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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 WTO Agreements: The Marrakesh Agreement Establishing the World Trade Organization and its Annexes*. It includes about 60 agreements, annexes, decisions and understandings, but not the commitments individual members made on tariffs and services.

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## **The volumes in this series**

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 (TBT Agreement) entered into force with the establishment of the World Trade Organization (WTO) on 1 January 1995. It aims to ensure that product requirements in regulations and standards (on safety, quality, health, etc.), as well as procedures for assessing product compliance with such requirements (testing, inspection, accreditation, etc.), are not unjustifiably discriminatory and/or do not create unnecessary obstacles to trade.

This handbook discusses the text of the TBT Agreement as it appears in the Final Act of the Uruguay Round of Multilateral Trade Negotiations (Final Act), signed in Marrakesh on 15 April 1994. The various WTO multilateral agreements (including the TBT Agreement and the amended General Agreement on Tariffs and Trade (GATT 1994)), as well as a few plurilateral agreements, are all contained in the Final Act. The Final Act, in turn, is part of the treaty that established the WTO: the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement). The WTO superseded the GATT 1947 as the umbrella organization in charge of multilateral trade.

The WTO Secretariat has prepared this handbook to assist public understanding of the TBT Agreement. The handbook 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 TBT Agreement and discusses how these have been addressed in recent key disputes brought under this Agreement. Next, it 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 negotiations at the WTO. The handbook also contains the full text of the TBT Agreement, a compilation of decisions and recommendations by the TBT Committee over the years and a list of observers in the TBT Committee.



A handwritten signature in black ink that reads "Alan Wm. Wolff".

“Standards and regulations are among the most important types of trade-related measures used around the world. Crafting them carefully, in line with the disciplines of the WTO Agreement on Technical Barriers to Trade, can help governments achieve important policy objectives, including safeguarding human health and safety, as well as protecting the environment – and this without unnecessarily disrupting trade. This Handbook is a must-read for anyone interested in these issues, including policy-makers, practitioners, the private sector, consumers and academia.”

Alan Wm. Wolff

Deputy Director-General of the WTO



# 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 GATT (for goods), the General Agreement on Trade in Services (GATS) (for services) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (for intellectual property).

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>	<b>GATT</b>	<b>GATS</b>	<b>TRIPS</b>
<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:

<b>For goods (under GATT)</b>
Agriculture
Sanitary and phytosanitary regulations for food safety, animal and plant health protection (SPS)
Textiles and clothing
<b>Technical regulations and standards for products (TBT)</b>
Trade-related investment measures
Anti-dumping measures
Customs valuations methods
Pre-shipment inspection
Rules of origin
Import licensing
Subsidies and countervailing measures
Safeguards
Trade facilitation
<b>For services (the GATS annexes)</b>
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 members allowing specific foreign products or service providers access to their markets. For the 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 the 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 members say they are not applying the most-favoured nation (MFN) 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 beginning of the Doha Round in 2001 focused largely on market access commitments: financial services, basic telecommunications, maritime transportation (under the GATS), and information technology equipment (under the 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 Figure 1 is also important, that is, 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 WTO Agreement 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 GATT, the other agreements governing trade in goods and a protocol that ties in individual members' specific commitments on goods.
  - 1B, the GATS, texts on specific services sectors and individual members' specific commitments and exemptions.
  - 1C, the TRIPS Agreement.

Collectively, the agreements included in Annex 1 are referred to as the multilateral trade agreements since they comprise the substantive trade policy obligations that 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 that 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

## Overview

### Background and purpose

The TBT Agreement entered into force on 1 January 1995. It is one of the various WTO agreements annexed to the WTO Agreement. As indicated above, the TBT Agreement belongs to the family of multilateral WTO agreements dealing with trade in goods (the GATT and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) are examples of other “goods” agreements).

The TBT Agreement was not, however, the first one to discipline technical barriers (standards and regulations) to international trade in goods. In fact, the TBT Agreement was built upon the provisions of a previous GATT agreement that had been in operation for 15 years by the time the WTO was created in 1995: the 1979 Tokyo Round Agreement on Technical Barriers to Trade (commonly known as the Standards Code). As a plurilateral agreement, however, the Standards Code was made up from only a subset (46) of all GATT “contracting parties” (128).<sup>1</sup>

The TBT Agreement is a WTO Multilateral Trade Agreement. This means that, unlike the 1979 Standards Code, the TBT Agreement is binding on all, not just some, WTO members.<sup>2</sup> All WTO Multilateral Trade Agreements – including the TBT Agreement – are part of a coherent “single undertaking” administered under the umbrella of the WTO. This is why the TBT Agreement and all other multilateral

agreements share the same fundamental principles, including non-discrimination, promoting predictability of access to markets, and technical assistance (TA) and special and differential (S&D) treatment for developing members.

However, as a specialized “goods” agreement, the TBT Agreement also includes features specific to the preparation, adoption and application of regulatory measures that affect trade in goods. For instance, the Agreement strongly encourages regulatory harmonization by requiring, when possible, the use of international standards. The Agreement also requires members to avoid adopting regulations that restrict trade beyond what is necessary to address the stated policy objective (health, environment, etc.). This obligation applies regardless of whether the regulation is or is not discriminatory. Moreover, the Agreement contains detailed provisions to clarify and increase transparency throughout the entire process of preparing, adopting and applying TBT measures (the regulatory lifecycle). These provisions – together with TBT Committee 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 on goods.

The TBT Agreement is part of a broader category of WTO agreements dealing with non-tariff measures (NTMs). The term NTMs encompasses all measures that affect (actually or potentially) trade,

other than tariffs. NTMs – which include technical regulations, standards and conformity assessment procedures (CAPs) (the three types of measures covered by the TBT Agreement) – present the international trading system with several challenges. On the one hand, governments frequently rely on NTMs to achieve public policy goals (e.g. protecting human health or the environment): the fact that trade is affected is a normal and legitimate consequence of such regulatory processes. On the other hand, NTMs can sometimes be unnecessarily trade-restrictive and/or unjustifiably discriminatory. In addition, NTMs are often technically complex, less transparent and more difficult to quantify than tariffs, and can therefore have a significant impact on market access. The main challenges to trade therefore relate not to addressing “why” governments regulate, but to “how”.

The TBT Agreement was carefully designed with these challenges in mind. Its disciplines

address the “how” by helping WTO members distinguish between, on the one hand, regulatory measures with “legitimate” motivations and proportional requirements, and, on the other hand, measures with “protectionist” and arbitrary trade effects. As such, the Agreement is an important tool to improve coherence and mutual supportiveness between open trade, on the one hand, and the domestic 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 (e.g. the protection of human and animal life and health and the protection of the environment) and respecting key disciplines in the Agreement (e.g. non-discrimination, avoidance of unnecessary barriers to trade and use of international standards as a basis of technical regulations, where possible) (see Figure 2).

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

Avoiding unnecessary/discriminatory obstacles to international trade



Preserving members' right to regulate to protect legitimate interests

## The scope of the TBT Agreement

The TBT Agreement contains various criteria relevant for defining its scope. One set of criteria concerns what subject-matter is *excluded* from the Agreement. The Agreement expressly states that it does not apply to measures:

- on services;<sup>3</sup>
- for government procurement purposes;<sup>4</sup> and
- covered by the SPS Agreement (sanitary and phytosanitary measures).<sup>5</sup>

Except for the above exclusions, the TBT Agreement in principle covers a broad category of NTMs affecting international trade. The Agreement governs domestic measures regulating products, either in terms of their “characteristics” (what they must or must not be made of, their packaging or labelling, etc.) or in terms of their “processes and productions methods” (how they are made or produced). TBT measures can pursue a wide variety of policy objectives, such as health and safety, as well as the protection of the environment.

The full scope of the TBT Agreement is sometimes not well understood. And, as we shall see further below, this can have important implications, in particular, for understanding precisely the boundaries between the TBT and SPS Agreements.

A common misunderstanding, for instance, is that the TBT Agreement only covers regulations on the labelling or packaging (or the quality and performance) of industrial products and consumer durable goods: cars, trains, computers, bicycles, household appliances, furniture and so on. While it is indeed true that the Agreement deals with

these types of measures, its scope is wider. Here are three reasons why.

First, in terms of product coverage, as expressed in Article 1.3, all products – including industrial and agricultural products – are subject to the provisions of the TBT Agreement. This means that a measure cannot automatically fall outside the TBT Agreement’s scope just because it is a regulation about certain kinds of products, for example, foods or agricultural goods (e.g. corn, sardines, oranges, coffee, poultry or livestock).

Second, the same is true in terms of the objective(s) pursued. A measure cannot be automatically excluded from the TBT Agreement’s scope just because it addresses a particular type of policy objective (at least when objectives are described in broad terms, for example, as being the protection of human life or animal health). Instead, here too, the Agreement’s scope is wide: it covers regulatory measures fulfilling a wide range of “legitimate objectives”. No objective is, *a priori*, “carved out” from the Agreement (except, as we shall see below, those that are explicitly covered by the SPS Agreement). The TBT Agreement expressly mentions some types of objectives (quality; protection of human, animal or plant life or health; protection of the environment; prevention of deceptive practices, etc.), but this is a non-exhaustive list. And the TBT Agreement describes such objectives in very broad terms (as we shall see below, this is a key distinction with the SPS Agreement, which describes the objectives or purposes of SPS measures very specifically – and these are excluded from the TBT Agreement’s coverage).

Third, another element – indeed the most important – is the identification of the “type” of measure. Here, in contrast with the other criteria above, the TBT Agreement is specific and

exhaustive. It only covers three types of strictly defined measures: technical regulations, standards and CAPs (more on this terminology below). The implication of having such precise definitions is clear: if a measure does not meet any of them, it cannot be a TBT measure. And if this is the case, then such measure will always fall outside the scope of the Agreement, regardless of its product coverage or the objective(s) it pursues.

### **Relation to the SPS Agreement**

The TBT and SPS Agreements are very close in many aspects. For starters, both are part of the family of WTO covered agreements about trade in goods (a well-known member of this family being the GATT). More than that: generally speaking, the TBT and SPS Agreements both cover regulatory (non-tariff) measures addressing issues such as human or animal health. They contain similar obligations (for example, non-discrimination, use of international standards, enhanced transparency, etc.). The Agreements, on the other hand, also differ in many other important aspects, and not only in terms of some unique obligations each contain, but also (and importantly) concerning the way they define their coverage.

Given such a unique relationship, delineating the boundaries between these two agreements may sometimes be difficult. This is a particularly important question because the TBT Agreement does not apply to SPS measures (TBT Agreement, Article 1.5), while the SPS Agreement cannot affect members' rights under the TBT Agreement concerning all non-SPS measures (SPS Agreement, Article 1.4). As the examples below illustrate, regulations with concurrent TBT and SPS elements require special attention. For example, sometimes WTO members may need to fulfil their

transparency obligations under one or both agreements (and can also raise any trade concerns under the SPS and/or the TBT Committees) depending on the specific objectives and elements of a measure.

Turning to explore the similarities and differences between the TBT and SPS Agreements, note that the key element for defining the scope of the SPS Agreement is the purpose of the measure. This is critical because the SPS Agreement concerns only those measures aiming to achieve a predefined, closed (exhaustive) list of specific objectives (or addressing a specific set of risks). The way the SPS Agreement describes these objectives (risks) is very precise. SPS measures are described with respect to the following elements: who is at risk (humans, animals or plants; the territory of a member); the type of risk (risk to life or health); and the cause of the risk (pests, disease-carrying organisms, additives, toxins, etc.).

Annex A of the SPS Agreement describes in detail these specific SPS objectives (risks) for the purpose of defining its scope (see also Figure 3). Put simply, the SPS Agreement covers only measures whose purpose is to protect:

- human or animal health from food-borne risks;
- human health from animal- or plant-carried diseases;
- animals and plants from pests or diseases; or
- the territory of a member from damage caused by pests.

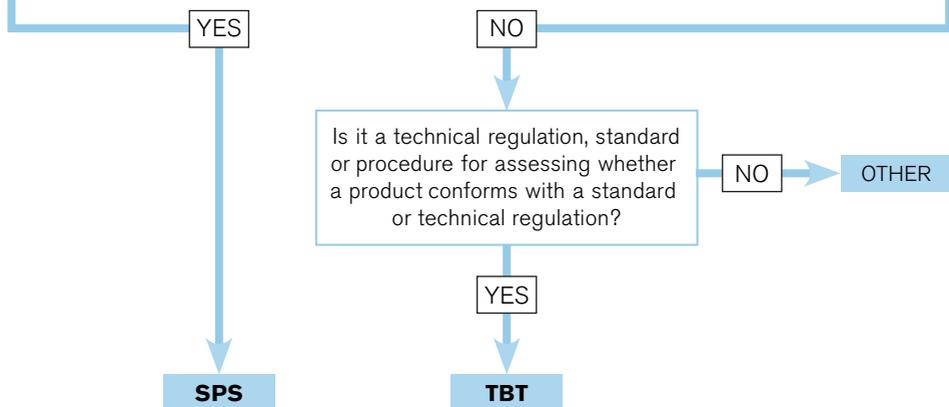
Based on the above, the following key difference between the two agreements can

### Figure 3: SPS or TBT?

Which agreement does a measure come under?

Is it food, drink or feed, and is its objective to protect one of those from these risks?

human life	animal life	plant life	a country
<ul style="list-style-type: none"> <li>additives, contaminants, toxins or disease-causing organisms in food or drink</li> <li>plant- or animal-carried disease</li> </ul>	<ul style="list-style-type: none"> <li>additives, contaminants, toxins or disease-causing organisms in feed or drink</li> <li>diseases</li> <li>disease-causing or disease-carrying organisms</li> </ul>	<ul style="list-style-type: none"> <li>pests</li> <li>diseases</li> <li>disease-causing or disease-carrying organisms</li> </ul>	<ul style="list-style-type: none"> <li>pests entering, establishing or spreading</li> </ul>



be described as follows: the TBT Agreement covers only three specifically defined types of measures, but those measures can address a wide variety of policy objectives, including not only the protection of human, animal or plant life or health but also many others (consumer information, quality, animal welfare, etc.). The SPS Agreement, in contrast, can cover any type of measure, but only if the measure addresses a predefined, closed (exhaustive) list of specific objectives (risks). That is, the type of measure is key to determining the

coverage of the TBT Agreement, while the purpose of the measure is key to determining what measures the SPS Agreement applies to.

Examining the relationship of the TBT and SPS Agreements in terms of objectives as they relate to specific products, TBT measures can cover any product and a wide variety of objectives – from car safety and energy-saving devices to the shape of food cartons. To give some examples pertaining to human health

or safety, TBT measures could include CAPs to approve the marketing of pharmaceutical products, the labelling of cigarettes or even requirements for seatbelts and child seats in cars. While some measures addressing human diseases may fall under the TBT Agreement (for example, requiring warning labels in tanning equipment addressing risks of developing skin cancer), if the measures concern diseases that are carried by plants or animals (such as rabies or bovine spongiform encephalopathy (BSE)) – or are transmitted through food – they most probably will fall instead under the SPS Agreement. For food,

most labelling requirements, information on nutrition and quality and packaging regulations are generally not considered to be SPS measures and hence are normally subject to the TBT Agreement. However, regulations that, for example, address the microbiological contamination of food, set allowable levels of pesticide or veterinary drug residues, or identify permitted food additives all fall under the SPS Agreement. Some packaging and labelling requirements, if directly related to the safety of the food, are also subject to the SPS Agreement. More examples are provided in Table 1.

**Table 1: SPS or TBT examples**

<b>Fertilizer</b>	Regulation on permitted fertilizer residue in food and animal feed	<b>SPS</b>
	Specifications to ensure fertilizer works effectively	<b>TBT</b>
	Specifications to protect farmers from possible harm from handling fertilizer	<b>TBT</b>
<b>Food labelling</b>	Regulation on permitted food safety: health warnings, use, dosage	<b>SPS</b>
	Regulation on size, construction/structure, safe handling	<b>TBT</b>
<b>Fruit</b>	Regulation on treatment of imported fruit to prevent pests spreading	<b>SPS</b>
	Regulation on quality, grading and labelling of imported fruit	<b>TBT</b>
<b>Bottled water: specifications for the bottles</b>	Materials that can be used because safe for human health	<b>SPS</b>
	Requirements: no residues of disinfectant, so water not contaminated	<b>SPS</b>
	Permitted sizes to ensure standard volumes	<b>TBT</b>
	Permitted shapes to allow stacking and displaying	<b>TBT</b>
<b>Cigarette packets</b>	Government health warning: "Smoking can seriously damage your health": the label's objective is health but it is not about food, so it is not SPS	<b>TBT</b>

**Table 2: SPS or TBT summary**

<b>SPS measures typically deal with:</b>	<b>TBT measures typically deal with:</b>
<ul style="list-style-type: none"> <li>▪ additives in food or drink</li> </ul>	<ul style="list-style-type: none"> <li>▪ labelling of food, drink and drugs</li> </ul>
<ul style="list-style-type: none"> <li>▪ contaminants in food or drink</li> </ul>	<ul style="list-style-type: none"> <li>▪ grading and quality requirements for food</li> </ul>
<ul style="list-style-type: none"> <li>▪ poisonous substances in food or drink</li> </ul>	<ul style="list-style-type: none"> <li>▪ packaging requirements for food</li> </ul>
<ul style="list-style-type: none"> <li>▪ residues of veterinary drugs or pesticides in food or drink</li> </ul>	<ul style="list-style-type: none"> <li>▪ packaging and labelling for dangerous chemicals and toxic substances</li> </ul>
<ul style="list-style-type: none"> <li>▪ certification: food safety, animal or plant health</li> </ul>	<ul style="list-style-type: none"> <li>▪ regulations for electrical appliances</li> </ul>
<ul style="list-style-type: none"> <li>▪ processing methods with implications for food safety</li> </ul>	<ul style="list-style-type: none"> <li>▪ regulations for cordless phones, radio equipment, etc.</li> </ul>
<ul style="list-style-type: none"> <li>▪ labelling requirements directly related to food safety</li> </ul>	<ul style="list-style-type: none"> <li>▪ textiles and garments labelling</li> </ul>
<ul style="list-style-type: none"> <li>▪ plant/animal quarantine</li> </ul>	<ul style="list-style-type: none"> <li>▪ testing vehicles and accessories</li> </ul>
<ul style="list-style-type: none"> <li>▪ declaring areas free from pests or disease</li> </ul>	<ul style="list-style-type: none"> <li>▪ regulations for ships and ship equipment</li> </ul>
<ul style="list-style-type: none"> <li>▪ preventing disease or pests spreading to a country</li> </ul>	<ul style="list-style-type: none"> <li>▪ safety regulations for toys</li> </ul>
<ul style="list-style-type: none"> <li>▪ other sanitary requirements for imports (e.g. imported pallets used to transport animals)</li> </ul>	<ul style="list-style-type: none"> <li>▪ etc.</li> </ul>
<ul style="list-style-type: none"> <li>▪ etc.</li> </ul>	

Beyond coverage, in terms of substantive obligations, the TBT and SPS Agreements, as mentioned above, also share some common elements. These include, for example, the basic obligation not to discriminate. Also, they both require governments to notify proposed measures in advance. Both require governments to set up information offices (enquiry points). Nonetheless, some other substantive rules are different. For example, both agreements encourage governments to use international standards. However, only the SPS Agreement contains a list

of the three relevant international bodies that should be considered for this purpose. The TBT Agreement, in contrast, does not contain such a list.

All of the above considerations explain why sometimes it may be difficult to decide whether a measure is a TBT or an SPS measure. It is useful to start by first asking whether the measure falls under the SPS Agreement, which covers only a limited set of specific regulatory measures. For addressing this, consider: what is the purpose (objective) of

the measure? But this information must be precise and specific. For example, just knowing that a measure contains specifications on food products to protect human health may not be enough. Such a measure, without further information, could be either a TBT or an SPS measure. Now, in contrast, assume that the measure, more specifically, identifies what additives are not permitted to be used in a given food product because they can be harmful to human health. This is precisely one of the purposes specifically described in the SPS Agreement. One can conclude that this is not a TBT measure but instead an SPS measure (in the form of a labelling requirement “directly related to food safety”).

Figure 3 and Tables 1 and 2 contain additional elements that could be helpful for assessing whether a measure falls under the TBT Agreement or the SPS Agreement.

### **Relation to other WTO agreements**

Can a measure fall under both the TBT Agreement and another WTO agreement (besides the SPS Agreement)? The short answer is that it depends.

As indicated above, if a measure concerns services or government procurement, while it may well fall under the GATS or the Agreement on Government Procurement (GPA), it will not be a TBT measure. This may not, however, necessarily be the case with other WTO agreements dealing with subject-matter not expressly “carved out” by the TBT Agreement.

Take the GATT, for example. The GATT and the TBT Agreement both belong to the family of WTO agreements governing trade in goods. Although more commonly known

for dealing with tariffs, the GATT also covers NTMs. Some of these NTMs are regulatory measures that may also fall under the TBT Agreement. For example, in accordance with Article III:4 of the GATT, members’ “regulations and requirements” on products cannot discriminate against imports in favour of like domestic products. This relationship between the TBT Agreement and the GATT stems from the fact that, as stated in its preamble, the TBT Agreement is intended to “further the objectives of the GATT”. This means that, sometimes, the consistency of a regulation can be examined under both the TBT Agreement and the GATT. But this does not necessarily mean that these two agreements discipline product regulations in exactly the same way.

In fact, as stated by the very first decision rendered in a TBT dispute, the TBT Agreement “imposes obligations on Members that seem to be *different* from, and *additional* to, the obligations imposed on Members under the GATT 1994” (*EC – Asbestos*). There are also other instances when only certain TBT-specific disciplines will apply. Indeed, while both the TBT Agreement and the GATT contain similar non-discrimination obligations, only the TBT Agreement contains other obligations such as requiring members to ensure that their technical regulations be “not more trade restrictive than necessary” or requiring that regulations be based on “relevant international standards”.

