provided the Secretariat with an unofficial translation into \_\_\_\_\_ of the document referenced in this notification. The document is available for consultation at:

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**Comité des obstacles techniques au commerce**

**TRADUCTIONS DISPONIBLES**

NOTE DU SECRETARIAT<sup>5</sup>

*Supplément*

La délégation de \_\_\_\_\_ a communiqué au Secrétariat une traduction non officielle en langue \_\_\_\_\_ du document auquel renvoie la présente notification. Cette traduction peut être consultée à:

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**Comité de Obstáculos Técnicos al Comercio**

**ACCESO A TRADUCCIONES**

NOTA DE LA SECRETARÍA<sup>5</sup>

*Suplemento*

La delegación de \_\_\_\_\_ ha remitido a la Secretaría una traducción no oficial al del documento a que se hace referencia en la presente notificación. La traducción se puede consultar en:

\_\_\_\_\_

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<sup>5</sup> This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members or to their rights or obligations under the WTO./Le présent document a été établi par le Secrétariat sous sa propre responsabilité et est sans préjudice des positions des Membres ni de leurs droits ou obligations dans le cadre de l'OMC./El presente documento ha sido elaborado bajo la responsabilidad de la Secretaría y se entiende sin perjuicio de las posiciones de los Miembros ni de sus derechos y obligaciones en el marco de la OMC.

## 6 Booklets on Enquiry Points

6.1. All booklets issued by Members should contain the elements and, as far as possible, follow the layout set out below:

### 6.1 Objective, Name, Address, Telephone Number, Fax Number, and E-mail and Internet Addresses, if available, of WTO TBT Enquiry Point(s)

- a. Refer to the provisions of Articles 10.1, 10.2 and 10.3 of the Agreement on Technical Barriers to Trade.
- b. Date established, and name of responsible officer.

### 6.2 Who Can Use the Enquiry Point(s)

- a. Refer to the provisions of Articles 2.9.3 and 2.10.2; 3.1 (in relation to 2.9.3 and 2.10.2); 5.6.3 and 5.7.2; 7.1, 8.1 and 9.2 (in relation to 5.6.3 and 5.7.2); 10.1 and 10.3; paragraphs M and P of Annex 3 of the Agreement.

### 6.3 Information available from Enquiry Point(s)

- a. Documentation
  - i. Refer to the provisions of Articles 2.9.3 and 2.10.2; 3.1 (in relation to 2.9.3 and 2.10.2); 5.6.3 and 5.7.2; 7.1, 8.1 and 9.2 (in relation to 5.6.3 and 5.7.2); 10.4, 10.8.1 and 10.8.2; paragraphs M and P of Annex 3 of the Agreement. Documentation that can be obtained from the enquiry point(s): Procedures for handling documentation on proposed or adopted domestic regulations and standards and procedures for assessment of conformity
- b. Notifications: content, format, comment period
  - i. Refer to the provisions of Articles 2.9.2, 2.10.1, 3.2, 5.6.2, 5.7.1, 7.2, 8.1, 9.2 and paragraphs C and J of Annex 3 of the Agreement, and to the decisions of the Committee on Technical Barriers to Trade regarding format and comment period).
  - ii. Procedures for handling notifications issued by other Members of the Agreement, for issuing notifications from domestic sources, and for handling comments on notifications received or issued.

c. Publication:

- i. Refer to the provisions of Articles 2.9.1 and 2.11; 3.1(in relation to 2.9.1 and 2.11); 5.6.1 and 5.8; 7.1, 8.1 and 9.2 (in relation to 5.6.1 and 5.8); 10.1.5; and paragraphs J, L and O of Annex 3 of the Agreement.
- ii. Procedures for ensuring compliance with these provisions of the Agreement, including any publications by the enquiry point(s).

