Conformity Assessment in the WTO TBT Agreement

Workshop on NTBs Affecting Trade in ICT Products
WTO Committee of Participants on the Expansion of Trade in IT Products

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**TBT Agreement**

*Pursuit of trade liberalization...*

- avoiding unnecessary/discriminatory barriers to int’l trade

*Right of Members’ to regulate...*

- allowing Members to pursue legitimate objectives at levels they consider appropriate

use of international standards

...*as a basis for regulation*...*Harmonization*
Scope of the TBT Agreement

TBT Measures...

Technical Regulations

Standards

Conformity Assessment Procedures

...related to all products (industrial and agricultural) (Art. 1.3)
Standards

Technical

Regulations

Voluntary

Mandatory

Market

Conformity Assessment Procedures

Measures
**Conformity Assessment Procedures (CAP)**

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

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.” (TBT, Annex 1.3)
**TBT Agreement principles for CAP**

(mandatory, mandated by government bodies)

- **Non-discrimination**
  - Access for (foreign) suppliers under conditions no less favourable than accorded to suppliers of like products in a comparable situation

- **Avoid unnecessary barriers to trade**
  - CAP shall not be more strict than necessary to give importing Member adequate confidence of conformity
**TBT Agreement’s “balance” with respect to CAP**

**Pursuit of trade liberalization by...**

- avoiding that the choice of CAP creates unnecessary/discriminatory barriers to int’l trade

**Right of Members to ...**

- impose procedures that give confidence that risks associated with products, processes and systems are addressed

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use of international standards

*...as a basis for regulation*

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*... Regulatory Convergence*
**TBT Agreement’s “balance” with respect to CAP**

- The choice and design of CAP should be *calibrated* to the relevant requirements laid down in technical regulations or standards, such that the *nature of risks* embodied in the products, processes or systems in question are effectively addressed.

- Example of “calibration”:
  - products that pose only *minor risks* which could be effectively mitigated through *first-party testing* and *supplier's declaration of conformity schemes*.
  - products which pose *sufficiently high risks* of a specific nature that may necessitate *inspection* and *certification of production facilities and processes*. 

Arrangements to facilitate CAP
(encouraged in TBT Agreement)

• International or regional systems for conformity assessment
  – “Members shall, wherever practicable, formulate and adopt international systems for conformity assessment”
  – Systems such as ILAC/IAF, IECEE CB are increasingly prominent in TBT Committee discussions

• Recognition of foreign conformity assessment results
  – “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”
TBT Agreement: use of international standards

Members **shall** use...

“**relevant**” international standards

... as a **basis** for

- technical regulations (Art. 2.4)
- conformity assessment procedures (Art. 5.4)

Presumption of not creating an unnecessary barrier to trade when requirements are in accordance with “**relevant**” international standards (Art. 2.5)

when **ineffective** or **inappropriate** for policy objectives (e.g. fundamental climatic or geographical factors, or technological problems)

**except!**
1. Measure drafting
2. Notice publication
3. Notification to other Members (Art. 2.9.2, 5.6.2)
4. Provision of copies (Art. 2.9.3, 5.6.3)
5. Discussion of the comments (Art. 2.9.4, 5.6.4)
6. End of comment period
7. Adoption of the measure
8. (Prompt) Publication of the measure (Art. 2.11, 5.8)
9. Entry into force of the measure

Exceptions for urgent reasons... (Art. 2.10, 5.7)
Work of the TBT Committee
Functions of TBT Committee

• Multilateral review of Specific Trade Concerns
  – Around 20% STCs raised in 2013-2014 concerned measures related to ICT sector
  – Certain standards and systems related to CAP are raised, including in the ICT area:
    • Clarification or encouragement to use relevant IEC, ISO and other standards
    • Non-acceptance of test results generated under systems such as IECEE CB scheme, or through ILAC/IAF
  
• Furthering implementation of the TBT Agreement (Triennial Reviews)… decisions and recommendations
  – Decision on principles for the development of int’l Standards
  – Discussions/exchange of information on CAP
  – GRP
TBT Notifications: statistics
(~20,000 notif. since 1995)
STCs raised in the TBT Committee: statistics
(~460 STCs since 1995)
TBT Committee Decision on *Principles for the Development of International Standards, Guides and Recommendations*  
(November 2000, G/TBT/9)

“Six Principles”

- Transparency
- Openness
- Impartiality and consensus
- Relevance and effectiveness
- Coherence
- Development dimension
TBT Committee CAP discussions

Committee discussions on CAP covering 3 thematic areas (6th Triennial Review):

• What factors influence the choice and design of CAP?

• The importance of using international guides and recommendations for CAP.

• How to best facilitate the acceptance of conformity assessment results?

For more details see:
Overview of the TBT Committee's Work on Conformity Assessment Procedures – Note by the Secretariat - JOB/TBT/69, Oct. 2013
**Good Regulatory Practice (TBT Committee voluntary guidelines)**

Establish the potential need for government intervention, and define problem

- Publish a notice of regulatory activity
- Confirm the need for intervention
- Identify alternatives
- Assess alternatives (e.g. RIA)
- Notify regulations to WTO
- Consultation
- Provide opportunity for comments
- Take comments into account
- Publish final regulation and assessment (e.g. RIA)
- Transition period prior to entry into force
- Provide relevant guidance for compliance

Assess (e.g. through RIA)

Transparency and Consultation

Provide special and differential treatment and technical assistance

Conduct regulatory monitoring and reviews

(still not finalized)
Thank you!

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