Some covered agreements refer expressly to the TBT Agreement (even if the TBT Agreement does not refer to them). Such references may provide some guidance on the relationship of those agreements with the TBT Agreement. One example is the Trade Facilitation Agreement (TFA), which states, for example, that its provisions cannot diminish members’ rights and obligations under the TBT Agreement

(TFA, Article 11.8). Another example is the plurilateral Agreement on Trade in Civil Aviation, which states that the provisions of the TBT Agreement “apply to trade in civil aircraft” and, more specifically, that “civil aircraft certification requirements and specifications on operating and maintenance procedures” shall be governed, as between its signatories, by the TBT Agreement (Article 3.1).

There are also instances when neither the TBT Agreement nor the other WTO agreement refer expressly to each other. This is the case, for example, with the TRIPS Agreement, which governs trade-related aspects of IP rights (patents, copyright, trademarks, etc.). Many TBT measures concern, among other things, regulations about the way products are labelled or packed, for example, a measure regulating – for public health purposes – the appearance of, and any information contained in, the labels and packages of certain consumer goods. Let’s also assume that some of these labels and packages contain the brand of the manufacturers of these goods, which are affected by this measure.

Since brands are normally registered and protected as “trademarks”, can this labelling/packaging measure be both a “technical regulation” under the TBT Agreement and an IP measure under the TRIPS Agreement? When confronted with a similar question, a WTO dispute settlement panel stated that, in principle, this was possible. It saw “no basis to assume that, as a matter of principle, measures affecting the use of IP, and thus potentially covered by the TRIPS Agreement, could not also be covered by relevant provisions of the TBT Agreement, to the extent that they would also fall within the scope of application of these provisions” (*Australia – Tobacco Plain Packaging*).

### Three categories of TBT measures

The TBT Agreement distinguishes between three types of measures: technical regulations, standards and CAPs. These measures are precisely defined in Annex 1 to the TBT Agreement. Box 1 offers a simplified characterization of these measures.

Box 1: TBT measures		
Technical regulations	Standards	Conformity assessment procedures
Technical regulations lay down product characteristics or their related processes and production methods. Compliance is mandatory. They may also deal with terminology, symbols, packaging, marking and labelling requirements.	Standards are approved by a recognized body that is responsible for establishing rules, guidelines or characteristics for products or related processes and production methods. Compliance is not mandatory. They may also deal with terminology, symbols, packaging, marking and labelling requirements.	CAPs are used to determine that relevant requirements in technical regulations or standards are fulfilled.  They include procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; and registration, accreditation and approval.

## 1. Technical regulations

Technical regulations set out product requirements with which compliance is mandatory. They are normally instruments adopted by central government bodies (such as parliaments, regulatory agencies, ministries, etc.), but they are also occasionally adopted by local government bodies. Types and product coverage may vary widely among technical regulations. They may be specific: for example, establishing the maximum permitted levels of lead in paint used on toys, or prohibiting the use of certain additives in tobacco products. Other regulations may be more general in nature: for example, establishing criteria for the labelling of organic agricultural products, or providing for emission requirements for diesel engines. What all of these measures have in common, however, is that: (i) they all involve some form of government intervention (law, regulation, decree, act, etc.) regulating what characteristics products must have (or not have) or how they must be produced; and (ii) such requirements may affect trade and market access opportunities for the products concerned.

In summary, in accordance with WTO jurisprudence to date, the following three criteria must be met for a measure to constitute a technical regulation: (i) 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) the requirements must specify one or more characteristics of the product (they 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) compliance with the product characteristics must be mandatory.

## 2. Standards

Standards can be developed by a large number of different entities located in members' territories, including both governmental and non-governmental bodies (see Box 2). Like technical regulations, standards also establish product specifications (characteristics they should or should not have, details on how they should be produced, etc.). However, unlike technical regulations, standards are not mandatory and therefore compliance is voluntary. In practice, standards are often used as the basis for both technical regulations and CAPs. In such cases, the product requirements set out in the standard become mandatory by virtue of government intervention (in the form of technical regulations or CAPs).

### Box 2: "Private standards"

There has been some discussion over the years on the topic of "private standards" in the TBT Committee. These documents are normally developed by private entities (e.g. companies, non-governmental organizations (NGOs), etc.), for example, to manage supply chains or respond to consumer concerns. They may include environmental, social, food-safety or ethical specifications. Despite their "voluntary" nature, some argue that they *de facto* affect market access and trade. There is debate as to whether "private standards" are covered by the TBT Agreement. Some members take the view that they are not covered. Those who believe they are covered have raised concerns about the trade-restrictive effects of private standards at the WTO. Specific concerns include a higher level of stringency of requirements set out in "private standards" compared with those in regulations, rapid proliferation of "private standards" and lack of transparency. In the SPS Committee, members have agreed on certain actions to share information on "private standards".

Standards are specifically addressed by the Code of Good Practice for the Preparation, Adoption and Application of Standards (the Code), contained in Annex 3 to the TBT Agreement. The Code, which is open to acceptance by any standardizing body within the territory of a member, contains detailed obligations and guidance on the process of setting standards. For instance, the Code contains various obligations concerning transparency in standard-setting activities (e.g. periodic notification of a standardization “work programme”, accepting comments by interested parties on draft standards, etc.). The Code also contains various substantive obligations applicable to standards. These substantive obligations parallel those applicable to technical regulations and CAPs (e.g. non-discrimination, avoidance of unnecessary barriers to trade and use of international standards as a basis where possible).

Article 4 of the TBT Agreement requires members to ensure that their central government standardizing bodies accept and comply with the Code. This obligation is somewhat different with respect to bodies other than central government standardizing bodies, i.e. (i) local government standardizing bodies; (ii) non-governmental standardizing bodies; and (iii) regional standardizing bodies within their territories. Members are only required to take “reasonable measures” that “may” be available to them to ensure that these other bodies accept and comply with the Code. Thus, the Agreement attributes a certain degree of responsibility to governments to ensure that these other bodies follow the Code.

As of 1 July 2020, 192 standardizing bodies (of all types) have notified their acceptance of the Code.

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

CAPs are used to determine whether products fulfil the requirements established by relevant technical regulations or standards. Precisely because they give consumers confidence in the integrity, safety and trustworthiness of products, CAPs add value to manufacturers’ marketing claims, and, ultimately, to products themselves.

Typical CAPs include testing, sampling, inspection and certification, as well as accreditation (of laboratories carrying out tests, for example). Given that different types of CAPs affect trade differently (depending, for example, on how strict these procedures are), a key issue under TBT disciplines is the choice of which procedure to use in a particular situation. Here, the TBT Agreement seeks to avoid those choices that result in CAPs unnecessarily hindering trade. One factor that might influence this choice is the level of risk posed by products not conforming with relevant specifications: for example, “third-party certification” may be the choice of some members in situations in which the risk of harm is sufficiently high (e.g. to children’s life and health). This type of procedure tends to be stricter (and thus more costly) than a “supplier’s declaration of conformity” (SDoC), which is commonly used in situations where risks are lower. Under the TBT Agreement, members are free to make such choices, provided they do not restrict trade beyond what is necessary.

# Key principles

This section introduces the substantive disciplines of the TBT Agreement: non-discrimination, avoidance of unnecessary barriers to trade and the use of international standards, as well as TA and S&D treatment for developing and least developed countries (LDCs). Transparency – an additional core element of the TBT Agreement – is dealt with separately (from page 38).

## Non-discrimination

Governments regulate for many reasons, such as to protect human health and safety, protect the environment or provide consumers with information about various aspects of the products they consume. For example, a government may require household appliances (say, a refrigerator) to display a label with information about their energy efficiency, or it may prohibit the sale of toys containing hazardous substances (such as lead).

Regulations normally affect all products, domestic or imported. That is also why regulations normally affect international trade. And there is nothing extraordinary about this. Take the above-mentioned labelling regulation, for example. Its policy objective could be described as protecting the environment by better informing consumers about the energy efficiency of the appliances they buy. Given such objective, would it make sense to, for example, require affixing labels only to domestically produced refrigerators, while excluding imported ones? Again, regulations normally affect international trade, and there is nothing unusual or controversial about this effect. Evidence-based regulations that are proportional to the risk they intend to address are frequently adopted. What is important from the trade

perspective, therefore, is to avoid regulations that are arbitrary and to ensure regulations are not used as a disguise to protect domestic producers from foreign competition.

Respecting this fundamental discipline is an essential means of ensuring that members can attain their public policy goals while benefiting from open trade.

Under the TBT Agreement, governments must also ensure that TBT measures do not discriminate against foreign products (in favour of domestic products), or between foreign products (by favouring the products of one member over those of another). Using the words of the Agreement, this means that 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), standards (Annex 3.D) and CAPs (Article 5.1.1) (see Box 3 for an overview).

However, these disciplines do not apply in exactly the same way for each type of TBT measure. For example, as explained in more detail below, the context in which a given CAP takes place is important for assessing discrimination. This is because, unlike for technical regulations and standards, the TBT Agreement requires that CAPs grant access to suppliers (in other WTO members’ territories) under conditions no less favourable than those accorded to suppliers at home or abroad, in a “comparable situation”. There is no express reference to “comparable situations” in the non-discrimination provisions for technical regulations and standards.

The principle of non-discrimination has been addressed in detail in four TBT disputes:

### 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.

#### 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.

#### 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.

\* These are the texts of the most commonly mentioned non-discrimination provisions. The TBT Agreement contains many more such disciplines, including those in Article 3 (for technical regulations by “local” and “non-governmental bodies”), Articles 7 and 8 (for CAPs) and Article 9 (for “international and regional systems”). Additionally, the Agreement contains non-discrimination obligations addressing certain specifically described situations: see Articles 2.9.4, 2.10.3, 5.2.1, 5.2.4, 5.2.5, 5.6.4, 5.7.3, 6.4, 10.4, Annex 3.M and Annex 3.P.

*US – Clove Cigarettes*, *US – Tuna II (Mexico)* and *US – COOL*, all involving technical regulations, and *Russia – Railway Equipment*, concerning CAPs. To date, there has never been a case about whether a member's national “standard” was discriminatory. Although the specifics of each of these TBT disputes differ with respect to product coverage (tobacco, fish, meat products and railway equipment, respectively), and the measures at issue were also different, certain aspects of the analysis undertaken by the Panels and the Appellate Body (the

bodies in charge of adjudicating disputes among WTO members) were similar and may shed some light on the understanding of non-discrimination in relation to technical regulations and CAPs under Article 2.1 and Article 5.1.1 of the TBT Agreement.

#### 1. *US – Clove Cigarettes*

*US – Clove Cigarettes* concerned a tobacco control measure by the United States that prohibited the production and sale of cigarettes containing characterizing flavours (such as clove, strawberry, grape, orange and

cinnamon), other than tobacco or menthol. The logic behind the policy was that: (i) starting to smoke can be difficult given the “harshness” of tobacco (the main ingredient of regular cigarettes); (ii) flavoured cigarettes appeal to youth because their characterizing flavours can “mask” tobacco’s harshness; (iii) by masking harshness, flavours can facilitate initiation, ultimately increasing youth smoking; and (iv) prohibiting flavours may therefore reduce initiation opportunities, ultimately reducing 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 cigarettes containing 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 (mostly imported from Indonesia into the United States) and menthol cigarettes (mostly produced and sold in the United States) were “like”. Ultimately, and as explained in further detail on page 29, the banning of (mostly Indonesian) clove-flavoured cigarettes, but not of (mostly American) menthol-flavoured cigarettes amounted to (unjustified) discrimination, in violation of Article 2.1 of the TBT Agreement.

## **2. US – Tuna II (Mexico)**

*US – Tuna II (Mexico)* concerned various requirements by the United States for the labelling of tuna products (including canned tuna) as “dolphin-safe”. The measure at issue conditioned eligibility for a “dolphin-safe” label upon certain documentary evidence that varied depending on the area where the tuna contained in the tuna product was harvested and the type of vessel and fishing method by which it was

harvested. In particular, tuna caught by “setting on” dolphins was not eligible for a “dolphin-safe” label in the United States. The tuna fishing technique of “setting on dolphins” involves chasing and encircling dolphins with a purse seine net in order to catch tuna schools swimming beneath. This technique is particularly suitable for places where dolphins commonly swim beneath tuna as a result of a natural phenomenon called “tuna-dolphin association”. Setting on dolphins has been used in particular in the Eastern Tropical Pacific Ocean (ETP), one of the few regions where the tuna-dolphin association occurs frequently. Both Mexico and the United States have coastal territories within the ETP.

Under the measure, only tuna caught in the ETP required an additional certification by an expert on board that no dolphin had been killed or seriously injured during a fishing set. Mexico exports products made from tuna caught by fleets that “set on” dolphins when fishing in the ETP. Mexico complained that the labelling measures by the United States at issue prevented Mexican exporters from labelling their tuna products as “dolphin-safe”, and that these measures were therefore inconsistent with various TBT obligations, including Article 2.1 (non-discrimination). WTO adjudicators agreed. They considered that the “dolphin-safe” labelling requirements were not “even-handed”: that is, they were not correctly “calibrated” to address different risks to dolphins arising from different fishing methods in different areas of the ocean.

It was established, in particular, that tuna fishing taking place in oceanographic regions other than the ETP (using other fishing techniques) could also pose risks to dolphins. However, despite such risks, no certification that dolphins had not been killed or seriously injured was originally required under the measures for tuna products caught in

these other regions. This led adjudicators to conclude that the original measures were not “even-handed”: the requirements for granting access to the “dolphin-safe” label were not “calibrated” to also take account of possible risks to dolphins from tuna fishing in other regions and using techniques other than “setting on dolphins”. The measure by the United States was therefore found to be discriminatory under Article 2.1 of the TBT Agreement.

Subsequently, the United States amended its measure twice to ensure that the labelling requirements, as well as other aspects of the measure, were “calibrated” to the risks to dolphins for tuna caught by different fishing techniques inside and outside the ETP. Mexico also challenged these modifications. Ultimately, the amended measure was found by adjudicators to have correctly addressed (that is, been “calibrated to”) these varying risks. Consequently, the amended measure was found non-discriminatory and thus consistent with Article 2.1.

### **3. US – COOL**

Another dispute about technical regulation discrimination was *US – COOL*, which concerned the “country of origin labelling” (COOL) that the United States required for certain meat products. At issue, more specifically, was the way such requirements affected muscle cuts of beef and pork (and cattle and hogs, the livestock from which they derived, upstream along the production chain). Canada and Mexico, the complainants, argued that, among other things, the measure was discriminatory. They claimed that, in practice, the measure created unjustified incentives for retailers in the United States to sell meat made only in the United States.

The COOL measure contained detailed criteria for deciding which origin information

each label should contain. It established, for this purpose, four categories of origin depending on the country in which the animal (from which the meat came from) was born, raised and/or slaughtered. With respect to muscle cuts of meat (including beef and pork), their origin had to be labelled in accordance with one of four categories:

- Category A (United States country of origin) was reserved for meat derived from animals for which *all* production steps – birth, raising and slaughter – took place in the United States;
- Category B (multiple countries of origin);
- Category C (imported for immediate slaughter) concerned meat of “mixed origin” (i.e. at least one production step took place outside and at least one step took place within the United States); or
- Category D (foreign country of origin) was reserved for meat produced from animals that were slaughtered outside the United States and then imported into the United States in the form of meat.

Finally, and importantly, the COOL measure included certain flexibilities regarding the labelling rules applicable when livestock or meat of different “origins” was processed together on a single production day (“commingled”). When such commingling occurred, the resulting meat could bear a different label from the one it should in principle bear under the above rules.

For instance, when Category A and Category B meat were commingled, all of the resulting meat could be labelled as Category B meat, even though a particular piece of meat may have been derived from a Category A animal. These substantive requirements were complemented by various

other mandatory “information requirements”, such as record keeping, auditing and verification requirements on upstream livestock and meat producers. Specifically, such producers had to possess, at every stage of the supply and distribution chain, information on the origin of each animal and piece of meat, and they had to transmit such information to the next processing stage. The COOL measure required producers along the meat production chain to be able to verify origin and, for that purpose, to maintain the necessary records for a period of one year.

Canada and Mexico felt particularly affected by the COOL measure because of an important particularity: the market for livestock and meat in Canada, Mexico and the United States is highly integrated. As a result, different stages of livestock and meat production are often performed in more than one of these countries. Canada and Mexico export cattle, and Canada also exports hogs, to the United States. The vast majority of Canada’s and Mexico’s livestock exports are destined for the United States to be processed into meat.

However, Canadian and Mexican exports of cattle and hogs account for only a small percentage of total livestock slaughter in the United States. Most of the Canadian cattle exported to the United States are “fed cattle”, which are born and raised in Canada and exported to the United States for immediate slaughter. Mexico, in contrast, generally exports “feeder cattle” to backgrounding and feeding operations in the United States, where they are then raised to be slaughtered. The products at issue in the dispute were, more specifically, imported Canadian cattle and hogs and imported Mexican cattle, which were used in the United States to produce beef and pork. Muscle cuts of meat produced from such cattle and hogs may fall

into Category B or Category C, but can never fall into Category A (meat that originates exclusively in the United States) or Category D (imported meat).

Assessing the facts, WTO adjudicators considered that in order to comply with the substantive and information requirements imposed by the COOL measure, in practice, economic operators had no choice but to implement the segregation of meat and livestock according to their origin (even if, formally, doing so was not expressly required). Segregation was necessary and costly regardless of the origin of the meat to be labelled. However, it was particularly costly for products fully or partially made from imported meat, and significantly less costly for those fully made from domestic livestock in the United States.

Adjudicators concluded that, by imposing higher segregation costs on “like” imported livestock (mostly from Canada and Mexico), the COOL measure created an incentive to use domestic livestock in meat production, which ultimately resulted in detrimental impact to Canadian and Mexican livestock. Additionally, there was an important reality of the meat market in the United States: even before the COOL measure was introduced, the vast majority of the meat processed in the United States already derived from fully domestic livestock. This reality sharpened the incentive for production in the US to use only US livestock.

Adjudicators then assessed whether such detrimental impact to Canadian and Mexican products could be legitimately justified. They found, however, that it could not. For them, the COOL measure lacked “even-handedness” because the “informational requirements” imposed on producers were disproportionate when compared with the level of information ultimately communicated to consumers

through the mandatory retail labels. For these reasons, the measure was found to be discriminatory under Article 2.1 of the TBT Agreement.

#### **4. Russia – Railway Equipment**

More recently, *Russia – Railway Equipment* was the first dispute to address whether a CAP was “discriminatory” under Article 5.1.1 of the Agreement (see Box 3). This dispute concerned measures taken by the Russian Federation (Russia) regarding the application of its CAPs for railway products to suppliers from Ukraine. Among other things, Ukraine claimed that certain Russian suspensions of existing certificates (14 instructions) held by Ukrainian producers, as well as rejections of applications from Ukrainian producers for new certificates (three decisions), were inconsistent with Article 5.1.1.

Under some Russian CAP schemes, producers were subject to: (i) periodic inspection (including “on-site”) of production by Russian inspectors in order to maintain certificates; and (ii) the testing of product samples for new applications for certification. Essentially, Russia explained that Ukrainian certificates were suspended or rejected – while those from Russian and European producers were not – because Russian inspectors could not safely conduct in Ukraine the CAPs necessary for renewing existing certificates or issuing new ones for Ukrainian railway equipment.

The WTO panel found that such treatment meant that Russia was granting access to suppliers of Ukrainian railway products under conditions that were indeed less favourable than those accorded to suppliers of Russian and European (“like”) railway products. However, Russia’s application of the CAPs was nonetheless consistent with Article 5.1.1 because, in this specific case, the less favourably treated Ukrainian suppliers were

not in a “comparable situation” to the Russian or European suppliers. Their situations were not comparable, the Panel explained, due to the risks to life and health Russian inspectors could face – during the time period when the suspensions and rejections took place (April 2014 and December 2016) – if they were to travel to Ukraine to perform the CAPs necessary for renewing or issuing certificates. These inspectors would not face these risks when travelling within Russia or to Europe.

The Appellate Body agreed with the Panel’s interpretation of Article 5.1.1 on how to assess whether a CAP grants access under conditions no less favourable “in a comparable situation”. This analysis, the Appellate Body stressed, focused on factors having a bearing on the conditions for granting access to conformity assessment in that specific case and the ability of the regulating member to ensure compliance with the requirements in the underlying technical regulation or standard. The Appellate Body, however, found that the Panel erred in its application of that legal standard to the particular circumstances of the case. It disagreed with the way the Panel had examined and given importance to the different factors that were relevant, in that case, for establishing the existence of a “comparable situation”.

For the Appellate Body, the Panel erred because it: (i) did not “focus sufficiently” on aspects specific to the suppliers that claimed to have been granted access under less favourable conditions or to the location of the suppliers’ facilities; and (ii) instead, “relied too much” on information concerning “the security situation in Ukraine generally”. The Appellate Body thus reversed the Panel’s conclusion that these Russian measures did not violate Article 5.1.1.

## What more can be learned from the disputes?

In TBT disputes, adjudicators invariably start with these two questions: (i) Is the measure at issue a TBT measure? If the measure is not, then it does not fall within the scope of the TBT Agreement; and (ii) If the measure does fall within the scope of the Agreement, then what kind of TBT measure is it – a technical regulation, a standard or a CAP? These preliminary questions are essential as each type of TBT measure is subject to different (even if sometimes similar) obligations.

Below we explore certain key elements of non-discrimination obligations with respect to technical regulations.

### *“Legitimate regulatory distinction”: technical regulations*

To successfully claim that a technical regulation is discriminatory under Article 2.1 of the TBT Agreement, a member needs to show three things: (i) that the measure is indeed a technical regulation as defined in the Agreement; (ii) that the products involved are “like”; and (iii) that the imported products have been accorded “less favourable treatment” compared to “like” domestic products (national treatment) and/or “like” products from other countries (most-favoured nation (MFN) treatment).

Assessing whether products are “like” under Article 2.1 should basically follow the traditional “likeness” criteria used for similar non-discrimination provisions in other WTO agreements, i.e. whether, and to what extent, the products concerned share the same “physical characteristics”, “end-uses”, “consumer tastes and habits” and “tariff classification”. The goal is to use this non-exhaustive list of criteria as a

means to assess the existence, nature and extent of a “competitive relationship” – in the importing member’s marketplace – between the products being compared (imported and domestic, in the case of national treatment, or imports from different countries, in the case of MFN). If these products are found not to be in a competitive relationship with each other, then they are not like products. If they are not like, the analysis can stop, as there cannot be any discrimination under Article 2.1.