## **6.4 Facilities Offered (including Charges, if any).**

- a. Data bank (content and form of documents, e.g. paper, microfilm, computer, etc.).
- b. Access to data (retrieval system: manual, tape, on-line; software used).
- c. Languages used.
- d. Translation, if any.
- e. Brief description of the Agreement: objectives, date of entry into force, date joined, status in domestic law.
- f. List of Members of the Agreement.
- g. List of enquiry points of other Members.

# 7 Format for the Voluntary Notification of Specific Technical Assistance Needs or Responses



WORLD TRADE ORGANIZATION

G/TBT/TA

Date

(00-0000)

Page:

Committee on Technical Barriers to Trade

Original: English

## VOLUNTARY NOTIFICATION OF SPECIFIC TECHNICAL ASSISTANCE NEEDS OR RESPONSES

<b>1.</b>	<b>Notifying Member (including, if applicable, an indication of relevant bodies)</b> ..... .
<b>2.</b>	<b>The technical assistance activity needed or provided may be relevant to the following Article(s) of the TBT Agreement<sup>6</sup>:</b> <input type="checkbox"/> Articles 2 and 3 on technical regulations <input type="checkbox"/> Article 4 and Annex 3 on standards and the Code of Good Practice <input type="checkbox"/> Articles 5, 7 and 8 on development of conformity assessment procedures <input type="checkbox"/> Article 6 on recognition of conformity assessment <input type="checkbox"/> Article 9 on international and regional systems for conformity assessment <input type="checkbox"/> Articles 2, 5 and 10 on information exchange (e.g. notifications, enquiry point) <input type="checkbox"/> Article 11 on technical assistance to other Members <input type="checkbox"/> Article 12 on special and differential treatment of developing country Members <input type="checkbox"/> Article 13 on the TBT Committee (participation in work of TBT Committee) <input type="checkbox"/> Other: .....
<b>3.</b>	<b>Brief description of objective and rationale of the technical assistance activity, including, if possible, an estimation of the resources needed or on offer (e.g., financial or man-hours)<sup>7</sup>:</b> .....

6 For needs: if there is difficulty in establishing which Articles of the TBT Agreement are relevant, it is recommended that the "Needs assessment" and/or "Awareness raising" box be crossed under Point 4. Under Point 2 it may then be sufficient to cross the "Other" box and indicate "General".

7 This description should explain how this activity is intended to enhance implementation of specific provision(s) of the TBT Agreement listed in Point 2.

**4. Nature and timing of technical assistance activity needed or on offer (key words):**

*Type of assistance*

- [ ... ] Awareness raising
- [ ... ] Needs assessment
- [ ... ] Skills training
- [ ... ] Infrastructure development
- [ ... ] Other:

.....  
*Policy area covered*

- [ ... ] Technical regulations
- [ ... ] Conformity assessment procedures
- [ ... ] Standardization
- [ ... ] Information exchange
- [ ... ] Other:

.....  
*Mode of delivery*

- [ ... ] Workshop, seminar or other event
- [ ... ] Project-based activity
- [ ... ] Other:

.....  
*Dates*

- [ ... ] Envisaged start date for activity: .....
- [ ... ] Estimated duration: .....

**5. Further information available from:**

- [ ... ] National enquiry point.
- [ ... ] Other contact point<sup>8</sup>:.....
- [ ... ] Other reference<sup>9</sup>:.....

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<sup>8</sup> Name of a contact person with telephone and e-mail address.

<sup>9</sup> For example an Internet address, or the address of a body other than that of the Enquiry Point. For response notifications, this space could be used to make reference to previous relevant submissions or statements made in the TBT Committee (or other body).

# 8 Format for Notifications Related to the Code of Good Practice for the Preparation, Adoption and Application of Standards Contained in Annex 3 of the WTO TBT Agreement

## 8.1 Notification of Acceptance of the WTO TBT Code of Good Practice (Paragraph C) to the WTO Secretariat



WORLD TRADE  
ORGANIZATION

G/TBT/CS/N/

Date

(00-0000)

Page:

**Committee on Technical Barriers to Trade**

Under paragraph C of the Code of Good Practice for the Preparation, Adoption and Application of Standards contained in Annex 3 to the WTO Agreement on Technical Barriers to Trade, "Standardizing bodies that have accepted or withdrawn from this Code shall notify this fact to the ISO/IEC Information Centre in Geneva." The following notification conveyed to the Secretariat from the ISO/IEC Information Centre is being circulated for the information of Members.