If, however, products are considered to be “like”, then the next question is how imported and domestic products are “treated” by the TBT measure. Are they treated differently? And, more importantly, does the measure result in detrimental impact on competitive opportunities for imports? Different treatment may lead to less favourable treatment only if it also has a detrimental impact on competitive opportunities for imports.

Finally, a technical regulation that has detrimental impacts on imported products will only be deemed to accord “less favourable treatment” in the sense of Article 2.1 (i.e. the measure is indeed discriminatory and inconsistent with this provision) if such detrimental impact does not stem exclusively from a “legitimate regulatory distinction”. This concept, developed in the context of the early TBT disputes, is important. It provides a responding member with the opportunity to demonstrate that, whatever detrimental impacts its technical regulation may be causing to imports, they can be fully explained and justified by legitimate policy reasons. If this is the case, then the measure is not discriminatory under the TBT Agreement.

To understand the concept of “legitimate regulatory distinction”, it is necessary to take a step back and consider that just because regulations may cause detrimental impacts to

imports, this alone is not a sufficient basis for violating Article 2.1 of the TBT Agreement (non-discrimination) because there may be legitimate policy objectives that WTO members can pursue through technical regulations even in situations where those regulations have some negative trade impact.

Consider this hypothetical situation: Country A and Country B both produce wooden toys. Country A also imports these products, mostly from Country B. In Country A, provided they are safe, toys made from any type of wood can be manufactured, sold or imported. Country A then adopts a new technical regulation on toys. It specifies that, from now on, wooden toys can only be sold in, or imported into, Country A's territory if they are exclusively made from *betula magnifica*, a particular species of birch (a hardwood tree). On paper, this new regulation appears to be non-discriminatory: any wooden toy, domestic or imported, can still be sold if it is made from *b. magnifica*. But, in practice, things are quite different.

It just so happens that, given its peculiar climatic and geographic conditions, Country A is the only place in the world where *b. magnifica* grows, and Country A does not export *b. magnifica* at all. All wooden toys manufactured in Country A are made exclusively from this native birch species. Country B wooden toys, on the other hand, are made from many types of wood. As a consequence, in Country A, imported and domestic wooden toys are now treated differently (even if "on paper" they are not).

Unable to meet the new mandatory requirement of only using *b. magnifica*, foreign wooden toy makers can no longer export to Country A. Meanwhile, Country A toy makers remain unaffected; after all, they have been always using *b. magnifica*. This different treatment, in turn, results in an obvious

negative trade consequence ("detrimental impact") to imports: access to Country A's toy market is now closed. However, alone, the existence of such different impacts to imports and domestic products does not mean necessarily that the measure violates the TBT Agreement.

The regulation can still be consistent if the mentioned detrimental impact (as a consequence of requiring that wooden toys be made only from a specific tree species) can be somehow fully justified by legitimate policy reasons (does the "detrimental impact" stem exclusively from a "legitimate regulatory distinction"?). In other words: is there a policy explanation for requiring the use of a specific tree species – for example (among many possible policy reasons), health, safety or environment? If this is not the case, then Country A's regulation is likely to be considered discriminatory and thus inconsistent with Article 2.1 of the TBT Agreement.

Now consider another hypothetical example to help understand the concept of "legitimate regulatory distinction". Let's assume a country adopts a requirement that products must be labelled in the national language of the importing member. Such a requirement may entail different costs to exporters depending on whether they come from members that share a common language with the importing member. In this case, the importing member could argue that any negative impact of this labelling requirement on certain imports could be fully justified, because it is a legitimate consequence of the fact that countries have different national languages. Thus, if the translation requirement's "detrimental impact" on imports can be justified – i.e. if it stems exclusively from a "legitimate regulatory distinction" – then the measure is not inconsistent with Article 2.1 of the TBT Agreement. To determine the legitimacy

of such “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 when a member’s TBT measures do not discriminate at all, they could still be inconsistent with the TBT Agreement if they create “unnecessary obstacles to international trade”.

As with non-discrimination, the obligation that TBT measures shall not create unnecessary barriers to trade applies to all three types of TBT measures: technical regulations, standards and CAPs. Similarly, the Agreement’s provisions vary slightly depending on the type of TBT measure (see Box 4). For instance, technical regulations create “unnecessary” obstacles when they are more “trade-restrictive” than necessary to contribute to the legitimate objective (health, environment, etc.) they were meant to address. Standards, similarly, shall not “create unnecessary obstacles to international trade”. However, unlike technical regulations, no express reference to legitimate objectives is made in this context. CAPs, in turn, shall not create unnecessary obstacles in terms of procedures that are more “strict” than necessary to give the member adopting them “adequate confidence” that products “conform” with the requirements (on safety, health, etc.) in technical regulations (or standards) from that member.

But when is a measure unnecessarily trade-restrictive? How can it be ensured that variations in government regulations do not make life unnecessarily difficult for producers, exporters or even consumers?

Under the TBT Agreement, WTO members must pursue a “legitimate objective” when preparing, adopting or applying a TBT measure (say, a technical regulation) that restricts trade. The Agreement contains a list of such objectives, including the protection of human health or safety, animal or plant life or health, and the environment. However, as mentioned above (see page 26), this list is not exhaustive: TBT measures can address a wide variety of legitimate objectives. The Agreement also gives members the sole prerogative to determine the “level of protection” they deem appropriate 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. This means that the Agreement does not prohibit all “obstacles to international trade”, but rather only those that are “unnecessary”.

What, then, is the benchmark to determine whether a TBT measure is “necessary”?

In the case of technical regulations, Article 2.2 of the Agreement clarifies what the phrase “unnecessary obstacle to trade” means: 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 may be seen as requiring a degree of “proportionality” between a measure’s trade-restrictiveness and the risk that the measure seeks to mitigate or address. It should be emphasized that the Agreement is not about removing all barriers to trade, but only those that unnecessarily restrict trade.

Previous WTO TBT disputes offer some guidance on how to apply this so-called “necessity test”.

With respect to technical regulations, the “necessity test” is normally done in two sequential parts. The first is the “relational analysis”. It involves considering if the measure is, in principle, “necessary” in light of several factors, including (i) if, and how much, the measure contributes to the achievement of its legitimate objectives; (ii) the types of risks addressed, the potential consequences and their gravity, if these objectives are not fulfilled; and (iii) the existence, and level, of trade-restrictiveness of the measure. The second is the “comparative analysis”. It involves considering alternative measures and comparing them with the regulation at issue. The objective of this comparative analysis is to determine if there is a less trade-restrictive alternative measure that could make an equivalent contribution to the policy objective pursued by the technical regulation at issue. If such alternative measures are, in practice, “reasonably available” to the member in question, then they would be preferable. In this case, even if the regulation had been provisionally “necessary” under the relational analysis, it would ultimately still be unnecessarily trade-restrictive, and thus inconsistent with Article 2.2. Conversely, if no viable alternatives existed, then the regulation is confirmed as “necessary”, and thus as being fully consistent with Article 2.2.

Article 2.5 (second sentence) of the TBT Agreement is also relevant to the discipline on avoiding unnecessary barriers to trade: it provides a form of “safe haven” for technical regulations addressing certain policy objectives expressly listed in Article 2.2 (human health, environmental protection, etc.). This provision states that when a technical regulation is “in accordance with” relevant international standards, it is “presumed” not to create an unnecessary obstacle to international trade. However, this presumption is not absolute and can be rebutted. Thus, using international standards

can provide a technical regulation with a first line of defence against claims that it is inconsistent with Article 2.2. It should be noted that no equivalent “safe haven” exists for the other types of TBT measures: standards and CAPs. To date, *Australia – Tobacco Plain Packaging* has been the only dispute in which the presumption of Article 2.5 (second sentence) was invoked by the respondent.

Looking at TBT cases dealing with technical regulations, it was found in *US – Clove Cigarettes* 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. Indeed, there was evidence suggesting that the measure – at least to some degree – contributed to reducing smoking among the young. In *US – Tuna II (Mexico)*, it was found that the “dolphin-safe” labelling provisions by the United States 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 affected dolphins and discouraging the use of fishing techniques that were harmful to dolphins.

Then, in the *US – COOL* dispute, due to the absence of relevant factual determinations and undisputed facts, adjudicators were unable to determine whether the US measure at issue was “more trade-restrictive than necessary to fulfil a legitimate objective”. Finally, in *Australia – Tobacco Plain Packaging*, it was found that the measures at issue were not only apt to, but in fact did, make a “meaningful contribution” to the legitimate objective of improving public health by reducing the use of, and exposure to, tobacco products.

Thus, to date, no member’s technical regulations have been found (at the appeal

stage) to be in violation of Article 2.2 of the TBT Agreement.

In the case of CAPs, Article 5.1.2 of the TBT Agreement (see the full text of this provision in Box 4) states that an “unnecessary obstacle to trade” means, in that context, that such 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.

This obligation was discussed in *Russia – Railway Equipment*. In this dispute, Ukraine claimed that Russia had applied its CAP measures inconsistently with Article 5.1.2 by suspending certain certificates held by, and rejected new applications for certification from, Ukrainian

#### 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.

##### 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.

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

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:

...

5.1.2 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.

\* These are the texts of the most commonly mentioned “necessity” provisions. The TBT Agreement contains many more such disciplines, including those in Article 3 (for “local” and “non-governmental” technical regulations), Articles 7 and 8 (for CAPs) and Article 9 (for “international and regional systems”). Additionally, the Agreement also contains “necessity-type” obligations addressing certain specifically described situations: see Articles 2.5, 2.10, 5.2.2, 5.2.3, 5.2.6, 5.2.7, 5.7, 12.3 and 12.7.

producers supplying railway equipment to Russia. Ukraine argued that Russia applied its CAPs “more strictly than necessary” to give itself “adequate confidence” that Ukrainian railway products conform with the applicable technical regulations, in light of the “risks non-conformity” would create.

In that dispute, the Appellate Body listed the factors relevant for assessing whether a CAP constituted an “unnecessary obstacle[] to international trade” under Article 5.1.2: (i) whether the CAP provides “adequate confidence” of conformity with the underlying technical regulation or standard; (ii) the strictness of the CAP or of the way in which it is applied; and (iii) the nature of the risks and the gravity of the consequences that would arise from non-conformity with the technical regulation or standard.

The Appellate Body added that the legitimate objective of the regulation or standard at issue would also be relevant in determining the nature of the risks and the gravity of the consequences that would arise from non-conformity. Moreover, the Appellate Body noted that, similarly to the analysis under Article 2.2 of the TBT Agreement, the CAP may be compared to possible alternative procedures that are “reasonably available”, are “less strict or applied less strictly” and provide an “equivalent contribution” to giving the importing member adequate confidence. This analysis ultimately, it said, involves a “holistic” weighing and balancing of all these relevant factors.

The Panel found that Ukraine had failed to establish its claim that Russia had acted inconsistently with Article 5.1.2. The Appellate Body disagreed and reversed this finding. However, in the absence of sufficient factual findings by the Panel and undisputed facts on the record, the Appellate Body was not in a position to complete the legal

analysis regarding this claim brought by Ukraine. No final decision was, therefore, made on whether the Russian measure was or was not consistent with this provision of the TBT Agreement.

## International standards

The TBT Agreement strongly encourages the use of “relevant” international standards, guides or recommendations by requiring members to use them “as a basis” for their technical regulations, standards and CAPs (Article 2.4; Annex 3, paragraph F; and Article 5.4 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, second sentence).

At the same time, the TBT Agreement also recognizes that harmonization on the basis of international standards may not be desirable, or possible, in all contexts for all members. The Agreement thus allows a member to justify why it did not use (or why it significantly deviated from) an existing relevant international standard. Under the Agreement, there is no obligation for a member to use an international standard when that standard is an “ineffective” or “inappropriate” means of fulfilling the stated policy objective(s) of that member’s measure. The Agreement lists some of the circumstances that could render an international standard unsuitable for a member, including fundamental climatic or geographical factors, or fundamental technological problems (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).

## 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.

### 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.

### 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 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.

It is worth noting that, unlike the SPS Agreement, which makes reference to international standards developed by three standard-setting bodies (Food and Agriculture Organization (FAO)/World Health Organization (WHO)-administered Codex Alimentarius Commission (Codex Alimentarius), World Organisation for Animal Health (OIE) and the International Plant Protection Convention (IPPC)), the TBT Agreement does not make reference to any specific international standard-setting bodies. Nonetheless, the TBT Committee has agreed on a set of Principles for the Development of International Standards, Guides and Recommendations

(see pages 155-158 from *section on decisions and recommendations of the TBT Committee*), which provide guidance in the areas of “transparency”, “openness”, “impartiality and consensus”, “effectiveness and relevance”, “coherence” and “development dimension”. The Six Principles (see Figure 4) were agreed upon by the TBT Committee in 2000 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, or related to, the TBT Agreement (such as “open” and “recognized activities in standardization”).

**Figure 4: Six Principles for the Development of International Standards, Guides and Recommendations**



Source: TBT Committee.

### ***Why promote the use of international standards?***

When technical requirements vary from market to market, traders must contend with costs and delays related to access to information about the specific requirements, product adaptation (or redesign) and conformity assessment associated with each market they wish to enter. These costs can inhibit market access and reduce international trade opportunities. One way to

overcome these problems is to harmonize regulations with product requirements already contained in international standards. This can ensure different countries adopt the same specifications and requirements for the same products they trade among themselves.

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, international standards can be seen as “evidence-based” documents codifying scientific and technical knowledge developed at the global level. Their development and use can thus be an important means of disseminating knowledge and fostering innovation. Indeed, in its preamble, the TBT Agreement reflects WTO members’ recognition of “the contribution which international standardization can make to the transfer of technology from developed to developing countries”.

### Identifying when “relevant international standards” exist

Several WTO disputes have addressed the topic of international standards and the TBT Agreement. For example, in *EC – Sardines*, several key elements of Article 2.4 of the TBT Agreement were examined by WTO adjudicators (see Box 5). This dispute concerned a measure on the marketing of “preserved sardines” in the European Union. At the heart of this measure was a specification that only products prepared from the species *Sardina pilchardus* – mainly found in Europe – could be marketed as “preserved sardines” in the European Union. Peru complained that this made it impossible for its exporters to market *Sardinops sagax* – a fish species mainly found in South American waters – as “preserved sardines” in the European Union.

WTO adjudicators agreed with Peru’s claim that the EU measure was inconsistent with the TBT Agreement because CODEX STAN 94 (adopted by the FAO/WHO Codex Alimentarius, and which the

parties agreed was a “relevant international standard”), was not “used as a basis for” the marketing specifications of the measure. CODEX STAN 94 was an international standard for preserved sardines and sardine-type products that allowed, under certain conditions, 21 species of fish, including both *Sardinops sagax* and *Sardina pilchardus*, to be marketed as “sardines”. The WTO adjudicators also concluded that the European Union was unable to justify why it did not use this international standard. For them, the European Union did not convincingly explain why CODEX STAN 94 was “ineffective” or “inappropriate” for addressing the legitimate objectives of the measure at issue: market transparency, consumer protection and fair competition. This dispute is a clear example of the importance of basing technical regulations on relevant international standards.

In *EC – Sardines*, the Appellate Body made two important general clarifications on the legal meaning and application of the obligation under Article 2.4 of the TBT Agreement:

- the burden falls on the complaining party – not the respondent – to prove that the relevant international standard at issue is “appropriate” and “effective”; and
- an international standard is “ineffective” when it does not have the function of accomplishing the legitimate objective of the measure; while an international standard is “inappropriate” when it is not especially suitable for the fulfilment of the legitimate objective pursued by the measure.

The dispute in *US – COOL* (described in more detail above at page 23) also involved a claim of inconsistency with Article 2.4 of the TBT Agreement because a Codex Alimentarius standard had not been

used “as a basis for” the measure at issue. In this particular case, Mexico claimed that a US COOL measure was not based on the General Standard for the Labelling of Pre-packaged Foods (CODEX STAN 1-1985). Mexico claimed that CODEX STAN 1-1985 was an “international standard” and that it constituted an “effective and appropriate” means for the fulfilment of the legitimate objective pursued by the COOL measure.

The key issue before the Panel was whether Mexico had indeed met its burden of proving that the Codex standard was “effective” and “appropriate”. The Panel observed that because the Codex standard was based on the “principle of substantial transformation”, it conferred origin exclusively to the country where the processing of food took place. Consequently, under this standard, no more than one country could claim origin: even when an animal was born and raised in a third country and then slaughtered in the United States, the origin would exclusively be the United States. This, according to the Panel, meant that the precise origin information the United States wanted to provide to consumers (exact information on countries where the animal from which the meat is derived was born, raised and slaughtered) could not be conveyed through CODEX STAN 1-1985. The Panel thus concluded that this Codex standard was both “ineffective” (because it lacked the function or capacity of accomplishing the objective of the COOL measure) and “inappropriate” (because it was not specially suitable for providing the type of exact information to the consumers pursued by the COOL measure). Consequently, the Panel found that Mexico did not demonstrate that the COOL measure violated Article 2.4.

The situation was different in *US – Tuna II (Mexico)*, where the key issue was whether an instrument – the “dolphin-safe” definition and

certification scheme under the framework of the Agreement on the International Dolphin Conservation Program (AIDCP) – would qualify as an “international standard” under the TBT Agreement. International standards, WTO adjudicators explained, get their “international” character from the fact that they are adopted by “international standardizing bodies”, i.e. bodies with “recognized activities in standardization” and that are “open to the relevant bodies of at least all WTO Members”.

At issue therefore was whether the AIDCP complied with such conditions. WTO adjudicators thus focused more on the nature of, and the procedures used by, this body. Among other things, they found that under AIDCP procedures, new parties (including “relevant bodies” from WTO members) could accede to it only by invitation, rather than unconditionally. They concluded, therefore, that, because the AIDCP was not “open” to bodies of all members, it could not be an “international standardizing body” and, ultimately, not a relevant international standard under Article 2.4 of the TBT Agreement. The United States was not, therefore, under the obligation to use it as a basis for its “dolphin-safe” measure. Significantly, in this dispute, reference was made to the TBT Committee’s Six Principles for the Development of International Standards (see page 33).

*Australia – Tobacco Plain Packaging* involved claims by Honduras, the Dominican Republic, Cuba and Indonesia that certain Australian tobacco-control measures prescribing plain (standardized) packaging requirements for tobacco products were more trade-restrictive than necessary, and thus inconsistent with Article 2.2 of the TBT Agreement. As part of its defence to this claim, Australia invoked Article 2.5 (second sentence) of the Agreement, asking for these measures

to be (rebuttably) presumed as not creating unnecessary obstacles to international trade (and be thus declared consistent with Article 2.2).

Australia argued that its measures complied with all conditions for benefiting from such presumption, including because: (i) certain Guidelines adopted by the parties of the Framework Convention on Tobacco Control (FCTC) – a convention adopted under the auspices of the WHO – constituted “relevant international standards” for tobacco plain packaging requirements; and (ii) the measures were “in accordance with” these FCTC Guidelines. However, based on the facts before it, the Panel concluded that the FCTC Guidelines at issue could not be considered as international standards, because they did not fulfil some of the necessary elements of the definition of a “standard” in Annex 1.2 of the TBT Agreement, including being a “document” providing product requirements “for common and repeated use”.

## Technical assistance and S&D treatment

In its preamble (ninth recital), the TBT Agreement recognizes the difficulties and challenges that developing country members, and particularly least-developed countries (LDCs), may face with implementing their obligations under the Agreement. In order to address these challenges, the Agreement contains a total of 25 provisions relating to “technical assistance” and/or “special and differential treatment” (S&D), the majority of them contained in Articles 11 and 12. These provisions give developing countries, and LDCs in particular, certain special rights and flexibilities. They provide for the possibility of treating developing countries more favourably than other WTO members, in certain cases and under certain circumstances.

## Technical assistance

Article 11 of the TBT Agreement requires members to provide advice and TA to other members, especially developing country members. LDCs should be given priority with respect to TA activities.

TBT-related TA includes, for instance, assistance with the establishment of national standardizing or conformity assessment bodies, and the establishment of institutions and legal frameworks to fulfil the obligations of membership or participation in international or regional systems for conformity assessment. Members, if requested by other members, are also required to advise on the preparation of technical regulations, how best to comply with technical regulations and steps to be taken by producers to gain access to systems for conformity assessment.

## S&D treatment

Article 12 is the provision of the TBT Agreement that more specifically deals with S&D for developing country members. The implementation of Article 12 has been a topic of consideration and exchange of experiences in the TBT Committee since 1995 (see [section 8 of Part 1] of the compilation of Committee decisions and recommendations near the end of this publication).

Articles 12.1 and 12.2 provide the overall context of S&D treatment. Article 12.1 states that members shall provide such treatment to developing country members, both through the provisions of Article 12 itself, as well as through the relevant provisions of other articles of the Agreement (listed below). Pursuant to Article 12.2, members shall give particular attention to the provisions of the 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 the Agreement.

While paragraphs 1 and 2 of Article 12.2 provide the overall context of S&D treatment, the article's subsequent paragraphs clarify how S&D treatment relates more specifically to:

- the preparation and application of technical regulations, standards and CAPs (Article 12.3);
- TA (Article 12.7) and harmonization (Articles 12.4, 12.5 and 12.6); and
- time-limited exceptions (Article 12.8), consultations (Article 12.9) and periodic examinations (Article 12.10).

Other provisions in the Agreement containing S&D aspects include Articles 2.12 and 5.9 (setting "reasonable intervals" for entry into force of technical regulations and CAPs) and Article 11.8 (TA to LDCs as a priority). See also Articles 10.5 and 10.6.

## What support is available for developing countries?

A wide range of national, international and regional institutions provide TA related to the implementation of the TBT Agreement. Some of these are highlighted by members and observer organizations (see section on Observers in the TBT Committee) during the TBT Committee's regular meetings as well as thematic sessions.

WTO members have identified several priority areas for TA. For instance, they have discussed the importance of quality infrastructure (also

referred to as "technical infrastructure") in terms of both its regulatory and physical dimensions. This type of infrastructure is a prerequisite for the efficient and effective preparation, adoption and application of technical regulations, standards and CAPs. The lack of adequate quality infrastructure in developing countries constrains the ability of exporters to access foreign markets. This is because meeting requirements is often not enough; it may also be necessary to demonstrate compliance in order to build confidence in the quality and safety of exported products. Quality infrastructure, including accredited conformity assessment bodies, is essential to help domestic firms integrate into 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 TA 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 reviewed (see page 43).

# Transparency

Transparency is a cornerstone of the TBT Agreement. It aims to promote information exchange, regulatory cooperation and predictability and reduce potential trade frictions. Core transparency elements include:

- notification obligations, including the obligation to: (i) notify draft technical regulations (Articles 2.9, 2.10 and 3.2), as well as draft CAPs (Articles 5.6, 5.7 and 7.2); and (ii) make a “one-time” notification of each member’s organizational “set-up” for the implementation of the Agreement (Article 15.2);
- the establishment of enquiry points (Articles 10.1 and 10.3) and a notification authority (Article 10.10); and
- publication requirements for technical regulations (Articles 2.9.1 and 2.11), standards (Annex 3, paragraphs J and O) and CAPs (Articles 5.6.1 and 5.8).

These elements have been further developed by the decisions and recommendations of the TBT Committee (see page 77).

The TBT Enquiry Point Guide (available at: [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_enquiry\\_point\\_guide\\_e.pdf](https://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_point_guide_e.pdf)) contains further elaboration and examples related to transparency provisions and procedures.

## Notifications

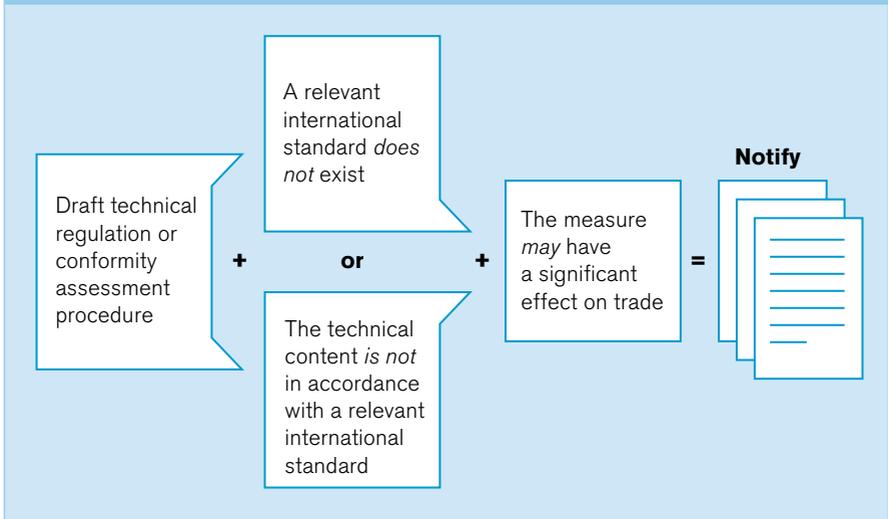
The notification provisions in the TBT Agreement, along with the relevant TBT Committee decisions and recommendations, form the backbone of the Agreement’s disciplines on transparency. Notifications

reveal how members intend to regulate to achieve specific policy objectives and allow for an initial assessment of potential 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 at the TBT Committee, and to receive feedback from industry or other stakeholders. 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.

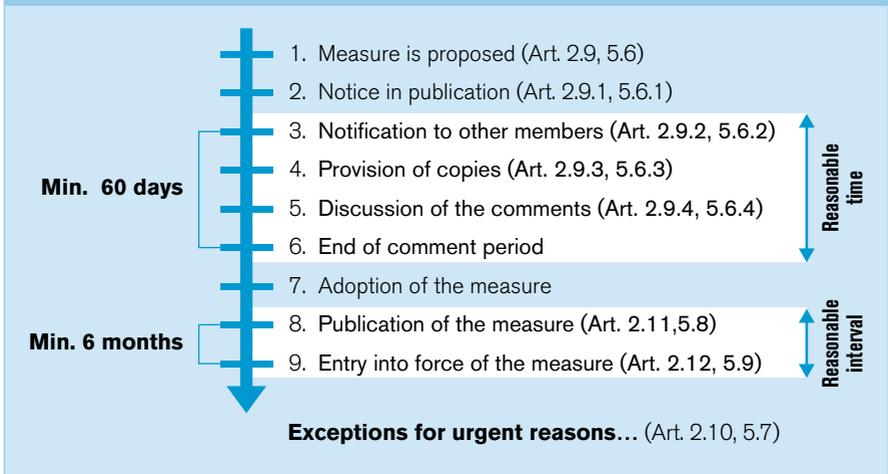
Essentially, governments are required to “notify” other members, through the WTO Secretariat, of proposed measures that may have a significant effect on other members’ trade and that are not in accordance with relevant international standards (see Figure 5). This notification must take place at an early, 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 and other stakeholders to transmit their concerns and comments to their governments who may then raise the matter bilaterally with trading partners. 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 43).

A notification opens up a comment period, during which members can request copies of the draft measure and make written comments on the measure to the notifying member. It thus provides an opportunity for consultation and cooperation with other

**Figure 5: Deciding what to notify**



**Figure 6: TBT transparency requirements**



members (see steps 3 to 6 of Figure 6). The recommended length of time for the comment period is at least 60 days.

As mentioned before, the TBT Committee has adopted a series of recommendations

related to transparency. One of these recommends members to go beyond their minimum obligation of notifying all regular regulations as drafted and also notify the final texts of these measures when they are subsequently adopted.

## Submitting notifications to the WTO

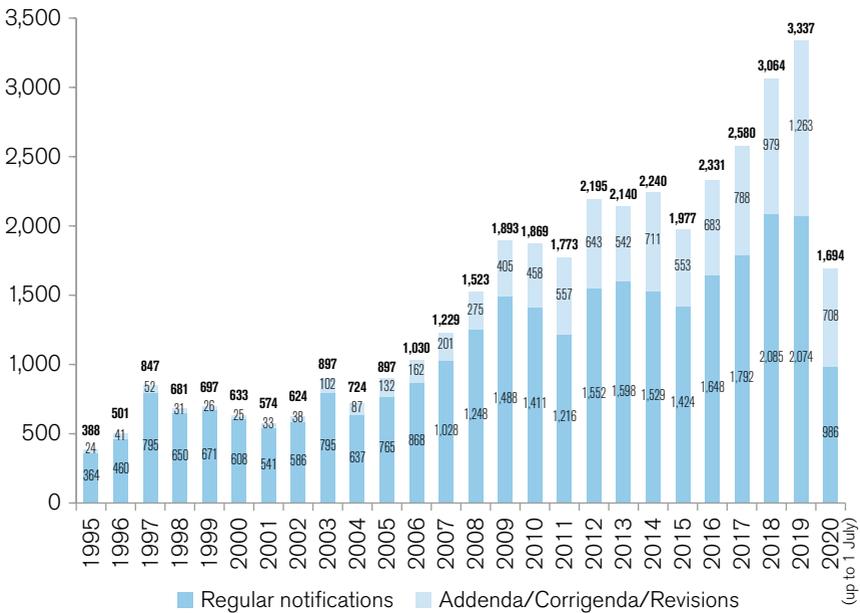
Members are required to designate “a single central government authority” for submitting these notifications (Article 10.10), although other entities may be involved in filling out the notification template. To date, 142 WTO members have made at least one notification on technical regulations or CAPs, totalling almost 40,000 TBT notifications (see Figure 7). 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 few pages long and may contain hyperlinks to the full text of the measure being notified. 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 should be submitted online through the WTO TBT Notification Submission System (<https://nss.wto.org/tbtmembers>) to the WTO Secretariat. Alternatively, notifications can be sent by email ([crn@wto.org](mailto:crn@wto.org)). However, the processing time for notifications submitted by email is significantly longer. The notification is then circulated via the SPS and TBT notification alert system, ePing, to all interested public and private sector stakeholders (more information on ePing can be found on page 42). The notification is also included in the WTO’s Documents Online database and the TBT IMS database (see page 42).

**Figure 7: Total TBT notifications, 1 January 1995 to 1 July 2020**



Detailed information on what, how and when to notify is included in the WTO TBT Enquiry Point Guide, which is available online on the TBT gateway at: [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_enquiry\\_point\\_guide\\_e.pdf](https://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_point_guide_e.pdf).

## 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 notification is a “statement of implementation” on the measures in existence or taken to ensure the implementation and administration of the Agreement. The statement should describe the content of relevant laws, regulations and administrative orders; the time period allowed for comments on notifications; contact information for enquiry points and other relevant agencies; titles of publications on TBT measures; and information on measures ensuring that national and sub-national authorities provide information on regulatory proposals at an early stage. While colloquially called “one-time” notifications, they should be updated when necessary. These notifications are contained in WTO document series G/TBT/2/Add. [number] and can be consulted on the TBT IMS under the heading “statements of implementation (Art 15.2)”.

## Enquiry point

To facilitate the exchange of information, the TBT Agreement requires each member to put in place one or more “enquiry points” that are able to answer all “reasonable enquiries” from other members as well as from “interested parties” in other members regarding their technical regulations,

standards and CAPs. An enquiry point is an office or body mandated to handle incoming comments on notified measures, respond to enquiries and provide relevant information and documents. In essence, enquiry points serve to connect members and “interested parties” (e.g. the private sector, trade officials, standards officials, regulators or any other domestic and international stakeholders) in all matters relating to the implementation of the transparency provisions of the TBT Agreement. Most members have provided contact details for their TBT enquiry point(s).

The contact information for notification authorities and enquiry points is available on the ePing platform, as well as in the TBT IMS (see page 42).

## 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 text of regulations. With respect to technical regulations and CAPs, even before notification, members must publish a notice, usually in an official journal (Step 2 of Figure 6) specifying their intention to introduce a particular measure – this is sometimes referred to as “early notice”. Early notice should be given at an “early appropriate stage” and in a manner that allows interested parties to become acquainted with it. Once a final measure is adopted, it must promptly be published, or be made available otherwise (Step 8 of Figure 6). Moreover, members should provide a “reasonable interval” (normally a minimum of six months) between publication of a measure and its entry into force (Steps 8 and 9 of Figure 6). This gives producers, both domestic and foreign, time to adapt their products and methods of production

to the new requirements (the relevant decision can be found on pages 117-118). It is also recommended that members notify the availability of the adopted text as an addendum to the original notification.

## Standards and transparency

The transparency provisions specifically related to standards are laid out in the TBT Agreement's Annex 3 (Code of Good Practice). There are some similarities to those for technical regulations and CAPs, but there are also some important differences. Standardizing bodies adhering to the Code of Good Practice must publish a "work programme" (specifying standards under preparation and those recently adopted) every six months and notify its existence for posting on the WTO ISO Standards Information Gateway (<https://tbcode.iso.org/sites/wto-tbt/home.html>). They do not need to notify individual standards, but they must nevertheless provide a period for comments of at least 60 days prior to adoption of draft standards. In addition, they are required to promptly publish adopted standards and provide copies upon request.

The WTO ISO Standards Information Gateway contains the full list of standardizing bodies that have accepted the Code of Good Practice, as well as information on their work programmes. Acceptance and withdrawal notifications are subsequently circulated by the WTO Secretariat. These notifications can be consulted on the TBT IMS under the heading "Standards related notifications".

## Accessing information on TBT measures online

A number of publicly available online tools have been developed to facilitate sharing and accessing TBT information.

- The TBT Notification Submission System (TBT NSS) is an online platform that enables members to prepare and submit TBT notifications to the WTO. The system allows members to organize and track submitted notifications and facilitates coordination between ministries and other relevant government bodies. In addition, it facilitates swift and accurate processing of the submitted notifications by the WTO Secretariat.  
<https://nss.wto.org/tbtmembers/> (accessible only to members)
- The TBT Information Management System (TBT IMS) is an online searchable database developed by the WTO Secretariat containing all TBT notifications submitted by members and all STCs raised in the TBT Committee. Users can also browse information on TBT enquiry points, statements on implementation, agreements between members and other TBT-related documents. All information can be extracted from the system in spreadsheet format through the custom reporting function, and several predefined reports are provided as well.  
<http://tbtime.wto.org/>
- ePing is an alert system that allows public and private stakeholders to keep track of relevant SPS and TBT notifications. By registering on the publicly available system, users can receive daily or weekly email alerts on notifications covering products and markets of interest to them. An SPS and TBT notification database is also included in the tool. In

addition, ePing facilitates national and international coordination and information exchange on distributed notifications. It offers a specific feature enabling enquiry points to manage and contact national subscribers. Enquiry points can also reach out directly to each other through a chat function. ePing has been set up by the WTO Secretariat in cooperation with the United Nations Department of Economic and Social Affairs (UNDESA) and the International Trade Centre (ITC).  
<https://www.epingalert.org/en>

- The WTO ISO Standards Information Gateway, maintained by the ISO Secretariat, contains information on the standardizing bodies that have accepted the WTO TBT Code of Good Practice and their work programmes.  
<https://tbtcode.iso.org/sites/wto-tbt/home.html>

## TBT Committee

The transparency disciplines discussed above are closely linked to the work of the TBT Committee. The Committee serves as a forum to discuss any issues of interest to WTO members related to the implementation of the Agreement. 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 normally include Geneva-based delegates, as well as various

capital-based trade officials and officials from national regulatory and standardizing bodies. There are generally three regular 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 and regional intergovernmental organizations – including bodies working in the areas of standardization and metrology – participate as observers in the Committee.

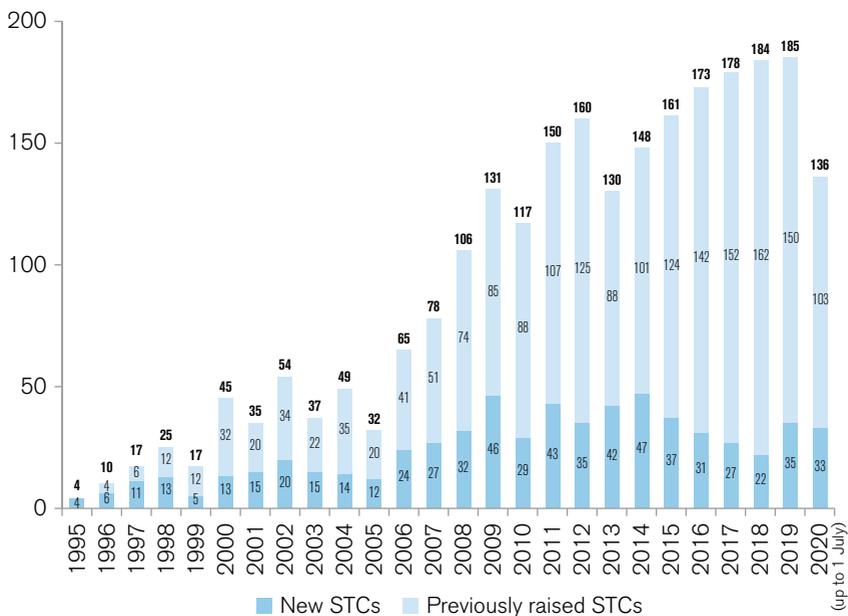
The work of the TBT Committee involves two broad areas:

1. Review of specific measures. Members use the TBT Committee to discuss “specific trade concerns” (STCs) with respect to TBT measures proposed or adopted by other members, which may affect their trade.
2. 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 cross-cutting themes, including transparency, standards, conformity assessment and good regulatory practice.

## Review of specific measures

A significant proportion of the work of the TBT Committee is dedicated to the discussion of “specific trade concerns” (STCs): i.e. concerns one or more members raise with respect to specific measures other members are preparing (drafting) or have already adopted. In advance of each regular Committee meeting, members have the option to add new or previously raised STCs to the Committee agenda for discussion during the meeting. The number

**Figure 8: STCs raised, 1 January 1995 to 1 July 2020**



Note: An STC is counted each time it has been raised in a TBT Committee meeting. If raised for the first time, it is counted as a new STC. If it is raised again, it is counted as a previously raised STC.

of STCs discussed in the TBT Committee has increased steadily since the creation of the WTO in 1995, reaching a total of around 640 by mid-2020 (see Figure 8). Around 70 per cent of these concerns related to a notified measure.

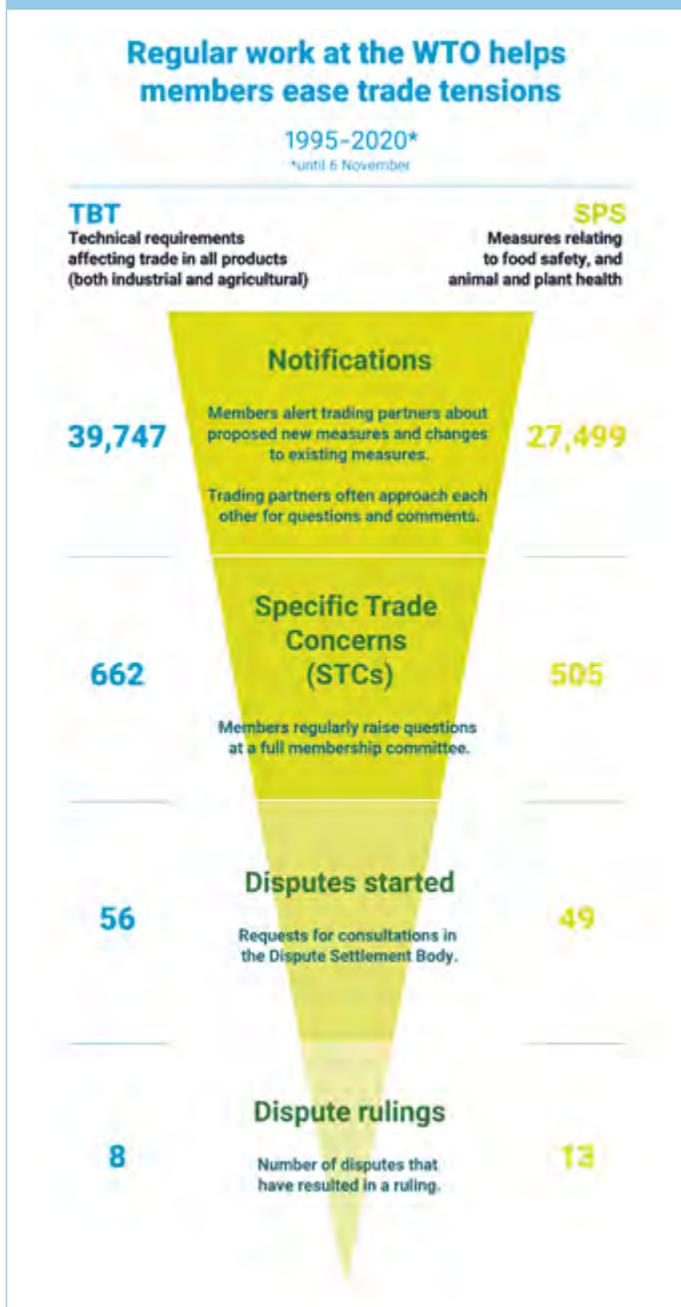
The opportunity to raise STCs in an open, multilateral platform – one composed mostly of technical experts – is an effective way of reducing potential trade tensions. Discussions of concerns contribute to an improved understanding by WTO members of the rationale underlying other members’ regulations and present an opportunity for clarification and for delegations to flag potential problems. The meetings of the Committee thus provide an opportunity for international regulatory cooperation between

members (see page 42) in a transparent, multilateral setting. In certain cases, this has effectively facilitated the resolution of trade 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 (see Figure 9).

### 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 82). The Committee’s decisions and recommendations include principles, guidelines and recommended procedures.

Figure 9: Regular work at the WTO 1995–2020



The bulk of these are developed through Triennial Reviews (reviews that take place every three years as mandated in Article 15.4 of the Agreement). The reports of these reviews guide the Committee's work. A large share of the decisions and recommendations adopted by the Committee pertain to transparency.

For example, the Committee has adopted formats for different types of notifications, agreed on the coherent use of these formats (see G/TBT/35/Rev.1) and recommended the notification of final versions of regulations. The Committee has also undertaken work in other areas. For instance, in 2000, the Committee developed guidance on international standards (see page 98) and, later, on conformity assessment (see page 89). During the 2018 review, the Committee considered issues such as CAPs, good regulatory practice, standards and TA.

Guidance developed during the triennial reviews helps strengthen the implementation of the TBT Agreement by ensuring better preparation, application and adoption of technical regulations, standards and CAPs – which, in turn, contribute to avoiding the creation of unnecessary obstacles to trade. A compilation of all the TBT Committee's decisions and recommendations is provided below, as a separate section of this publication. This compilation can also be consulted on the WTO's Documents Online database. (For the latest version of the compilation, please check the most recent version of the G/TBT/1/Rev.14 document.)

## 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. Examples of GRP include internal coordination (whole of government approach), transparency and public consultations and regulatory impact assessment (RIA). 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 GRP 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 international regulatory cooperation and harmonization.