### NOTIFICATION UNDER PARAGRAPH C OF THE WTO TBT CODE OF GOOD PRACTICE

#### NOTIFICATION OF ACCEPTANCE

<b>Country/Customs Territory/Regional Arrangement:</b> _____	
<b>Name of standardizing body:</b>	
<b>Address of standardizing body:</b>	
<b>Telephone:</b>	<b>Fax:</b>
<b>E-mail:</b>	<b>Internet:</b>
<b>Type of standardizing body:</b>	
[ ] central governmental [ ] local governmental [ ] non-governmental	
<b>Scope of current and expected standardization activities:</b>	
<b>Date:</b>	

# 8.2 Notification of Acceptance and of Existence of Work Programme under the WTO TBT Code of Good Practice (Paragraph C and J) to the ISO/IEC Information Centre

## Form A

ISO/IEC Information Centre  
International Organization for Standardization  
Case postale 56  
CH-1211 GENEVA 20  
Switzerland

**NOTIFICATION  
UNDER PARAGRAPH C OF THE WTO TBT\* CODE OF GOOD PRACTICE**  
(Notification of acceptance of the WTO TBT Code of Good Practice)

**Country (or regional arrangement):** .....

**Name of standardizing body:**  
.....  
.....  
.....

**Address of standardizing body:**  
.....  
.....  
.....

**Telephone:** ..... **Telefax:** ..... **Telex:** .....

**E-mail:** .....

**Type of standardizing body:**  
.....  
.....  
.....

**Scope of current and expected standardization activities:**  
.....  
.....  
.....

The above indicated standardizing body hereby notifies its acceptance of the *Code of Good Practice for the Preparation, Adoption and Application of Standards* presented in Annex 3 to the WTO Agreement on Technical Barriers to Trade.

.....  
(Name)(Signature)(Date)

.....  
(Title)

\*WTO - World Trade Organization, TBT - Agreement on Technical Barriers to Trade

**Form B**

ISO/IEC Information Centre  
 International Organization for Standardization  
 Case postale 56  
 CH-1211 GENEVA 20  
 Switzerland

**NOTIFICATION**  
**UNDER PARAGRAPH C OF THE WTO TBT\* CODE OF GOOD PRACTICE**  
 (Notification of withdrawal from the WTO TBT Code of Good Practice)

**Country (or regional arrangement):** .....

**Name of standardizing body:**

.....  
 .....  
 .....

The above indicated standardizing body hereby notifies its withdrawal from the *Code of Good Practice for the Preparation, Adoption and Application of Standards* presented in Annex 3 to the *WTO Agreement on Technical Barriers to Trade*.

.....  
 (Name)(Signature)(Date)

.....  
 (Title)

\*WTO - World Trade Organization  
 TBT - Agreement on Technical Barriers to Trade

**Form C**

ISO/IEC Information Centre  
International Organization for Standardization  
Case postale 56  
CH-1211 GENEVA 20  
Switzerland

**NOTIFICATION**  
**UNDER PARAGRAPH J OF THE WTO TBT\* CODE OF GOOD PRACTICE**  
(Notification of existence of work programme)

**Country (or regional arrangement):** .....

**Name of standardizing body:**  
.....  
.....  
.....

**Address of standardizing body:**  
.....  
.....  
.....

**Telephone:** ..... **Telefax:** ..... **Telex:** .....

**E-mail:** .....

<p>1. <i>Name and issue of the publication in which the work programme is published:</i> .....</p> <p>.....</p> <p>.....</p> <p>2. <i>The period to which the work programme applies:</i> .....</p> <p>3. <i>The price of the work programme (if any):</i> .....</p> <p>4. <i>How and where the work programme can be obtained:</i> .....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
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.....  
(Name)(Signature)(Date)