The TBT Committee has recognized that:

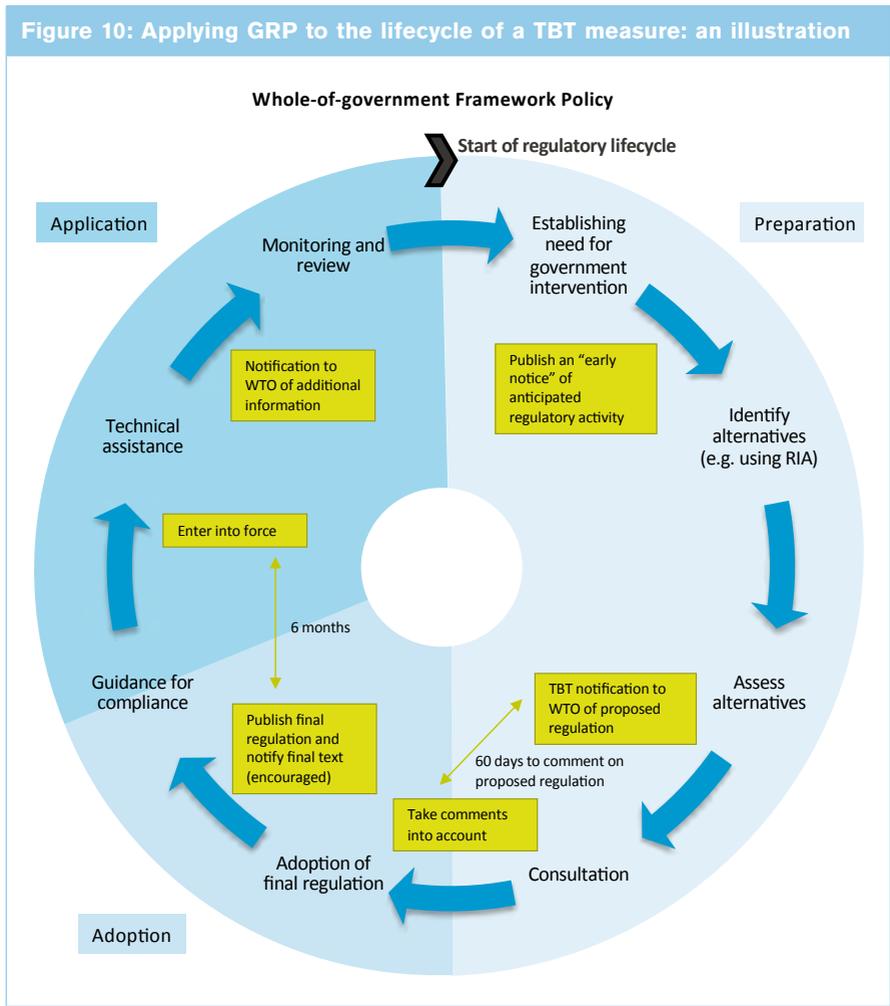
Good Regulatory Practice (GRP) can contribute to the improved and effective implementation of the substantive obligations under the TBT Agreement. (G/TBT/1/Rev.14, para. 1.1)

GRP discussions in the TBT Committee 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).

The TBT Agreement's provisions on transparency and discussions on GRP are closely linked. For instance, "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 among its fundamental components. Figure 10 is one way to illustrate the regulatory lifecycle of a specific measure. The core inner circle anchors the central importance of a “whole-of-government”

approach to GRP; at the next level, Figure 9 shows the procedural obligations contained in the TBT Agreement (green 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 RIA), publication, implementation and enforcement, and review.



## The need to improve international cooperation on regulation

Even when WTO members' regulations are intended to address the same policy objective, they can differ due to variations in local conditions, preferences and values. These differences entail trade costs. Regulatory cooperation between members (sometimes referred to as International Regulatory Cooperation (IRC)) aims to reduce these costs and avoid unnecessary barriers to trade, without compromising the legitimate public policy objectives. Regulatory cooperation comprises a wide range of approaches and mechanisms from informal exchanges to formal agreements, with varying scopes and levels of ambition, taking place in bilateral, regional or multilateral settings. 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. The most appropriate approaches in any given situation will differ based on a number of factors, including, for example, the compatibility of regulatory environments and systems, the sector, type and degree of regulation already in place, and the level of technical and institutional capacity of the members involved.

The disciplines of the TBT Agreement, and practices of the TBT Committee, help promote opportunities for regulatory cooperation between members. For instance, transparency and notification obligations,

and the exchange of comments on a draft measure, can be the start of a cooperation process. TBT Committee decisions and recommendations, which provide guidance to improve implementation, also support deeper cooperation, and some of these have been incorporated in TBT provisions of regional trade agreements.

A common feature across all forms and degrees of regulatory cooperation between members is its forward-looking nature. The early identification of potential regulatory frictions and opportunities for greater alignment is a key part of regulatory cooperation, before divergent approaches become 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.

## Quality infrastructure

Trust is vital for international trade. Consumers (or buyers in the market) need to believe that the products they purchase are safe and of sufficient quality. For example, a cycling helmet should keep the wearer safe in case of accident or impact. But none of this is explicitly evident to the consumer: one cannot always see the attribute of quality or safety in the product.

The trust does not arise spontaneously. Behind the scenes, trust is supported by an "invisible" chain of institutions working in synch to deliver what is referred to as the national quality infrastructure (NQI).

NQI can be defined as:

The system comprising the organizations (public and private) together with the policies, relevant legal and regulatory framework, and practices needed to support and enhance the quality, safety and environmental soundness of goods, services and processes.

It relies on: metrology; standardization; accreditation; conformity assessment; and market surveillance (in regulated areas).

The quality infrastructure is required for the effective operation of domestic markets, and its international recognition is important to enable access to foreign markets. It is a critical element in promoting and sustaining economic development, as well as environmental and social wellbeing.<sup>6</sup>

Essentially, this is a system that ensures that weights and measurements are trustworthy (e.g. that one litre of petrol bought at the pump is in fact one litre), that the way products are tested and inspected ensures they are safe and of appropriate quality, and that these activities are all done in a consistent manner by competent organizations. It comprises governance (“soft”) and institutions (“hard”) that, taken together, strongly foster productivity and competitiveness of businesses while supporting the protection of consumers’ health and safety, and the environment.

NQI is essential for the efficient and effective preparation, adoption and application of technical regulations, standards and CAPs. Inadequate quality infrastructure in developing countries constrains the ability of their exporters to access foreign markets. Lack of international recognition of their NQI multiplies costs and undermines confidence in the quality and safety of exports.

#### Box 6: CAPs – addressing a source of trade concerns<sup>7</sup>

The work of the TBT Committee shows that one pillar of the quality infrastructure – CAPs – is a frequent source of trade friction. From 2010-2019, members submitted more than 16,000 notifications of new TBT measures – the vast majority (more than 85 per cent) concerning technical regulations. While most notifications do not raise any alarm bells, those that are about CAPs are more often raised as STCs. Over this same period, around 50 per cent of new STCs were either in part or fully related to CAPs. This means that there is a higher concentration of trade concerns regarding CAPs compared to technical regulations.

Over the years, the TBT Committee has discussed challenges related to CAPs and how to overcome them. For instance, the Committee developed an Indicative List of Approaches to Facilitate the Acceptance of the Results of Conformity Assessment (See Annex 1 on pages 154-155), providing a range of approaches that governments might choose to apply across different sectors, in order to ease the burdens associated with duplicative testing and certification. In its Eighth Triennial Review, the Committee agreed to initiate work on developing non-prescriptive practical guidelines to support regulators in the choice and design of appropriate and proportionate CAPs.

Today this is more important than ever. Having trust in the quality and safety of products – and their constituent parts – is a prerequisite for participating in value chains. When there is uncertainty that the product (or a component of it) complies with the underlying requirements, trade can be negatively affected: is the helmet *actually* safe? Trust is so important between buyers and sellers that, when it falters, the consequences on trade can be stark, significant and sometimes disproportionate.

Although the quality infrastructure is vital for accessing market opportunities through international trade, policy makers do not always see it as a priority. In part this is because the benefits are not explicit. It is important to think pre-emptively about the role that quality infrastructure plays in boosting productivity and competitiveness.

## Disputes brought under the TBT Agreement

A WTO dispute is formally initiated when a member requests to enter into “consultations” with another member to discuss concerns that measures enacted by the latter may not be consistent with certain WTO obligations. Many times, an amicable solution is already found during this “non-litigious” consultation phase and the dispute is over. Other times, however, this is not possible. The parties then proceed into a full-fledged “litigation” phase: adjudicators are selected (Panel), legal and factual arguments are made, hearings are held and decisions are rendered (Panel and/or Appellate Body report(s)).

Since the creation of the WTO in 1995, 55 consultation requests contained claims that a member’s measure was inconsistent with one or various obligations under the TBT Agreement (and, frequently, also under other WTO agreements). However, the great majority of these 55 requests never became full-fledged TBT disputes (i.e. they went through all the dispute settlement proceedings, the “litigation phase”: written submissions were presented, hearings took place, and the process ended when a final Panel and/or Appellate Body reports were issued). There are at least two reasons for this.

First, many of these requests never proceeded to the “litigation phase” because they were already settled between the parties during the initial non-litigious “consultations phase”.

Second, there were other cases that proceeded further, but no final rulings on TBT claims were made. In such cases, the reason was either because: (i) the complaining party ultimately decided not to pursue these claims any further during the proceedings (instead proceeding only with respect to its claims raised under other WTO agreements, e.g. under the GATT 1994 or the SPS Agreement); or (ii) the Panel, after having first ruled on claims raised under other agreements, considered it unnecessary to also rule on the TBT claims against the same measure (in light of the principle of “judicial economy”).

Over the years, the TBT Agreement has been mentioned, in various degrees of detail, in many WTO Panel and Appellate Body reports, both in the context of disputes with TBT claims and disputes under other agreements. Strictly speaking, however, there have been only eight disputes (listed in Box 7) brought to the WTO where a significant part of the

**Box 7: Disputes where the findings focused on the TBT Agreement**

<b>Title of dispute</b>	<b>Complainant(s)</b>	<b>Dispute No.</b>
<i>EC – Asbestos</i>	Canada	DS135
<i>EC – Sardines</i>	Peru	DS231
<i>US – Tuna II (Mexico)</i>	Mexico	DS381
<i>US – COOL</i>	Mexico, Canada	DS384, DS386
<i>EC – Seal Products</i>	Canada, Norway	DS400, DS401
<i>US – Clove Cigarettes</i>	Indonesia	DS406
<i>Australia – Tobacco Plain Packaging</i>	Honduras, Dominican Republic, Cuba, Indonesia	DS435, DS441, DS458, DS467
<i>Russia – Railway Equipment</i>	Ukraine	DS499

Panel's and/or Appellate Body's findings has been specifically on the TBT Agreement. Some of these disputes were mentioned above in various sections of this publication.

Full information on all 55 disputes containing at least one TBT claim can be found on the WTO website (go to [www.wto.org/disputes](http://www.wto.org/disputes), click "Find disputes" in the left menu, click "by WTO agreement", and then click "Technical Barriers to Trade (TBT)").

## End notes

- 1 As of December 1994, just before the GATT system was replaced by the WTO.
- 2 As of July 2020, the WTO has 164 members.
- 3 TBT Agreement, Annex 1 (opening paragraph); and Article 1.3 (only referring to “products”, not “services”). See also WTO Agreement, Annex 1A (where TBT is listed as one of the multilateral trade agreements on “trade in goods”).
- 4 TBT Agreement, Article 1.4 (stating that “purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies” are instead addressed in the Plurilateral WTO Agreement on Government Procurement, according to its coverage).
- 5 TBT Agreement, Article 1.5, and Figure 3). See also SPS Agreement, Article 1.4.
- 6 This definition was developed by the International Network on Quality Infrastructure (INetQI), available at: [https://www.wto.org/english/tratop\\_e/tbt\\_e/02\\_a\\_p2a\\_bipm.pdf](https://www.wto.org/english/tratop_e/tbt_e/02_a_p2a_bipm.pdf)
- 7 See JOB/TBT/224/Rev.1.

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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.

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# 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.

## 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.

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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.

- 10.8 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.
- 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

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

## NOTE BY THE SECRETARIAT<sup>1</sup>

### *Revision*

The present document contains the fourteenth 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 Decisions and recommendations

1.2 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>3</sup>

- a. In 1997, in order to assist the implementation of the relevant provisions of the Agreement, the Committee agreed to the following<sup>4</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

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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, 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, paras. 19-20; G/TBT/26, 13 November 2009, para. 11; G/TBT/32, 29 November 2012, paras. 3-4; G/TBT/37, 3 December 2015, paras. 1.1-1.7.

<sup>4</sup> G/TBT/5, 19 November 1997, para. 24 (a)-(b).

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;

- 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;
  - iii. to invite Members, on a voluntary basis, to submit descriptions of their approach to technical regulations; and
  - iv. 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 2000, in order to assist the implementation of the relevant provisions of the Agreement, the Committee agreed to reiterate points 1.2 a. (iii) and (iv) above.<sup>5</sup>
- c. 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>6</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.
- d. 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>7</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;

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5 G/TBT/9, 13 November 2000, para. 37.

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

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

- 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 between Members has contributed to the avoidance of unnecessary regulatory differences;
  - 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); and
  - viii. to hold a workshop on GRP addressing, among other topics, regulatory impact assessment.
- e. 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>8</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.

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<sup>8</sup> G/TBT/26, 13 November 2009, para. 11.

- f. In 2012, with a view of furthering its work in the area of GRP, the Committee agreed<sup>9</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);
    - 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.
- g. In 2015, with a view to furthering its work in the area of GRP, the Committee agreed<sup>10</sup>:
- i. to continue to exchange information on mechanisms of GRP adopted by WTO Members that facilitate the implementation of the TBT Agreement; and
  - ii. to hold a thematic session in March 2016 on RIAs, including discussion of:
    - the extent to which RIAs could facilitate the implementation of the TBT Agreement, considering the constraints facing developing countries in carrying out RIAs; and

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

10 G/TBT/37, 3 December 2015, para. 1.8.

- how trade impacts and TBT Agreement obligations could be taken into account in the preparation of RIAs.
- h. In 2018, with a view to furthering its work in the area of GRP, the Committee agreed<sup>11</sup>:
- i. to continue to exchange information on mechanisms of GRP adopted by WTO Members that facilitate the implementation of the TBT Agreement and, in this vein:
    - to dedicate, unless otherwise agreed, the first thematic session of the TBT Committee each year to the topic of GRP;
    - to hold a thematic session on the role and function of domestic committees, and other administrative mechanisms, that facilitate internal coordination on TBT;
  - ii. to encourage those Members that conduct RIA or similar initiatives as part of their regulatory process to provide, to the extent feasible, a hyperlink to the studies (ex ante) in the pertinent notification to the TBT Committee, as well as to notify on a regular basis or publish on a publicly accessible website the subsequent related assessments (ex post) in the national language<sup>12</sup>;

## 1.2 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>13</sup>
- b. On 5 March 2013, the Committee held a Thematic Session on GRP.<sup>14</sup>
- c. On 17 June 2013 the Committee held a second Thematic Session on GRP.<sup>15</sup>
- d. On 18 March 2014, the Committee held a third Thematic Session on GRP.<sup>16</sup>

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11 G/TBT/41, 19 November 2018, para. 1.7.

12 In line with a previous recommendation by the TBT Committee, for *ex ante* RIAs, this information could be made available through a hyperlink to the assessment in Box 8 of the notification template or by including the assessment in the draft measure itself (G/TBT/1/Rev.13, Section 5.6.2.1.d. on p.35).

13 The 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.

14 The Moderator's summary and the final programme are contained in G/TBT/GEN/143, 11 March 2013.

15 The Chairman's report is contained in G/TBT/GEN/143/Add.1, 25 June 2013.

16 The Chairman's report and the final programme are contained in G/TBT/GEN/143/Add.2, 26 March 2014.

- e. On 17 March 2015, the Committee held a first Thematic Session on the Seventh Triennial Review, covering, *inter alia*, GRP.<sup>17</sup>
- f. On 16 June 2015, the Committee held a second Thematic Session on the Seventh Triennial Review, covering, *inter alia*, GRP.<sup>18</sup>
- g. On 8 March 2016, the Committee held a Thematic Session on GRP.<sup>19</sup>
- h. On 28 March 2017, the Committee held a Thematic Session on GRP.<sup>20 21</sup>
- i. On 5 March 2019, the Committee held a Thematic Session on GRP.<sup>22 23</sup>

## 2 Regulatory Cooperation between Members

2.1 The Committee notes that regulatory cooperation between Members is an effective means of disseminating GRP. It can also 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.<sup>24</sup>

### 2.1 Decisions and recommendations

- a. In 2006, with a view to deepening understanding of the contribution GRP can make to the implementation of the TBT Agreement, the Committee agreed, *inter alia*, to share experiences on<sup>25</sup>:
  - i. how regulatory cooperation between Members has contributed to the avoidance of unnecessary regulatory differences.
- b. In 2009, in order to further enhance information on regulatory cooperation between Members, the Committee agreed<sup>26</sup>:

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17 The Chairman's report is contained in JOB/TBT/125, 25 March 2015, paras. 1.1-1.2.

18 The Chairperson's report is contained in JOB/TBT/134, 26 June 2015, para. 1.1.

19 The Chairperson's report is contained in G/TBT/GEN/191, 17 March 2016.

20 The Moderator's report is contained in G/TBT/GEN/214, 5 April 2017.

21 [https://www.wto.org/english/tratop\\_e/tbt\\_e/th\\_sess\\_gpr\\_280317\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/th_sess_gpr_280317_e.htm)

22 The Moderator's report is contained in G/TBT/GEN/256, 14 March 2019.

23 [https://www.wto.org/english/tratop\\_e/tbt\\_e/thematicsession5319\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/thematicsession5319_e.htm)

24 G/TBT/26, 13 November 2009, paras. 14-15.

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

26 G/TBT/26, 13 November 2009, para. 16.

- 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.
- c. In 2015, with a view to furthering its work and raising awareness of the importance of regulatory cooperation between Members, the Committee agreed<sup>27</sup>:
- i. to deepen and broaden its information exchange in the area of regulatory cooperation between Members, based on topics identified by Members. The purpose of this information exchange is to:
    - provide Members with an opportunity to share factual information and experiences with respect to ongoing, new or emerging regulatory issues, including in specific sectors, without duplicating regulatory cooperation work in other technical bodies<sup>28</sup>;
    - discuss possible elements of regulatory cooperation between Members with the aim of making regulatory cooperation initiatives more effective; and
  - ii. to hold thematic sessions on regulatory cooperation between Members in June and November 2016. The Committee will organize these sessions based on proposals from Members.
- d. In 2018, building on this exchange as well as on previous decisions and recommendations of the Committee, and with a view to furthering its work and raising awareness of the importance of regulatory cooperation between Members, the Committee agreed<sup>29</sup>:
- i. to continue its information exchange in the area of regulatory cooperation between Members, based on topics identified by them.

## 2.2 Events

- a. 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>30</sup>

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27 G/TBT/37, 3 December 2015, para. 23(b).

28 In line with Article 13.3 of the TBT Agreement.

29 G/TBT/41, 19 November 2018, para. 2.18.

30 The 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, 7 September 2011.

- b. On 17 March 2015, the Committee held a first Thematic Session on the Seventh Triennial Review, covering, *inter alia*, regulatory cooperation between Members.<sup>31</sup>
- c. On 16 June 2015, the Committee held a second Thematic Session on the Seventh Triennial Review, covering, *inter alia*, regulatory cooperation between Members.<sup>32</sup>
- d. On 14 June 2016, the Committee dedicated a Thematic Session on regulatory cooperation between Members to the topic of energy efficiency.<sup>33 34</sup>
- e. On 9 November 2016, the Committee dedicated a Thematic Session on regulatory cooperation between Members to the topic of food labelling.<sup>35 36</sup>

## 3 Technical Regulations

### 3.1 Decisions and recommendations

- a. In 2018, with a view to furthering its work in the area of mandatory marking and labelling requirements, the Committee agreed<sup>37</sup>:
  - i. to *hold* a discussion of how to facilitate compliance with mandatory marking and labelling requirements on products, and consider the need for further work in the Committee on this topic, including on a sectoral basis, as appropriate.

## 4 Conformity Assessment

- 4.1 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.

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31 The Chairman's report is contained in JOB/TBT/125, 25 March 2015, paras. 2.1-2.2 and 4.1.

32 The Chairperson's report is contained in JOB/TBT/134, 26 June 2015, para. 1.1 and 5.1-5.2.

33 The moderators' report is contained in G/TBT/GEN/198, 23 June 2016.

34 [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbtcomjune16\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbtcomjune16_e.htm)

35 The moderators' report is contained in G/TBT/GEN/205, 22 November 2016.

36 [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbtnov16\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbtnov16_e.htm)

37 G/TBT/41, 19 November 2018, para. 3.2.

## 4.1 Decisions and recommendations

4.2 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>38</sup>

- 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>39</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;
  - 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

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38 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; G/TBT/37, 3 December 2015, paras. 3.1-3.8. 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, G/TBT/M/8 and G/TBT/M/10 (1997).

39 G/TBT/5, 19 November 1997, para. 29(a), (b), (d) and (e).

- 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 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>40</sup>; and
  - ii. to exchange information on the operation of Articles 6, 10.7 (Section 4.2 a.iv) and other relevant provisions which contain disciplines with respect to recognition of the results of conformity assessment procedures.<sup>41</sup>
- c. 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 154 of this document). The Committee noted the following in respect of this list<sup>42</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.
- d. In 2000, the Committee agreed to invite Members, on a voluntary basis:

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40 G/TBT/5, 19 November 1997, para. 29(c).

41 G/TBT/5, 19 November 1997, para. 29(e).

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

- 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>43</sup>; and
  - 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>44</sup>
- e. 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>45</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.

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43 G/TBT/9, 13 November 2000, para. 28.

44 G/TBT/9, 13 November 2000, para. 33.

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

- f. 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>46</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.
  - 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.
- g. In 2009, with a view to facilitating trade, the Committee agreed<sup>47</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;

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

47 G/TBT/26, 13 November 2009, para. 19.

- iii. based on these exchanges, and those referred to on page 87 of this document (Section 2.1 b, above), 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".
- h. 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>48</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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<sup>48</sup> G/TBT/32, 29 November 2012, para. 5.