.....  
(Title)

\*WTO - World Trade Organization  
TBT - Agreement on Technical Barriers to Trade

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# Part 2: Rules of Procedure for the Meetings of the WTO Committee on Technical Barriers to Trade and Guidelines for Observer Status for Governments and International Intergovernmental Organizations<sup>1</sup>

## Decision

- a. In 1995, the Committee adopted the following Rules of Procedure, including Guidelines for Observer Status for Governments (Annex 1, below) and International Intergovernmental Organizations in the WTO (Annex 2, below)<sup>2</sup>:

## CHAPTER I - Meetings

### Rule 1

The Committee on Technical Barriers to Trade (hereinafter the Committee) shall meet as necessary, but not less than once a year.

### Rule 2

Meetings of the Committee shall be convened by the Director-General by a notice issued, preferably three weeks, and in any event not less than ten calendar days, prior to the date set for the meeting. In the event that the tenth day falls on a weekend or a holiday, the notice shall be issued no later than the preceding WTO working day. Meetings may be convened with shorter notice for matters of significant importance or urgency at the request of a Member concurred in by the majority of the Members.

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1 G/TBT/W/4.

2 G/TBT/M/1, 28 June 1995, para. 13.

## **CHAPTER II - Agenda**

### **Rule 3**

A list of the items proposed for the agenda of the meeting shall be communicated to Members together with the convening notice for the meeting. It shall be open to any Member to suggest items for inclusion in the proposed agenda up to, and not including, the day on which the notice of the meeting is to be issued.

### **Rule 4**

Requests for items to be placed on the agenda of a forthcoming meeting shall be communicated to the Secretariat in writing, together with the accompanying documentation to be issued in connection with that item. Documentation for consideration at a meeting shall be circulated not later than the day on which the notice of the meeting is to be issued.

### **Rule 5**

(Will not apply)

### **Rule 6**

The first item of business at each meeting shall be the consideration and approval of the agenda. Representatives may suggest amendments to the proposed agenda, or additions to the agenda under "Other Business". Representatives shall provide the Chairperson or the Secretariat, and the other Members directly concerned, whenever possible, advance notice of items intended to be raised under "Other Business".

### **Rule 7**

The Committee may amend the agenda or give priority to certain items at any time in the course of the meeting.

## **CHAPTER III - Representation**

### **Rule 8**

Each Member shall be represented by an accredited representative.

## Rule 9

Each representative may be accompanied by such alternates and advisers as the representative may require.

## CHAPTER IV - Observers

### Rule 10

Representatives of States or separate customs territories may attend the meetings as observers on the invitation of the Committee in accordance with the guidelines in Annex 1 to these Rules.

### Rule 11

Representatives of international intergovernmental organizations may attend the meetings as observers on the invitation of the Committee in accordance with the guidelines in Annex 2 to these Rules.

## CHAPTER V - Officers

### Rule 12

The Committee shall elect a Chairperson<sup>3</sup> and may elect a Vice-Chairperson from among the representatives of Members. The election shall take place at the first meeting of the year and shall take effect at the end of the meeting. The Chairperson and Vice-Chairperson shall hold office until the end of the first meeting of the following year.

### Rule 13

If the Chairperson is absent from any meeting or part thereof, the Vice-Chairperson shall perform the functions of the Chairperson. If no Vice-Chairperson was elected or if the Vice-Chairperson is not present, the Committee shall elect an interim Chairperson for that meeting or that part of the meeting.

### Rule 14

If the Chairperson can no longer perform the functions of the office, the Committee shall designate the Vice-Chairperson referred to in Rule 12 or, if no Vice-Chairperson was elected

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<sup>3</sup> The Committee shall apply the relevant guidelines contained in the "Guidelines for Appointment of Officers to WTO Bodies" (WT/L/31 dated 7 February 1995).

it shall elect an interim Chairperson to perform those functions pending the election of a new Chairperson.