- i. In 2015, with a view to furthering its work in the area of conformity assessment procedures, and in particular with respect to the recommendation from the Fifth Triennial Review 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<sup>49</sup>, the Committee agreed<sup>50</sup>:
- i. to continue to exchange information in respect of the three areas of work identified in the Sixth Triennial Review (namely: Approaches to conformity assessment; Use of relevant international standards, guides or recommendations; and, Facilitating the recognition of conformity assessment results)<sup>51</sup>;
  - ii. to exchange information on initiatives of Members to enhance regulators' reliance on international and/or regional systems for conformity assessment, including sectoral schemes, aimed at facilitating the recognition of conformity assessment results;
  - iii. to discuss approaches to the use of quality infrastructure, both national and regional, for facilitating trade in respect of standards, technical regulations and conformity assessment procedures;
  - iv. to discuss factors that Members consider relevant when deciding whether to accept tests and other conformity assessment results in other Members. For example, relevant factors could be: the existence of international schemes, or mutual recognition agreements, for the acceptance of tests and other conformity assessment results; or reliance on accreditation to demonstrate technical competence of conformity assessment bodies; and
  - v. to hold a thematic session in March 2016 on developments in international and regional systems, and regional trade agreements (RTAs), relating to the recognition and acceptance of conformity assessment results.
- j. In 2018, building on this exchange as well as on previous decisions and recommendations of the Committee, in particular the mandate from the Fifth Triennial Review<sup>52</sup>, and with a view to furthering its work in the area of conformity assessment procedures, the Committee agreed<sup>53</sup>:
- i. to *continue to exchange information* in respect of the three areas of work identified in previous reviews (namely: Approaches to conformity assessment; Use of relevant international standards, guides or recommendations; and Facilitating the recognition of conformity assessment results);

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49 G/TBT/26, para. 19(c).

50 G/TBT/37, para. 3.9.

51 G/TBT/32, para. 5.

52 G/TBT/26, para. 19(c).

53 G/TBT/41, 19 November 2018, para. 4.17.

- ii. with respect to “Approaches to conformity assessment” to *initiate work* on developing non-prescriptive practical guidelines to support regulators in the choice and design of appropriate and proportionate conformity assessment procedures, including, but not limited to, the following areas:
- criteria related to risk assessment and other relevant factors, including for identification of lower and higher risk products;
  - the range of approaches to conformity assessment available to regulators within different regulatory frameworks;
  - elements of conformity assessment that regulators can use in designing appropriate procedures;
  - legal and administrative frameworks that enable regulators to confidently rely on a particular conformity assessment regime (for example, SDoC may need to be supported by appropriate product recall, product liability laws and consumer protection legislation);
- iii. in parallel to the above work, to *hold* thematic sessions on:
- risk assessment, including: categorization of risks, and methods of risk assessment;
  - post market controls (e.g. market surveillance) and other pre-market controls;
  - “Certificates of Free Sale”, without prejudice to their use by Members, including on: the range of appropriate and less trade restrictive available alternatives; related challenges faced by regulators and exporters, including with respect to producing certificates when they are not in use in the exporting market; and how these apply to re-exports;
  - the development of National Quality Infrastructure (NQI), including metrology, standardization, conformity assessment, and accreditation, and its use by regulators;
  - the use of international and/or regional systems for conformity assessment by regulators in both national and regional regulatory regimes; and,
  - case studies of practical examples of how Members arrive at the acceptance of conformity assessment results (including by using the approaches mentioned in the Committee’s “Indicative List”<sup>54</sup>).

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54 The “Indicative List” refers to the Indicative List of Approaches to Facilitate the Acceptance of the Results of Conformity Assessment: Annex 1 of G/TBT/1/Rev.13 (p.52).

## 4.2 Events

- a. A Symposium on Conformity Assessment Procedures was held on 8-9 June 1999.<sup>55</sup>
- b. A Special Meeting dedicated to Conformity Assessment Procedures was held on 29 June 2004.<sup>56</sup>
- c. A Workshop on Supplier's Declaration of Conformity (SDoC) was held on 21 March 2005.<sup>57</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>58</sup>
- e. A Thematic Session on Conformity Assessment Procedures took place on 29 October 2013.<sup>59</sup>
- f. A Thematic Session on Conformity Assessment Procedures took place on 4 November 2014.<sup>60</sup>
- g. On 16 June 2015, the Committee held a second Thematic Session on the Seventh Triennial Review, covering, *inter alia*, Conformity Assessment Procedures.<sup>61</sup>
- h. A Thematic Session on Conformity Assessment Procedures took place on 8 March 2016.<sup>62</sup>
- i. A Thematic Session on Conformity Assessment Procedures took place on 28 March 2017.<sup>63 64</sup>
- j. On 13 June 2017, a Thematic Session was held on Risk Assessment.<sup>65 66</sup>
- k. A Thematic Session on Conformity Assessment Procedures was held on 5 March 2019.<sup>67 68</sup>
- l. On 18 June 2019, a Dedicated Informal meeting on Guidelines for Conformity Assessment Procedures was held.

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

56 The Report of the special meeting is contained in G/TBT/M/33/Add.1, 21 October 2004.

57 The Report of the workshop is contained in Annex 1 of G/TBT/M/35, 24 May 2005.

58 The Report of the workshop is contained in G/TBT/M/38/Add.1, 6 June 2006.

59 The Chairman's report and the final programme are contained in G/TBT/GEN/155, 4 November 2013.

60 The Chairman's report and the final programme are contained in G/TBT/GEN/174, 11 November 2014.

61 The Chairperson's report is contained in JOB/TBT/134, 26 June 2015, paras. 2.1-2.5.

62 The Chairperson's report is contained in G/TBT/GEN/190, 17 March 2016.

63 The Moderator's report is contained in G/TBT/GEN/213, 5 April 2017.

64 [https://www.wto.org/english/tratop\\_e/tbt\\_e/th\\_sess\\_280317\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/th_sess_280317_e.htm)

65 The Moderator's report is contained in G/TBT/GEN/226, 19 June 2017.

66 [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbtrisk13617\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbtrisk13617_e.htm)

67 The Moderator's report and the final programme are contained in G/TBT/GEN/257, 14 March 2019.

68 [https://www.wto.org/english/tratop\\_e/tbt\\_e/thematicsessioncap5319\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/thematicsessioncap5319_e.htm)

## 5 Standards

- 5.1 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 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>69</sup>
- 5.2 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>70</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>71</sup>

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69 G/TBT/26, 13 November 2009, para. 20.

70 This Decision is contained in Annex 2 (on page 155 of this document).

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

## 5.1 Decisions and 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>72</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>73</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 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>74</sup> Also, with a view to developing a better understanding of international standards within the Agreement, the Committee agreed<sup>75</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 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

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

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

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

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

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.
- d. 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 155 of this document).<sup>76</sup>
- e. In 2006, with regard to the acceptance of the Code of Good Practice by regional standardizing bodies, the Committee agreed<sup>77</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.
- f. 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>78</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.
- g. 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

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

77 G/TBT/19, 14 November 2006, paras. 66-67 and 68(g)(i). This recommendation is also reproduced in this document on page 121, see para. 6.4.1.1.(b.).

78 G/TBT/26, 13 November 2009, para. 25.

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>79</sup>:

- i. recalled its discussion in the Third Triennial Review<sup>80</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>81</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.
- h. 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>82</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.
- i. 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>83</sup>:

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79 G/TBT/26, 13 November 2009, para. 26.

80 G/TBT/13, 11 November 2003, para. 25.

81 G/TBT/5, 19 November 1997, para. 12(a). This recommendation is also reproduced in this document on page 121, see para 6.4.1.1.(a.).

82 G/TBT/26, 13 November 2009, para. 27.

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

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 implementation of the TBT Agreement had not been established.<sup>84</sup> During the review period, the Committee reverted to this discussion. The Committee hereby reiterates the recommendations made at the Fifth Triennial Review<sup>85</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>86</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.

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84 These concerns are reflected in the Fifth Triennial Review Report (G/TBT/26, 13 November 2009, para. 26).

85 The three recommendations contained in G/TBT/26, 13 November 2009, para. 26(a)–(c).

86 The full text of this Decision (hereafter the “2000 Committee Decision”) is contained in Annex 2 (page 155 of this document).

iii. Transparency in standard-setting<sup>87</sup>

During the review period, the Committee emphasized, in particular, the importance of transparency in the development of standards.<sup>88</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>89</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 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.

j. In 2015, with a view to furthering its work standards, as well as in the area of transparency in standard-setting, the Committee agreed<sup>90</sup>:

- i. consistent with paragraph J of the Code, to encourage Members’ central government standardizing bodies, and non-governmental bodies that have accepted the Code, to publish their work programmes on websites and notify the specific website addresses where the work programmes are published to the ISO/IEC Information Centre;
- ii. consistent with paragraph L of the Code, to encourage Members’ central government standardizing bodies, and non-governmental bodies that have accepted the Code, to share information about the publication of a notice announcing the period for commenting on a draft standard (e.g. title and volume of publication, website address);

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87 Relevant existing decisions and recommendations are contained in G/TBT/1/Rev.10, 9 June 2011, Section IV.C.2.(iii) on page 29.

88 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 (G/TBT/1/Rev.10, para 17).

89 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”.

90 G/TBT/37, 3 December 2015, para. 4.10(a), (b) and (c).

- iii. to discuss ways of improving Members' access to the information mentioned in *i* and *ii* above<sup>91</sup>;
  - iv. to hold a thematic session in June 2016 on methods of referencing standards in regulation, including Members' initiatives or policies that seek to utilize international standards in regulation; and
  - v. 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.
- k. In 2018, building on this exchange as well as on previous decisions and recommendations of the Committee, and with a view to furthering its work in the area of standards, the Committee agreed<sup>92</sup>:
- i. to *hold* a thematic session on incorporating standards by reference in regulations with a view to discussing and possibly collecting best practices and which would take into account existing guidelines and policy considerations on referencing standards; and,
  - ii. to *hold* a workshop on the role of gender in the development of standards.

## 5.2 Events

- a. An Information Session of Bodies Involved in the Preparation of International Standards was held on 19 November 1998.<sup>93</sup>
- b. A Workshop on the Role of International Standards in Economic Development was held on 16-17 March 2009.<sup>94</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>95</sup>
- d. A Thematic Session on Standards was held on 5 March 2013.<sup>96</sup>

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91 In 2016, the "WTO ISO Standards Information Gateway" was launched. The Gateway can be accessed at <https://tbtcode.iso.org/sites/wto-tbt/home.html> and provides information on standardizing bodies that have accepted the Code of Good Practice and, if available, their work programmes. The notification formats for the acceptance of and withdrawal from the Code of Good Practice as well as to notify work programmes, can also be found on the gateway.

92 G/TBT/41, 19 November 2018, para. 5.8.

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

94 G/TBT/M/47, 5 June 2009, pp. 81-83.

95 G/TBT/M/51, 1 October 2010, pp. 82-88.

96 The Moderator's summary and the final programme are available in G/TBT/GEN/144, 11 March 2013.

- e. A Thematic Session on Standards was held on 18 March 2014.<sup>97</sup>
- f. A Thematic Session on Transparency, held on 17 June 2014, included a session on Transparency in Standard Setting.<sup>98</sup>
- g. On 16 June 2015, the Committee held a second Thematic Session on the Seventh Triennial Review, covering, *inter alia*, Standards.<sup>99</sup>
- h. A Thematic Session on Standards was held on 14 June 2016.<sup>100 101</sup>

## 6 Transparency

6.1 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.

### 6.1 General

#### 6.1.1 Decisions and recommendations

- 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 transparency is a fundamental pillar in the implementation of the TBT Agreement and a key element of GRP.<sup>102</sup> The Committee noted the significant stock of decisions and recommendations that it has developed since 1995, and agreed<sup>103</sup>:
  - i. to stress the importance of full implementation of this existing body of decisions and recommendations by Members.

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97 The Chairman's report and the final programme are available in G/TBT/GEN/144/Add.1, 26 March 2014.

98 The Moderator's report and the final programme are contained in G/TBT/GEN/167, 24 June 2014.

99 The Chairperson's report is contained in JOB/TBT/134, 26 June 2015, para. 3.1.

100 The Moderator's report is contained in G/TBT/GEN/199, 23 June 2016.

101 [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbtcomjune16\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbtcomjune16_e.htm)

102 G/TBT/26, 13 November 2009, para. 29.

103 G/TBT/26, 13 November 2009, para. 32 and G/TBT/32, 29 November 2012, para. 11.

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

6.2 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>104</sup>

### 6.2.1 Decisions and recommendations

- a. In 1995, with respect to the contents of Article 15.2 statements, the Committee agreed<sup>105</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;
    - 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

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104 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.

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

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.
- b. 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>106</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; and
  - 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.
- c. In 2000, the Committee agreed<sup>107</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.
- d. In 2003, in order to assist Members in meeting their obligations under Articles 15.2 and 10.1, the Committee<sup>108</sup>:

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106 G/TBT/5, 19 November 1997, para. 7.

107 G/TBT/9, 13 November 2000, para. 9.

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

- 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.

## 6.2.2 Documents

- a. Members' Statements on Implementation and Administration of the Agreement are contained in the G/TBT/2/Add - series.<sup>109</sup>
- b. A list of Members having submitted their 15.2 Statements is maintained in the G/TBT/GEN/1/ - series.

## 6.2.3 Events

- 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>110</sup>

## 6.3 Notifications of Technical Regulations and Conformity Assessment Procedures

6.3 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.

6.4 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 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.

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109 This information can be downloaded from the TBT IMS, at: <http://tbtims.wto.org>. See Section "Online Tools" for further details.

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

## 6.3.1 Decisions and recommendations

### 6.3.1.1 General

- a. In 2009, based on experience shared between Members on the implementation of notification obligations, the Committee agreed<sup>111</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.

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

- 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>112</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;
  - 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;

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111 G/TBT/26, 13 November 2009, para. 34.

112 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, p. 7.

- 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>113</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.

### 6.3.1.3 Timing of Notifications

- 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>114</sup>

### 6.3.1.4 Submission of Notifications (Format and Guidelines)

- a. The agreed version of the Format and Guidelines for the submission of notifications is contained in Annex 3.2 (on page 161 of this document).<sup>115</sup>
- b. 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>116</sup>
- c. 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

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

114 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, p. 7.

115 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, p. 3-6.

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

process, including the time needed for the publication and circulation of notification by the Secretariat, the Committee<sup>117</sup>:

- i. agreed that 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>118</sup>
  - ii. 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>119</sup>
- d. In 2003, with regard to the electronic transmission of information on proposed standards, technical regulations and conformity assessment procedures, the Committee agreed<sup>120</sup>:
- iii. 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.
- e. 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>121</sup>:
- 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.

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

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

119 G/TBT/M/15, 3 May 1999, paras. 43 and 45; G/TBT/9, 13 November 2000, paras. 13, 15 and Annex 3; G/TBT/13, 11 November 2003, para. 26.

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

121 G/TBT/26, 13 November 2009, para. 36.

- f. In 2012, with respect to the online submission of notifications, the Committee agreed<sup>122</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>123</sup>
- g. In 2014, with a view to facilitating the traceability of information pertaining to a given notification (e.g. amendments, availability of the adopted text, entry into force), and avoiding confusion between new notifications and previously notified measures, the Committee agreed<sup>124</sup>:
- i. to a recommendation on the coherent use of notification formats (new notification, addenda, corrigenda, revision and supplement).
- h. In 2015, the Committee agreed<sup>125</sup>:
- i. to encourage Members to follow the recommendation on coherent use of notification formats.<sup>126</sup>
- i. In 2018, building on this exchange as well as on previous decisions and recommendations of the Committee, and with a view to furthering its work in the area of transparency, the Committee agreed<sup>127</sup>, with respect to the submission of notifications:
- i. to *exchange information*, for the purposes of enhancing predictability and transparency, on practices used in situations where a Member considers it is difficult to establish whether a draft technical regulation or conformity assessment procedure may fall under the TBT and/or the SPS Agreement. This exchange may be organized as an information session in cooperation with the SPS Committee;
  - ii. to *encourage* Members to provide maximum specific information on the products potentially impacted by notified measures (in Box 4 of the notification format). In this connection, to hold an initial discussion on how to improve – and what challenges exist for – the identification of products including with respect to the use of ICS and/or HS codes and/or product names where precise codes do not apply;

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122 G/TBT/32, 29 November 2012, para. 18.

123 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: [tbtnss@wto.org](mailto:tbtnss@wto.org). See Section "Online Tools" for further details.

124 G/TBT/35, 24 June 2014. The recommendation also appears under Section 6.3.1.11 (d) "Follow-up", page 119, and is reproduced in full in Annex 3.1 (on page 159 of this document).

125 G/TBT/37, 3 December 2015, para. 5.12(b).

126 G/TBT/35, 24 June 2014.

127 G/TBT/41, 19 November 2018, para. 6.19(d).

- iii. to *discuss* challenges in identifying deviations from relevant international standards, guides or recommendations;
- iv. to *encourage* Members, where possible, to provide a website address giving access to the text of the “relevant documents” in Box 8 of the notification format; and
- v. to *consider*, in light of the above, the need to review and update the Committee’s *Format and Guidelines for New Notification*<sup>128</sup>. Consideration could also, at that point, be given to the development of a keyword list and mechanism for assigning relevant keywords for TBT notifications.

### 6.3.1.5 Notification of Labelling requirements

- 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>129</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.

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

- 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>130</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>131</sup>:

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128 G/TBT/1/Rev.13, Annex 3.2, pp. 58-61.

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

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

131 G/TBT/26, 13 November 2009, para. 38.

- 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>132</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>133</sup>

### 6.3.1.7 Regional approaches to notification of technical regulations and conformity assessment procedures

- a. In 2015, with a view to providing greater transparency and meaningful opportunity for comment on regional experiences, the Committee agreed:
- i. to discuss the notification of regional technical regulations and conformity assessment procedures and to recommend best practices.<sup>134</sup>

### 6.3.1.8 Length of time allowed for comments

- a. In 2000 and 2003, with respect to time limits for presentation of comments on notified technical regulations and conformity assessment procedures, 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>135</sup>; and
  - ii. in order to improve the ability of developing country Members to comment on notifications, and consistent with the principle of special and differential

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

133 It was noted that the establishment of internal coordination mechanisms is also an important element of GRP. See Section 1.1 (on pages 82–86 of this document). See also: G/TBT/32, 29 November 2012, para. 14, footnote 28.

134 G/TBT/37, 3 December 2015, para. 5.12(e).

135 G/TBT/9, 13 November 2000, para. 13 and Annex 3, p. 22.

treatment, developed country Members are encouraged to provide more than a 60-day comment period.<sup>136</sup>

- b. In 2009, the Committee agreed<sup>137</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.

### 6.1.3.9 Handling of comments

- 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>138</sup>:
- 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

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

137 G/TBT/26, 13 November 2009, paras. 39-40.

138 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, p. 9.

- 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>139</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; and
  - 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>140</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
  - 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>141</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

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

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

141 G/TBT/26, 13 November 2009, para. 42.

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.
- e. In 2018, the Committee decided<sup>142</sup>, with respect to the handling of comments:
- i. to *reiterate* previous recommendations<sup>143</sup> to *encourage* Members to disseminate comments received on notified draft measures and substantive replies, on a voluntary basis; and
  - ii. to *discuss*, in the context of the Ninth Special Meeting on Procedures for Information Exchange, the dissemination of comments received on notified draft measures and substantive replies on a voluntary basis, possibly via existing online tools such as ePing.

### 6.3.1.10 Timing of Entry into Force of Technical Regulations and Understanding of “Reasonable Interval” under Article 2.12

6.5 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>144</sup>

- 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>145</sup>:

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142 G/TBT/41, 19 November 2018, para. 6.19(f).

143 G/TBT/1/Rev.13, Section 5.3.1.9, p. 28.

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

145 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.
- b. In 2006, with a view to facilitating the implementation of transparency procedures under the Agreement, the Committee agreed<sup>146</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.

### 6.3.1.11 Follow-up

- 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>147</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>148</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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146 G/TBT/19, 14 November 2006, paras. 61-63 and 68(e)(i).

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

148 G/TBT/26, 13 November 2009, para. 43.

- c. In 2012, with a view to advancing the work of establishing common procedures for the use of notification formats the Committee agreed<sup>149</sup>:
  - i. To exchange experiences on Members' use of notification formats (addendum, corrigendum, revision, new notification).<sup>150</sup>
- d. In 2014, with a view to facilitating the traceability of information pertaining to a given notification (e.g. amendments, availability of the adopted text, entry into force), and avoiding confusion between new notifications and previously notified measures, the Committee agreed<sup>151</sup>:
  - i. to a recommendation on the coherent use of notification formats (new notification, addenda, corrigenda, revision and supplement).
- e. In 2015, the Committee agreed<sup>152</sup> to encourage Members to follow the recommendation on coherent use of notification formats.<sup>153</sup>

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

- a. In 2000, the Committee agreed on the following with a view to providing a brief indication of the notifications issued<sup>154</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>155</sup>

## 6.3.2 Documents

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

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

150 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.

151 G/TBT/35, 24 June 2014 and is reproduced in full in Annex 3.1 (on page 159 of this document).

152 G/TBT/37, 3 December 2015, para. 5.12(b).

153 G/TBT/35, 24 June 2014.

154 G/TBT/9, 13 November 2000, para. 13 and Annex 3, p. 22.

155 These reports can be downloaded from the TBT IMS: <http://tbtime.wto.org>. This information can also be accessed through ePing, the TBT and SPS notification alert system: [www.epingalert.org](http://www.epingalert.org). See Section "Online Tools" for further details.

### 6.3.3 Events

- a. A Workshop and the Second Special Meeting on Procedures for Information Exchange was held on 14 September 1998, which included discussion on notification practices.<sup>156</sup>
- b. The Third Special Meeting on Procedures for Information Exchange was held on 28 June 2001, which included discussion on notification practices.<sup>157</sup>
- c. 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 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>158</sup>
- d. The Fourth Special Meeting on Procedures for Information Exchanges was held on 2-3 November 2004, which included discussion on notification practices.<sup>159</sup>
- e. The Fifth Special Meeting on Procedures for Information Exchange was held on 7-8 November 2007, which included discussion on notification practices.<sup>160</sup>
- f. The Sixth Special Meeting on Procedures for Information Exchange was held on 22 June 2010, which included discussion on good practices in notification.<sup>161</sup>
- g. The Seventh Special Meeting on Procedures for Information Exchange was held on 18 June 2013, which included discussion of good practices in the use of notification formats.<sup>162</sup>
- h. On 16 June 2015, the Committee held a second Thematic Session on the Seventh Triennial Review, covering, *inter alia*, discussion of regional experiences.<sup>163</sup>

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

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

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

159 The Summary Report of the meeting is contained in Annex 2 of G/TBT/M/34, dated 5 January 2005.

160 The Summary Report as well as the Chairman's Report are contained in Annex 1 and 2, respectively, of G/TBT/M/43, dated 21 January 2008.