## **Rule 15**

The Chairperson shall normally participate in the proceedings as such and not as the representative of a Member. The Chairperson may, however, at any time request permission to act in either capacity.

## **CHAPTER VI - Conduct of Business**

### **Rule 16**

The Chairperson may consider postponing a meeting in the event that he or she feels that doing so may result in a more representative level of participation by WTO Members.

### **Rule 17**

In addition to exercising the powers conferred elsewhere by these rules, the Chairperson shall declare the opening and closing of each meeting, shall direct the discussion, accord the right to speak, submit questions for decision, announce decisions, rule on points of order and, subject to these rules, have complete control of the proceedings. The Chairperson may also call a speaker to order if the remarks of the speaker are not relevant.

### **Rule 18**

During the discussion of any matter, a representative may raise a point of order. In this case the Chairperson shall immediately state the ruling. If the ruling is challenged, the Chairperson shall immediately submit it for decision and it shall stand unless overruled.

### **Rule 19**

During the discussion of any matter, a representative may move the adjournment of the debate. Any such motion shall have priority. In addition to the proponent of the motion, one representative may be allowed to speak in favour of, and two representatives against, the motion, after which the motion shall be submitted for decision immediately.

## Rule 20

A representative may at any time move the closure of the debate. In addition to the proponent of the motion, not more than one representative may be granted permission to speak in favour of the motion and not more than two representatives may be granted permission to speak against the motion, after which the motion shall be submitted for decision immediately.

## Rule 21

During the course of the debate, the Chairperson may announce the list of speakers and, with the consent of the meeting, declare the list closed. The Chairperson may, however, accord the right of reply to any representative if a speech delivered after the list has been declared closed makes this desirable.

## Rule 22

The Chairperson, with the consent of the meeting, may limit the time allowed to each speaker.

## Rule 23

Representatives shall endeavour, to the extent that a situation permits, to keep their oral statements brief. Representatives wishing to develop their position on a particular matter in fuller detail may circulate a written statement for distribution to Members, the summary of which, at the representative's request, may be reflected in the records of the Committee.

## Rule 24

In order to expedite the conduct of business, the Chairperson may invite representatives that wish to express their support for a given proposal to show their hands, in order to be duly recorded in the records of the Committee as supporting statements; thus, only representatives with dissenting views or wishing to make explicit points or proposals would actually be invited to make a statement. This procedure shall only be applied in order to avoid undue repetition of points already made, and will not preclude any representative who so wishes from taking the floor.

## Rule 25

Representatives should avoid unduly long debates under "Other Business". Discussions on substantive issues under "Other Business" shall be avoided, and the Committee shall limit itself to taking note of the announcement by the sponsoring delegation, as well as any reactions to such an announcement by other delegations directly concerned.

## Rule 26

While the Committee is not expected to take action in respect of an item introduced as "Other Business", nothing shall prevent the Committee, if it so decides, to take action in respect of any such item at a particular meeting, or in respect of any item for which documentation was not circulated at least ten calendar days in advance.

## Rule 27

Representatives should make every effort to avoid the repetition of a full debate at each meeting on any issue that has already been fully debated in the past and on which there appears to have been no change in Members' positions already on record.

## Rule 28

Proposals and amendments to proposals shall normally be introduced in writing and circulated to all representatives not later than twelve hours before the commencement of the meeting at which they are to be discussed.

## Rule 29

If two or more proposals are moved relating to the same question, the meeting shall first decide on the most farreaching proposal and then on the next most farreaching proposal and so on.

## Rule 30

When an amendment is moved to a proposal, the amendment shall be submitted for decision first and, if it is adopted, the amended proposal shall then be submitted for decision.

## Rule 31

When two or more amendments are moved to a proposal, the meeting shall decide first on the amendment farthest removed in substance from the original proposal, then, if necessary, on the amendment next farthest removed, and so on until all the amendments have been submitted for decision.