161 The Summary Report as well as the Chairman's Report are contained in Annex 1 and 2, respectively, of G/TBT/M/51, dated 1 October 2010.

162 The Summary Report is contained in the Annex of G/TBT/M/60, 23 September 2013.

163 The Chairperson's report is contained in JOB/TBT/134, 26 June 2015, paras. 4.1-4.6.

## 6.4 Notifications related to Standards

6.6 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).

### 6.4.1 Decisions and recommendations

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

- a. In 1997, in order to improve the transparency, acceptance of, and compliance with the Code, the Committee agreed<sup>164</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>165</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.

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

165 G/TBT/19, 14 November 2006, paras. 66-67 and 68(g)(i).

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

- a. In 1997, in order to improve the transparency, acceptance of, and compliance with the Code, the Committee agreed<sup>166</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 programmes every six months as required under paragraph J, so that appropriate technical assistance can be provided, if necessary.
- b. In 1999, the Committee agreed<sup>167</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.
- c. In 2006, with a view to facilitating the implementation of transparency procedures under the Agreement, the Committee agreed<sup>168</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.
- d. In 2015, with a view to furthering its work in the area of transparency in standard-setting, the Committee agreed<sup>169</sup>:
  - i. consistent with paragraph J of the Code, to encourage Members' central government standardizing bodies, and non-governmental bodies that have accepted the Code, to publish their work programmes on websites and notify the specific website addresses where the work programmes are published to the ISO/IEC Information Centre; and
  - ii. to discuss ways of improving Members' access to the information mentioned in *i* above.

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

167 G/TBT/M/15, 3 May 1999, paras. 67-69.

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

169 G/TBT/37, 3 December 2015, para. 4.10(b).

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

- a. In 1997, in order to improve the transparency, acceptance of, and compliance with the Code, the Committee agreed<sup>170</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>171</sup>:
  - i. that the electronic publication of notices announcing the periods for comments can constitute another possibility for the fulfilment of this transparency obligation.
- c. In 2015, with a view to furthering its work in the area of transparency in standard-setting, the Committee agreed<sup>172</sup>:
  - i. consistent with paragraph L of the Code, to encourage Members' central government standardizing bodies, and non-governmental bodies that have accepted the Code, to share information about the publication of a notice announcing the period for commenting on a draft standard (e.g. title and volume of publication, website address); and
  - ii. to discuss ways of improving Members' access to the information mentioned in *i* above.

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170 G/TBT/5, 19 November 1997, para. 12(e).

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

172 G/TBT/37, 3 December 2015, para. 4.10(b).

## 6.4.2 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>173</sup> The agreed format is contained in Annex 7 (on page 175 of this document).
- b. The agreed format for notification of the existence of a work programme to the ISO/IEC Information Centre is contained in Annex 7 (on page 186 of this document).

## 6.4.3 Events

- a. The Fourth Special Meeting on Procedures for Information Exchanges was held on 2-3 November 2004, which included discussion on transparency in standard-setting.<sup>174</sup>
- b. The Sixth Special Meeting on Procedures for Information Exchange was held on 22 June 2010, which included discussion on transparency in standard-setting.<sup>175</sup>
- c. A Thematic Session on Transparency was held on 17 June 2014, which included discussion of transparency in standard-setting.<sup>176</sup>
- d. On 16 June 2015, the Committee held a second Thematic Session on the Seventh Triennial Review, covering, *inter alia*, discussion of transparency in standard-setting.<sup>177</sup>
- e. The Eighth Special Meeting on Procedures for Information Exchange was held on 8 November 2016, which included discussion of transparency in standard-setting.<sup>178</sup>

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173 This information can be downloaded from the TBT IMS under "Reports": <http://tbtime.wto.org>. See Section "Online Tools" for further details. See Annex 7 (on page 175 of this document) 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). In 2016, the "WTO ISO Standards Information Gateway" was launched. The Gateway can be accessed at <https://tbtcode.iso.org/sites/wto-tbt/home.html> and provides information on standardizing bodies that have accepted the Code of Good Practice and, if available, their work programmes. The notification formats for the acceptance of and withdrawal from the Code of Good Practice as well as to notify work programmes, can also be found on the gateway.

174 The Summary Report of the meeting is contained in Annex 2 of G/TBT/M/34, dated 5 January 2005.

175 The Summary Report as well as the Chairman's Report are contained in Annex 1 and 2, respectively, of G/TBT/M/51, dated 1 October 2010.

176 The Moderator's summary and the final programme are contained in G/TBT/GEN/167, 24 June 2014.

177 The Chairperson's report is contained in JOB/TBT/134, 26 June 2015, paras. 4.1-4.6.

178 The Summary Report is contained in the Annex of G/TBT/M/70, 17 February 2017.

- f. On 18 and 19 June 2019, the Committee held a Thematic Session on Transparency, including the Ninth Special Meeting on Procedures for Information Exchange.<sup>179 180</sup>

## 6.5 Notification under Article 10.7 of the TBT Agreement

6.7 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).

### 6.5.1 Decisions and recommendations

- 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 170 of this document).<sup>181</sup>

### 6.5.2 Documents

- a. Notifications under Article 10.7 are circulated under document symbol G/TBT/10.7/N/[Number].<sup>182</sup>

## 6.6 Dissemination of Information

### 6.6.1 Publication

6.8 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).

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179 The Moderator's report is contained in G/TBT/GEN/265, 28 June 2019.

180 [https://www.wto.org/english/tratop\\_e/tbt\\_e/thematicsession1819\\_06\\_29\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/thematicsession1819_06_29_e.htm)

181 G/TBT/M/5, 19 September 1996, para. 15; G/TBT/W/25, 3 May 1996.

182 This information can be downloaded from the TBT IMS: <http://tbtime.wto.org>. See Section "Online Tools" for further details.

### 6.6.1.1 Decisions and recommendations

- 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>183</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.

### 6.6.1.2 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>184</sup>

### 6.6.1.3 Events

- a. The Fifth Special Meeting on Procedures for Information Exchange was held on 7-8 November 2007, which included discussion on publication practices.<sup>185</sup>

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

6.9 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.

### 6.6.2.1 Decisions and 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>186</sup>:

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183 G/TBT/19, 14 November 2006, paras. 51 and 68(a)(i); G/TBT/26, 13 November 2009, para. 46.

184 This information can be downloaded from the TBT IMS, under report "Publications": <http://tbtims.wto.org>.

185 The Summary Report as well as the Chairman's Report are contained in Annex 1 and 2, respectively, of G/TBT/M/43, dated 21 January 2008.

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

- 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 2007, with the purpose of facilitating access to notified draft texts, the Committee decided<sup>187</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.)
- c. In 2009, with a view to improving access to texts of notified measures, the Committee agreed<sup>188</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.
- d. 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>189</sup>:
- i. to encourage Members when notifying draft measures to provide access – on a voluntary basis and depending on their individual situations – to assessments,

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187 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.

188 G/TBT/26, 13 November 2009, para. 49.

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

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.

- e. In 2018, building on this exchange as well as on previous decisions and recommendations of the Committee, and with a view to furthering its work in the area of transparency, the Committee agreed<sup>190</sup> with respect to adopted final texts:
- i. to *recommend* Members to notify the adopted final text of technical regulations and conformity assessment procedures<sup>191</sup>;
  - ii. to *modify* the existing addenda notification template<sup>192</sup> or to *develop* a new addenda template specific to adopted final texts so as to provide Members with the ability to indicate when the measure entered – or will enter – into force and provide information on where the final text can be obtained, including website address<sup>193</sup>;
  - iii. to *endeavour* to provide the Secretariat, to the extent possible before the June 2019 TBT Committee meeting, with up-to-date website information for where adopted final texts of technical regulations, as well as applicable conformity assessment procedures, can normally be accessed; and
  - iv. to *request* the Secretariat to maintain an up-to-date and readily available list of such websites, based on information from Members and within the limits of its resources, and to publish the list annually in the *Annual Review of the Implementation and Operation of the TBT Agreement*.

### 6.6.3 Provision of Translations

6.10 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.

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190 G/TBT/41, 19 November 2018, para. 6.19(e)

191 Circulated as an addendum to the original notification in line with G/TBT/35.

192 G/TBT/1/Rev.13, Annex 3.3, p. 62; and G/TBT/35.

193 G/TBT/1/Rev.13, Section 5.6.2.1, p. 35; and G/TBT/35.

### 6.6.3.1 Decisions and 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>194</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;
  - 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; and
  - iv. 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>195</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>196</sup>:
- 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.

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194 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, pp. 7-8.

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

196 G/TBT/19, 14 November 2006, para. 68(c)(iv).

- d. 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>197</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 3.6 (on page 168 of this document).<sup>198</sup>
- e. 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>199</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.
- f. In 2015, the Committee agreed to encourage Members to provide translations of draft technical regulations and conformity assessment procedures in one of the WTO official working languages and make them available to Members and their exporters in an effective, efficient and transparent way, taking into account the special difficulties of developing Members.<sup>200</sup>

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197 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.

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

199 G/TBT/26, 13 November 2009, para. 52.

200 G/TBT/37, 3 December 2015, para. 5.12(c).

### 6.6.3.2 Documents

- a. Unofficial translations of notified measures are circulated in the document series G/TBT/N/[Member]/[Number]/[Suppl.].

### 6.6.3.3 Events

- a. On 16 June 2015, the Committee held a second Thematic Session on the Seventh Triennial Review, covering, *inter alia*, discussion of the provision of translations.<sup>201</sup>

## 6.6.4 Online Tools

6.11 At the request of Members, the Secretariat launched the web-based application, the TBT Information Management System (TBT IMS)<sup>202</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, *inter alia*, product codes, notification keywords, objectives of the notified measures, geographic grouping, and dates for comments.

6.12 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>203</sup>

### 6.6.4.1 Decisions and recommendations

- a. 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>204</sup>:

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201 The Chairperson's report is contained in JOB/TBT/134, 26 June 2015, paras. 4.1-4.6.

202 <http://tbtims.wto.org>

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

204 G/TBT/32, 29 November 2012, para. 18.

- i. to request the rapid development of a TBT on-line Notification Submission System (TBT NSS)<sup>205</sup> to foster more expedient processing and circulation of notifications by the Secretariat;
  - ii. 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
  - iii. to discuss further enhancement of the TBT IMS.
- b. In 2015, the Committee agreed<sup>206</sup>:
- i. to encourage Members in a position to do so to begin using the TBT NSS to facilitate and accelerate the submission and processing of notifications;
  - ii. to request the Secretariat to continue to improve the TBT NSS and TBT IMS in line with the needs of Members;
  - iii. to request the Secretariat to explore the development of an export alert system for TBT notifications, in cooperation with other organizations<sup>207</sup>; and
  - iv. to request the Secretariat to report back on *ii* and *iii* above at the Eighth Special Meeting on Procedures for Information Exchange (November 2016).
- c. In 2018, building on this exchange as well as on previous decisions and recommendations of the Committee, and with a view to furthering its work in the area of transparency, the Committee agreed<sup>208</sup> with respect to use of online tools:
- i. to *discuss* how to improve the TBT IMS in order to best reflect the status of STCs raised in the TBT Committee with a view to modify its format accordingly before the next Triennial Review.

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205 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: [tbtnss@wto.org](mailto:tbtnss@wto.org).

206 G/TBT/37, 3 December 2015, para. 5.12(d).

207 The WTO has, in cooperation with UNDESA and ITC, developed a TBT and SPS notification alert system, called ePing. ePing allows government agencies and private sector stakeholders, especially SMEs, to keep track of notifications affecting foreign markets and products of particular interest to them. The system is globally accessible and free of charge and is also equipped with an Enquiry Point Management Tool enabling registered enquiry points to monitor national activity and custom several settings. The system can be accessed on [www.epingalert.org](http://www.epingalert.org).

208 G/TBT/41, 19 November 2018, para. 6.19(c)

## 6.6.4.2 Events

- a. The Fourth Special Meeting on Procedures for Information Exchanges was held on 2-3 November 2004, which included discussion of online tools.<sup>209</sup>
- b. A Thematic Session on Transparency was held on 17 June 2014, which included discussion of online tools.<sup>210</sup>
- c. The Fifth Special Meeting on Procedures for Information Exchange was held on 7-8 November 2007, which included discussion on the use of electronic tools.<sup>211</sup>
- d. The Sixth Special Meeting on Procedures for Information Exchange was held on 22 June 2010, which included discussion on electronic databases.<sup>212</sup>
- e. The Seventh Special Meeting on Procedures for Information Exchange was held on 18 June 2013, which included discussion of online tools.<sup>213</sup>
- f. On 17 March 2015, the Committee held a first Thematic Session on the Seventh Triennial Review, covering, *inter alia*, discussion of online tools.<sup>214</sup>
- g. On 16 June 2015, the Committee held a second Thematic Session on the Seventh Triennial Review, covering, *inter alia*, discussion of online tools.<sup>215</sup>
- h. The Eighth Special Meeting on Procedures for Information Exchange was held on 8 November 2016, which included discussion of online tools.<sup>216</sup>
- i. The Ninth Special Meeting on Procedures for Information Exchange was held on 18 June 2019, which included discussion of online tools.<sup>217</sup>

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209 The Summary Report of the meeting is contained in Annex 2 of G/TBT/M/34, dated 5 January 2005.

210 The Moderator's summary and the final programme are contained in G/TBT/GEN/167, 24 June 2014.

211 The Summary Report as well as the Chairman's Report are contained in Annex 1 and 2, respectively, of G/TBT/M/43, dated 21 January 2008.

212 The Summary Report as well as the Chairman's Report are contained in Annex 1 and 2, respectively, of G/TBT/M/51, dated 1 October 2010.

213 The Summary Report is contained in the Annex of G/TBT/M/60, 23 September 2013.

214 The Chairman's report is contained in JOB/TBT/125, 25 March 2015, paras. 3.1-3.3.

215 The Chairperson's report is contained in JOB/TBT/134, 26 June 2015, paras. 4.1-4.6.

216 The Summary Report is contained in the Annex of G/TBT/M/70, 17 February 2017.

217 [https://www.wto.org/english/tratop\\_e/tbt\\_e/thematicsession1819\\_06\\_29\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/thematicsession1819_06_29_e.htm)

## 6.7 Enquiry Points

### 6.7.1 Establishment of Enquiry Points

6.13 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.

#### 6.7.1.1 Decisions and 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>218</sup>
- b. In 2009, in order to improve implementation of provisions related to the work of Enquiry Points, the Committee agreed<sup>219</sup>:
  - 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.

#### 6.7.1.2 Documents

- a. A list of national enquiry points is contained in the document G/TBT/ENQ/ - series.<sup>220</sup>

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218 G/TBT/M/15, 3 May 1999, paras. 41 and 45 and Annex 1.

219 G/TBT/26, 13 November 2009, para. 54.

220 This information is now available on the TBT IMS. In addition, a predefined report "Enquiry Point(s) List" under "Reports": <http://tbtims.wto.org>.

## 6.7.2 Functioning of Enquiry Points

### 6.7.2.1 Decisions and recommendations

#### 6.7.2.1.1 Handling and Processing of Requests

- 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>221</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>222</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;
  - 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>223</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

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221 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, p. 13.

222 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, p. 8; G/TBT/M/15, 3 May 1999, para. 45 and Annex 1.

223 G/TBT/32, 29 November 2012, para. 16.

- 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.
- d. In 2015, the Committee agreed to continue discussing the role of enquiry points in facilitating internal coordination and in the handling of comments, and explore ways to improve their functioning, including through the use of online tools and by addressing capacity building needs of developing Members.<sup>224</sup>
- e. In 2018, building on this exchange as well as on previous decisions and recommendations of the Committee, and with a view to furthering its work in the area of transparency, the Committee agreed<sup>225</sup> with respect to functioning of enquiry points:
- i. to *encourage* Members to validate the contact information of their enquiry points as contained in the TBT IMS<sup>226</sup> to improve the accuracy and availability of this information. Members are encouraged to either inform the Secretariat that the current information is correct, or to provide the Secretariat with updated information, by the March 2019 Committee meeting;
  - ii. to *discuss* in the context of the Ninth Special Meeting on Procedures for Information Exchange: how ePing can facilitate the work of enquiry points; linkages between ePing and domestic registers of central regulatory planning or action, or other “early warning systems”; and the private sector’s use of ePing.
- f. In 2018, the Committee also agreed<sup>227</sup> with respect to domestic coordination:
- i. to *discuss* good practices for domestic coordination and engagement with regulators, including sharing information about how Members effectively communicate with regulatory agencies to ensure that all relevant notifications are made.

#### **6.7.2.1.2 Enquiries which the Enquiry Points should be prepared to Answer**

- 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>228</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;

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224 G/TBT/37, 3 December 2015, para. 5.12(a)(i).

225 G/TBT/41, 19 November 2018, para. 6.19(a).

226 <http://tbtime.wto.org/en/NationalEnquiryPoints/Search>.

227 G/TBT/41, 19 November 2018, para. 6.19(b).

228 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, p. 13.

- 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.

### 6.7.2.2 Events

- a. A Workshop and the Second Special Meeting on Procedures for Information Exchange was held on 14 September 1998, which included discussion on the functioning of enquiry points.<sup>229</sup>
- b. The Fourth Special Meeting on Procedures for Information Exchange was held on 2-3 November 2004, which included discussion on the handling of comments and the functioning of enquiry points.<sup>230</sup>
- c. The Fifth Special Meeting on Procedures for Information Exchange was held on 7-8 November 2007, which included discussion on technical cooperation and the work of enquiry points.<sup>231</sup>
- d. The Sixth Special Meeting on Procedures for Information Exchange was held on 22 June 2010, which included discussion on the operation of enquiry points.<sup>232</sup>
- e. The Seventh Special Meeting on Procedures for Information Exchange was held on 18 June 2013, which included discussion on the functioning of enquiry points.<sup>233</sup>
- f. On 16 June 2015, the Committee held a second Thematic Session on the Seventh Triennial Review, covering, *inter alia*, discussion of a proposed survey on the functioning of enquiry points.<sup>234</sup>

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

230 The Summary Report of the meeting is contained in Annex 2 of G/TBT/M/34, dated 5 January 2005.

231 The Summary Report as well as the Chairman's Report are contained in Annex 1 and 2, respectively, of G/TBT/M/43, dated 21 January 2008.

232 The Summary Report as well as the Chairman's Report are contained in Annex 1 and 2, respectively, of G/TBT/M/51, dated 1 October 2010.

233 The Summary Report is contained in the Annex of G/TBT/M/60, 23 September 2013.

234 The Chairperson's report is contained in JOB/TBT/134, 26 June 2015, paras. 4.1-4.6.

- g. The Eighth Special Meeting on Procedures for Information Exchange was held on 8 November 2016, which included discussion on the functioning of enquiry points.<sup>235</sup>
- h. The Ninth Special Meeting on Procedures for Information Exchange was held on 18 June 2019, which included discussion on the functioning of enquiry points.<sup>236</sup>

### 6.7.3 Booklets on Enquiry Points

#### 6.7.3.1 Decisions and recommendations

- 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>237</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 5 (on page 171 of this document).
- b. In 2015, the Committee agreed to request the Secretariat, based on experiences shared by Members and for the purposes of training and capacity building, to prepare a guide on best practices for enquiry points for the consideration of Members at the Eighth Special Meeting on Procedures for Information Exchange (November 2016).<sup>238</sup>
- c. At the 14-15 November 2018 Committee meeting, the Secretariat presented the WTO TBT Enquiry Point Guide.<sup>239</sup>

#### 6.7.3.2 Events

- a. A Thematic Session on Transparency was held on 17 June 2014, which included discussion of functioning of enquiry points.<sup>240</sup>

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235 The Summary Report is contained in the Annex of G/TBT/M/70, 17 February 2017.

236 [https://www.wto.org/english/tratop\\_e/tbt\\_e/thematicsession1819\\_06\\_29\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/thematicsession1819_06_29_e.htm)

237 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, pp. 11-12.

238 G/TBT/37, 3 December 2015, 5.12(a)(ii).

239 [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_enquiry\\_point\\_guide\\_e.pdf](https://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_point_guide_e.pdf)

240 The Moderator's summary and the final programme are contained in G/TBT/GEN/167, 24 June 2014.

## 6.8 Special Meetings on Procedures for Information Exchange

### 6.8.1 Decisions and recommendations

- 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>241</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.

### 6.8.2 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>242</sup>
- b. A Workshop and the Second Special Meeting on Procedures for Information Exchange was held on 14 September 1998.<sup>243</sup>
- c. The Third Special Meeting on Procedures for Information Exchange was held on 28 June 2001.<sup>244</sup>
- d. The Fourth Special Meeting on Procedures for Information Exchanges was held on 2-3 November 2004.<sup>245</sup>
- e. The Fifth Special Meeting on Procedures for Information Exchange was held on 7-8 November 2007.<sup>246</sup>
- f. The Sixth Special Meeting on Procedures for Information Exchange was held on 22 June 2010.<sup>247</sup>

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241 G/TBT/M/2, 4 October 1995, para. 5; G/TBT/W/2/Rev.1, 21 June 1995, p. 11; G/TBT/9, 13 November 2000, para. 13 and Annex 3.

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

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

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

245 The Summary Report of the meeting is contained in Annex 2 of G/TBT/M/34, dated 5 January 2005. 246 The 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.

247 The 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.

- g. The Seventh Special Meeting on Procedures for Information Exchange was held on 18 June 2013.<sup>248</sup>
- h. The Eighth Special Meeting on Procedures for Information Exchange was held on 8 November 2016.<sup>249</sup>
- i. The Ninth Special Meeting on Procedures for Information Exchange was held on 18 June 2019.<sup>250</sup>

## 7 Technical Assistance

7.1 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.

### 7.1 Decisions and recommendations

- a. In 1995, in considering the ways in which the provisions of Article 11 could be given operational significance, the Committee agreed<sup>251</sup>:
  - i. that 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; and
  - ii. to exchange information on technical assistance as follows<sup>252</sup>: 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.

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248 The Summary Report is contained in the Annex of G/TBT/M/60, 23 September 2013. The final programme is contained in G/TBT/GEN/150, 17 June 2013.