## Rule 32

Parts of a proposal may be decided on separately if a representative requests that the proposal be divided.

## **CHAPTER VII - Decision-Making**

### **Rule 33**

Where a decision cannot be arrived at by consensus, the matter at issue shall be referred to the Council for Trade in Goods.

### **Rule 34**

(Will not apply)

## **CHAPTER VIII - Languages**

### **Rule 35**

English, French and Spanish shall be the working languages.

## **CHAPTER IX - Records**

### **Rule 36**

Records of the discussions of the Committee shall be in the form of minutes.<sup>4</sup>

## **CHAPTER X - Publicity of Meetings**

### **Rule 37**

The meetings of the Committee shall ordinarily be held in private. It may be decided that a particular meeting or meetings should be held in public.

### **Rule 38**

After a private meeting has been held, the Chairperson may issue a communiqué to the Press.

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<sup>4</sup> The customary practice under the GATT 1947, whereby representatives may, upon their request, verify those portions of the draft records containing their statements, prior to the issuance of such records, shall be continued.

## CHAPTER XI - Revision

### Rule 39

The Committee may decide at any time to revise these rules or any part of them.

## Annex 1

### Guidelines for Observer Status for Governments in the WTO

The purpose of observer status in the General Council and its subsidiary bodies is to allow a government to better acquaint itself with the WTO and its activities, and to prepare and initiate negotiations for accession to the WTO Agreement.

Observer governments shall have access to the main WTO document series. They may also request technical assistance from the Secretariat in relation to the operation of the WTO system in general, as well as to negotiations on accession to the WTO Agreement.

Representatives of governments accorded observer status may be invited to speak at meetings of the bodies to which they are observers normally after Members of that body have spoken. The right to speak does not include the right to make proposals, unless a government is specifically invited to do so, nor to participate in decision-making.

## Annex 2

### Guidelines for Observer Status for International Intergovernmental Organizations in the WTO<sup>1</sup>

The purpose of observer status for international intergovernmental organizations (hereinafter referred to as "organizations") in the WTO is to enable these organizations to follow discussions therein on matters of direct interest to them.

Requests for observer status shall accordingly be considered from organizations which have competence and a direct interest in trade policy matters, or which, pursuant to paragraph V:1 of the WTO Agreement, have responsibilities related to those of the WTO.

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<sup>1</sup> These guidelines shall apply also to other organizations referred to by name in the WTO Agreement.

Requests for observer status shall be made in writing to the WTO body in which such status is sought, and shall indicate the nature of the work of the organization and the reasons for its interest in being accorded such status.

Requests for observer status shall be considered on a casebycase basis by each WTO body to which such a request is addressed, taking into account such factors as the nature of work of the organization concerned, the nature of its membership, the number of WTO Members in the organization, reciprocity with respect to access to proceedings, documents and other aspects of observership, and whether the organization has been associated in the past with the work of the CONTRACTING PARTIES to GATT 1947.

In addition to organizations that request, and are granted, observer status, other organizations may attend meetings of the Ministerial Conference, the General Council or subsidiary bodies on the specific invitation of the Ministerial Conference, the General Council or the subsidiary body concerned, as the case may be. Invitations may also be extended, as appropriate and on a case-by-case basis, to specific organizations to follow particular issues within a body in an observer capacity.

Organizations with which the WTO has entered into a formal arrangement for cooperation and consultation shall be accorded observer status in such bodies as may be determined by that arrangement.

Organizations accorded observer status in a particular WTO body shall not automatically be accorded such status in other WTO bodies.

Representatives of organizations accorded observer status may be invited to speak at meetings of the bodies to which they are observers normally after Members of that body have spoken. The right to speak does not include the right to circulate papers or to make proposals, unless an organization is specifically invited to do so, nor to participate in decision-making.

Observer organizations shall receive copies of the main WTO documents series and of other documents series relating to the work of the subsidiary bodies which they attend as observers. They may receive such additional documents as may be specified by the terms of any formal arrangements for cooperation between them and the WTO.

If for any oneyear period after the date of the grant of observer status, there has been no attendance by the observer organization, such status shall cease.



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# Observers in the TBT Committee

As of 29 November 2012, the following intergovernmental organizations had been granted observer status in the TBT Committee:

- African, Caribbean and the Pacific Group (ACP)
- Bureau International des Poids et Mesures (BIPM)<sup>1</sup>
- European Free Trade Association (EFTA)<sup>1</sup>
- Food and Agriculture Organization (FAO)
- International Electrotechnical Commission (IEC)
- International Monetary Fund (IMF)
- International Office of Epizootics (OIE)
- International Organization of Legal Metrology (OIML)<sup>1</sup>
- International Organization for Standardization (ISO)
- International Telecommunication Union (ITU)<sup>1</sup>
- International Trade Centre (ITC)
- Latin American Integration Association (ALADI)<sup>1</sup>
- Organization for Economic Co-operation and Development (OECD)
- Southern African Development Community (SADC)<sup>1</sup>
- UN Economic Commission for Europe (UNECE)
- United Nations Conference on Trade and Development (UNCTAD)
- United Nations Industrial Development Organization (UNIDO)<sup>1</sup>
- WHO/FAO Codex Alimentarius Commission
- World Bank
- World Health Organization (WHO)

<sup>1</sup> *Ad hoc* observer status.

# Example of a Notification

The following is an example of a notification by a WTO member circulated in accordance with Article 10.6 of the TBT Agreement.



WORLD TRADE  
ORGANIZATION

G/TBT/N/KEN/365

21 February 2013

(13-0931)

Page: 1/1

Committee on Technical Barriers to Trade

Original: English

## NOTIFICATION

The following notification is being circulated in accordance with Article 10.6

<b>1.</b>	<b>Notifying Member:</b> KENYA <b>If applicable, name of local government involved (Article 3.2 and 7.2):</b>
<b>2.</b>	<b>Agency responsible:</b> Kenya Bureau of Standards (KEBS) <b>Name and address (including telephone and fax numbers, email and website addresses, if available) of agency or authority designated to handle comments regarding the notification shall be indicated if different from above:</b>
<b>3.</b>	<b>Notified under Article 2.9.2 [X], 2.10.1 [ ], 5.6.2 [ ], 5.7.1 [ ], other:</b>
<b>4.</b>	<b>Products covered (HS or CCCN where applicable, otherwise national tariff heading. ICS numbers may be provided in addition, where applicable):</b> Animal feed (65.120).
<b>5.</b>	<b>Title, number of pages and language(s) of the notified document:</b> KS 2451 Compounded Cat fish Feeds: Part 1.complete feed (9 pages, in English).
<b>6.</b>	<b>Description of content:</b> This Standard prescribes requirements for compounded catfish feeds used as a complete feed and serving as the only source of nutrients for catfish. The standard also prescribes the labelling and packaging requirements.
<b>7.</b>	<b>Objective and rationale, including the nature of urgent problems where applicable:</b> Quality requirements.
<b>8.</b>	<b>Relevant documents:</b> Publication in which the notification is published when adopted: Kenya Gazette
<b>9.</b>	<b>Proposed date of adoption:</b> May 2013 <b>Proposed date of entry into force:</b> Upon declaration as mandatory by the Minister for Industrialisation
<b>10.</b>	<b>Final date for comments:</b> 60 days after circulation by WTO Secretariat
<b>11.</b>	<b>Text available from: National enquiry point [X], or address, telephone and fax numbers, e-mail and web-site addresses, if available of the other body:</b> Kenya Bureau of Standards WTO/TBT National Enquiry Point P.O. Box: 54974-00200, Nairobi, Kenya Telephone: + (254) 020 605490, 605506/ 6948258 Fax: + (254) 020 609660/ 609665 E-mail: <a href="mailto:info@kebs.org">info@kebs.org</a> ; Website: <a href="http://www.kebs.org">http://www.kebs.org</a>

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