249 The Summary Report is contained in the Annex of G/TBT/M/70, 17 February 2017. The final programme is contained in JOB/TBT/207/Rev.1.

250 [https://www.wto.org/english/tratop\\_e/tbt\\_e/thematicsession1819\\_06\\_29\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/thematicsession1819_06_29_e.htm)

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

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

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.

- b. In 1997, in order to enhance the implementation of Article 11, the Committee agreed<sup>253</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.
- c. 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>254</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;
  - v. reassessment of needs in light of agreed priorities, identification of technical assistance partners and financial considerations; and
  - vi. 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>255</sup>

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

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

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

- d. In 2000, Members were also invited, on a voluntary basis, to further communicate information on technical assistance programmes they proposed, provided or received.<sup>256</sup>
- e. In 2003, in light of the work programme<sup>257</sup> on TBT-related technical assistance and in order to assist Members in implementing and operationalizing Article 11, the Committee agreed as follows:<sup>258</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

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

257 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).

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

- 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.
- 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.
- f. In 2005, with a view to increasing transparency in the identification and prioritization of technical assistance needs, the Committee agreed<sup>259</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 6 (on page 173 of this document).
- g. In 2006, with a view to facilitating the implementation of the TBT Agreement's provisions on technical assistance, the Committee agreed<sup>260</sup>:
- i. to encourage Members to make use of the Format for the Voluntary Notification of Specific Technical Assistance Needs or Responses<sup>261</sup>;
  - 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;

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259 G/TBT/16, 8 November 2005; G/TBT/M/37, 22 December 2005, para. 82.

260 G/TBT/19, 14 November 2006, paras. 78(a)-(c) and 77.

261 G/TBT/16, 8 November 2005. See also Annex 6 of this document.

- iii. to exchange experiences in respect of the delivery and receipt of technical assistance with a view to identifying good practices in this regard; and
  - iv. 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.
- h. In 2009, the Committee agreed<sup>262</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.
- i. 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>263</sup>:
- i. to encourage Members and relevant bodies involved in the provision of technical assistance to exchange information to identify such practices.
- j. 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>264</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 sectors of priority interest. It may be beneficial to explore incentives

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262 G/TBT/26, 13 November 2009, para. 63.

263 G/TBT/26, 13 November 2009, para. 57.

264 G/TBT/26, 13 November 2009, para. 59.

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.
- k. 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>265</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.
- l. In 2015, with a view to furthering its work in the area of technical assistance, the Committee agreed<sup>266</sup>:
  - i. to reaffirm the need to review the effectiveness of technical assistance and capacity building activities among Members in the TBT area, and encourage Members to continue to exchange experiences on technical assistance;
  - ii. to stress the importance and discuss possible approaches to enhancing the active participation of developing Members in thematic sessions held by the Committee; and
  - iii. to hold a thematic session in November 2016 on technical assistance, including discussion of:
    - the positive effects of technical assistance and capacity building in the TBT area for international trade; and
    - possible approaches to identifying gaps between the demand<sup>267</sup> and supply of technical assistance in the TBT area for developing Members, and seeking to close them where they exist, including through exploring the need for more coordination and better targeted TBT-related technical assistance.
- m. In 2018, building on this exchange as well as on previous decisions and recommendations of the Committee, and with a view to furthering its work in the area of technical assistance, the Committee agreed<sup>268</sup>:

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

266 G/TBT/37, 3 December 2015, para. 6.7(a)-(c).

267 In line with the Committee's agreement on a demand-driven approach to the technical assistance. G/TBT/26, para. 59.

268 G/TBT/41, 19 November 2018, para. 7.12.

- i. to *encourage* Members to continue providing and exchanging experiences on technical assistance, including on how to improve donor coordination;
- ii. to *request* the Secretariat to provide a presentation on the feasibility, including challenges and options, of expanding the present STDF to encompass measures covered by the TBT Agreement, or setting up a separate and dedicated TBT development facility; and,
- iii. to *develop* a good practice guide on how to prepare a comment on a WTO notified technical regulation or conformity assessment procedure.

## 7.1 Documents

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

## 7.2 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>269</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>270</sup>
- c. On 29 October 2013, the Committee held a Thematic Session on Technical Assistance and Special and Differential Treatment.<sup>271</sup>
- d. On 4 November 2014, the Committee held a Thematic Session on Technical Assistance and Special and Differential Treatment.<sup>272</sup>
- e. On 9 November 2016, the Committee held a Thematic Session on Technical Assistance.<sup>273</sup>

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

270 The Summary Report by the Chairperson is contained in Annex A of G/TBT/M/29, 19 May 2003.

271 The Chairman's report and the final programme are contained in G/TBT/GEN/156, 4 November 2013.

272 The Chairman's report and the final programme are contained in G/TBT/GEN/174, 11 November 2014.

273 The Moderator's report is contained in G/TBT/GEN/204, 22 November 2016.

## 8 Special and Differential Treatment

8.1 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.

### 8.1 Decisions and recommendations

- a. In 1997, with a view to operationalize and implement the provisions of Article 12, the Committee agreed to the following<sup>274</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 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:
  - ii. 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

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<sup>274</sup> G/TBT/5, 19 November 1997, para. 33.

- iii. 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>275</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
  - 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>276</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.
- d. In 2015, with a view to furthering its work in the area of special and differential treatment, the Committee agreed:
  - i. to encourage Members to continue to exchange information on the implementation of Article 12 of the TBT Agreement, with a view towards enhancing the effective operation of Article 12.<sup>277</sup>

## 8.2 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>278</sup>
- b. On 29 October 2013, the Committee held a Thematic Session on Technical Assistance and Special and Differential Treatment.<sup>279</sup>
- c. On 4 November 2014, the Committee held a Thematic Session on Technical Assistance and Special and Differential Treatment.<sup>280</sup>

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275 G/TBT/19, 14 November 2006, para. 82.

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

277 G/TBT/37, 3 December 2015, para. 7.6.

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

279 The Chairman's report and the final programme are contained in G/TBT/GEN/156, 4 November 2013.

280 The Chairman's report and the final programme are contained in G/TBT/GEN/174, 11 November 2014.

## 9 Operation of the Committee

### 9.1 Review of Specific Trade Concerns

9.1 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.

#### 9.1.1 Decisions and recommendations

- 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 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>281</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

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281 G/TBT/26, 13 November 2009, paras. 67-68.

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, considering the substantive body of recommendations and decisions before the Committee, Members agreed on the need to focus and deepen their work. Noting that follow-up was a long-term endeavour, Members saw benefit to dedicating time to thematic topics in response to the specific decisions and recommendations of the Committee, in order to press for greater progress on these issues. To this end, the Committee agreed:
  - i. in order to ensure the efficiency of the discussion of STCs, to further reflect on ways to streamline the work of the Committee in the consideration of STCs<sup>282</sup>; and
  - ii. to hold thematic sessions in conjunction with its regular meetings during 2013-2015.<sup>283</sup>
- c. In 2015, building on the valuable experiences gained in the context of thematic sessions since 2012, and with a view to further deepening the Committee’s exchange of experiences on specific topics, the Committee agreed<sup>284</sup>:
  - i. to continue to hold thematic sessions in conjunction with its regular meetings; and,
  - ii. on the following *work programme* for thematic sessions:
    - March 2016: conformity assessment procedures and good regulatory practice;
    - June 2016: regulatory cooperation between Members and standards;
    - November 2016: transparency, including the Eighth Special Meeting on Procedures for Information Exchange, technical assistance and regulatory cooperation between Members; and
    - In 2017 and 2018, Members will continue to hold thematic sessions as appropriate pursuant to the decisions and recommendations before the Committee.

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

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

284 G/TBT/37, 3 December 2015, para. 8.3.

- d. In 2018, building on this experience as well as on previous decisions and recommendations of the Committee, the Committee agreed<sup>285</sup>:
- i. with respect to thematic sessions, building on the valuable experiences gained in the context of thematic sessions since 2012<sup>286</sup>:
- to *continue* to hold thematic sessions in conjunction with its regular meetings during 2019 to 2021, with a view to further deepening the Committee's exchange of experiences on specific topics;
  - to *encourage* a more balanced representation of speakers in thematic sessions, from all regions in the world including developing and least developed Members (LDCs). In this respect, to *request* the Secretariat to explore the use of WTO technical assistance funding to support participation of speakers from LDCs, and to consider other ways of facilitating engagement (e.g. streaming);
  - for planning purposes, no later than the last meeting of the year, normally in November, the TBT Committee will *confirm* the specific topics to be discussed at the thematic sessions that would take place during the following year;
  - to *hold* the following thematic sessions<sup>287</sup>:
    - March 2019: good regulatory practice<sup>288</sup> and conformity assessment procedures<sup>289</sup>;
    - June 2019: transparency<sup>290</sup>, including the Ninth Special Meeting on Procedures for Information Exchange<sup>291</sup>;
    - November 2019: conformity assessment procedures<sup>292</sup> and standards<sup>293</sup>;

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285 G/TBT/41, 19 November 2018, para. 8.2.

286 In the Sixth Triennial Review, Members agreed on the need to focus and deepen their work and decided to dedicate time to thematic sessions in response to the specific decisions and recommendations in the triennial review reports, in order to press for greater progress on these issues. This recommendation was reiterated in the Seventh Triennial Review (G/TBT/1/Rev.13, Section 8.1.1, p.50).

287 This listing provided below is flexible. Members may agree to include other matters for discussion, or they may agree to otherwise adapt this work programme to reflect unforeseen developments. The Committee will organize these thematic sessions based on proposals from Members.

288 See G/TBT/41 para. 1.7 a.ii. (domestic committees, and other administrative mechanisms, to facilitate internal coordination on TBT).

289 See G/TBT/41 paras. 4.17.c.i. (risk assessment) and 4.17.c.ii. (market surveillance and other pre-market and post-market controls).

290 See G/TBT/41 para. 6.19.

291 Pursuant to the 1995 decision to hold regular meetings of persons responsible for information exchange (G/TBT/1/Rev.13, Section 5.8.1, p. 42).

292 See G/TBT/41 para. 4.17.c.iv. (National Quality Infrastructure).

293 See G/TBT/41 para. 5.8.a. (incorporating standards by reference in regulations).

- March 2020: good regulatory practice<sup>294</sup> and conformity assessment procedures<sup>295</sup>;
  - June 2020: transparency<sup>296</sup> and technical regulations<sup>297</sup>;
  - November 2020: conformity assessment procedures<sup>298</sup> and one additional topic to be defined in November 2019;
  - in 2021, Members will continue to hold thematic sessions on topics to be defined in November 2020;
- ii. with respect to specific trade concerns:
- to *adjust*, on a trial basis<sup>299</sup>, the procedures<sup>300</sup> for the inclusion of specific trade concerns in the annotated draft agenda of the Committee as follows:
    - 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 twenty calendar days prior to the convening of the TBT Committee meeting;
    - 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 (to the extent such information has been communicated to the Secretariat) which concerns are being raised for the first time and which have been previously raised, as well as which concerns relate to *proposed* technical regulations or conformity assessment procedures, and which concerns relate to *final* technical regulations or conformity assessment procedures. It should be circulated no less than fifteen calendar days before the meeting;
  - to *continue discussions* with a view to improving the efficiency and effectiveness of the Committee's consideration of specific trade concerns;

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294 See G/TBT/41 para. 1.7.

295 See G/TBT/41 para. 4.17.

296 See G/TBT/41 para. 6.19.

297 See G/TBT/41 para. 3.2.

298 See G/TBT/41 para. 4.17.

299 This adjustment will be valid for the March and June 2019 Committee meetings. After the June 2019 meeting, the Committee will revert to the original procedures unless there is agreement to apply the adjusted procedures on a permanent basis, or to pursue another course of action.

300 G/TBT/1/Rev.13, Section 8.1.1.a, sub-paragraphs (i - iv), p. 50. The procedures in sub-paragraphs (i) and (ii) of G/TBT/1/Rev.13, Section 8.1.1.a, are replaced by the trial procedures set out in the two bullets below. The procedures in sub-paragraphs (iii) and (iv) of G/TBT/1/Rev.13, Section 8.1.1.a, remain unchanged and continue to apply.

- iii. with respect to Observers:
  - to *ensure* timely consideration of requests for observer status; and
  - to *discuss* best practices for observers' participation in meetings of the TBT Committee.
- e. In 2019, the Committee agreed to apply, on a permanent basis, those procedures that had been adjusted on a trial basis in 2018.<sup>301</sup>

### 9.1.2 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>302</sup> The G/TBT/GEN/74/-series of documents contain an overview of specific trade concerns raised in the TBT Committee.<sup>303</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.

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301 G/TBT/M/78, para 3.331. The full set of procedures for the inclusion of specific trade concerns in the annotated draft agenda of the Committee are contained in G/TBT/43.

302 G/TBT/26, 13 November 2009, para. 69.

303 The information is now available on the TBT IMS: <http://tbtime.wto.org>.

# 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 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.

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

## 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 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 Technical Regulations and Conformity Assessment Procedures

#### 3.1 Recommendation of the Committee on Coherent Use of Notification Formats<sup>2</sup>

The Committee on Technical Barriers to Trade makes the following recommendation to enhance the coherent use of the notification formats:

Type	Description
<b>New Notification</b>	Members should use a new notification <sup>3</sup> to notify the draft text of a proposed technical regulation or conformity assessment procedure (hereafter referred to as the "notified measure"). If the notified measure is associated with a previously notified measure (e.g. amending or supplementing an adopted measure, or replacing a withdrawn or revoked measure) <sup>4</sup> , the symbol(s) of the associated notified measure(s) should be indicated in Box 8 of the new notification.
<b>Addenda<sup>5</sup></b>	Members should use an addendum to notify additional information related to a notification or the text of a notified measure, including if: <ul style="list-style-type: none"> <li>The comment period has been changed (e.g. extended or re-opened);</li> <li>The notified measure is adopted, published, or enters into force, especially in cases where relevant dates have not been provided in the original notification or have been changed. Members are encouraged to indicate how the final text of the measure can be obtained, including website address;</li> <li>The notified measure is withdrawn or revoked. If replaced with a new measure, where possible, the symbol of the corresponding new notification should be indicated;</li> <li>The content or scope of a notified measure is partially changed or amended. In this case, Members should consider opening a new comment period;</li> </ul>

<sup>2</sup> G/TBT/35, 24 June 2014.

<sup>3</sup> A "notification" refers to the official WTO document which is part of document series "G/TBT/N/[three digit country code]/#".

<sup>4</sup> Note: The WTO Secretariat is exploring the feasibility of an IT solution whereby searches on relevant WTO databases (e.g. TBT IMS, I-TIP) would automatically retrieve associated notifications (so as not to lose the thread through the life-cycle of the measure).

<sup>5</sup> Note: The option of a new addenda format with a list of tick boxes could be annexed to this recommendation.

Type	Description
<b>Addenda</b>	Interpretive guidance is issued; and
	Any other useful and relevant additional information directly related to a notification or notified measure has been made available that does not qualify as a corrigenda, revision or supplement.
<b>Corrigenda</b>	Members should use a corrigendum to correct minor administrative or clerical errors (which do not entail any changes to the meaning of the content) in:
	a notification or subsequent related addendum or revision; and
	the text of the notified measure.
<b>Revision</b>	Members should use a revision to indicate that the notified measure has been substantially re-drafted prior to adoption or entry into force. A revision replaces the original notification. A revision should normally open a new comment period.
<b>Supplement</b>	Members should use a supplement to notify the availability of unofficial translations of notified measures. <sup>6</sup>

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6 In 2007 the TBT Committee agreed (G/TBT/M/43, Section II.C.3, 21 January 2008) that Members should use the formats for unofficial translations contained in G/TBT/1/Rev.11, Annex 5 – Unofficial Translations. Further information is contained in G/TBT/GEN/66.

## 3.2 Format and Guidelines for New Notification (of draft technical regulations and conformity assessment procedures)

### 3.2.1 Format



WORLD TRADE  
ORGANIZATION

G/TBT/N/XXX/XXX

(00-0000)

Date

Page:

#### Committee on Technical Barriers to Trade

### NOTIFICATION<sup>7</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>7</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".

### 3.2.2 Guidelines

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</b> <sup>8</sup>	<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> <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>

<sup>8</sup> Notifiers are requested to check the relevant box or indicate relevant information under "other".

Item	Description
<b>4. Products covered</b>	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.
<b>5. Title and number of pages</b>	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.
<b>6. Description of content</b>	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.
<b>7. Objective and rationale, including the nature of urgent problems where applicable</b>	For instance: health, safety, national security, ... etc.
<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.

Item	Description
<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>9</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.

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9 Notifiers are requested to check the relevant box or indicate relevant information under "other".

### 3.3 Format for Addenda



WORLD TRADE  
ORGANIZATION

G/TBT/N/XXX/#/Add.#

(00-0000)

Date

Page:

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**Committee on Technical Barriers to Trade**

Original:

### NOTIFICATION

#### *Addendum*

The following communication, dated \_\_\_\_\_, is being circulated at the request of the delegation of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### 3.4 Format for Corrigenda



WORLD TRADE  
ORGANIZATION

G/TBT/N/XXX/#/Corr.#

(00-0000)

Date

Page:

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**Committee on Technical Barriers to Trade**

Original:

#### **NOTIFICATION**

##### *Corrigendum*

The following communication, dated \_\_\_\_\_, is being circulated at the request of the delegation of \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### 3.5 Format for Revision



WORLD TRADE  
ORGANIZATION

G/TBT/N/XXX/#/Rev.#

(00-0000)

Date

Page:

#### Committee on Technical Barriers to Trade

### NOTIFICATION<sup>10</sup>

#### Revision

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>10</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".

### 3.6 Format for Supplements (Unofficial Translations)



WORLD TRADE  
ORGANIZATION

G/TBT/N/Country/#/Suppl.#

(00-0000)

Date

Page:

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#### Committee on Technical Barriers to Trade

### AVAILABILITY OF TRANSLATIONS Note by the Secretariat<sup>11</sup>

#### *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<sup>11</sup>

#### *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<sup>11</sup>

#### *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: .....

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11 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.



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**Committee on Technical Barriers to Trade**

Original:

**AVAILABILITY OF TRANSLATIONS**  
**Note by the Secretariat<sup>12</sup>**  
*Supplément*

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 Secrétariat<sup>12</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:

---

**Comité de Obstáculos Técnicos al Comercio**

**ACCESO A TRADUCCIONES**  
**Nota de la Secretaría<sup>12</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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12 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.

## 4. Notification Format under Article 10.7



WORLD TRADE  
ORGANIZATION

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.

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

## 5 Booklets on Enquiry Points

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

### 5.1 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.

### 5.2 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.

### 5.3 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).

#### **5.4 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.

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



WORLD TRADE  
ORGANIZATION

G/TBT/TA

(00-0000)

Date

Page:

Committee on Technical Barriers to Trade

Original: English

### VOLUNTARY NOTIFICATION OF SPECIFIC TECHNICAL ASSISTANCE NEEDS OR RESPONSES

1.	Notifying Member (including, if applicable, an indication of relevant bodies): .....
2.	<p>The technical assistance activity needed or provided may be relevant to the following Article(s) of the TBT Agreement<sup>13</sup>:</p> <p>[.....] Articles 2 and 3 on technical regulations</p> <p>[.....] Article 4 and Annex 3 on standards and the Code of Good Practice</p> <p>[.....] Articles 5, 7 and 8 on development of conformity assessment procedures</p> <p>[.....] Article 6 on recognition of conformity assessment</p> <p>[.....] Article 9 on international and regional systems for conformity assessment</p> <p>[.....] Articles 2, 5 and 10 on information exchange (e.g. notifications, enquiry point)</p> <p>[.....] Article 11 on technical assistance to other Members</p> <p>[.....] Article 12 on special and differential treatment of developing country Members</p> <p>[.....] Article 13 on the TBT Committee (participation in work of TBT Committee)</p> <p>[.....] Other: .....</p>
3.	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>14</sup> :

13 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".

14 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.	<p>Nature and timing of technical assistance activity needed or on offer (key words):</p> <p><i>Type of assistance</i></p> <p>[.....] Awareness raising</p> <p>[.....] Needs assessment</p> <p>[.....] Skills training</p> <p>[.....] Infrastructure development</p> <p>[.....] Other: .....</p> <p><i>Policy area covered</i></p> <p>[.....] Technical regulations</p> <p>[.....] Conformity assessment procedures</p> <p>[.....] Standardization</p> <p>[.....] Information exchange</p> <p>[.....] Other: .....</p> <p><i>Mode of delivery</i></p> <p>[.....] Workshop, seminar or other event</p> <p>[.....] Project-based activity</p> <p>[.....] Other: .....</p> <p><i>Dates</i></p> <p>[.....] Envisaged start date for activity: .....</p> <p>[.....] Estimated duration: .....</p>
5.	<p>Further information available from:</p> <p>[.....] National enquiry point.</p> <p>[.....] Other contact point:<sup>15</sup> .....</p> <p>[.....] Other reference:<sup>16</sup> .....</p>

15 Name of a contact person with telephone and e-mail address.

16 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).

## 7 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

### 7.1 Notification of acceptance of the WTO TBT Code of Good Practice (Paragraph C) to the WTO Secretariat



WORLD TRADE  
ORGANIZATION

(00-0000)

G/TBT/CS/N/

Date

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

Country/Customs Territory/Regional Arrangement:		
Name of standardizing body:		
Address of standardizing body:		
Telephone:	Fax:	
E-mail:	Internet:	
Type of standardizing body:		
<input type="checkbox"/> central governmental	<input type="checkbox"/> local governmental	<input type="checkbox"/> non-governmental
Scope of current and expected standardization activities:		
Date:		

## 7.2 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<sup>17</sup>

### Form A

International Organization for Standardization  
 Case postale 401  
 CH-1214 VERNIER, GENEVA  
 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/Customs territory/Regional arrangement:** .....

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

.....

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

.....

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

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

**Type of standardizing body:**  central governmental;  local governmental;  non-governmental

**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

<sup>17</sup> Forms A, B and C can be downloaded from the WTO ISO Standards Information Gateway <https://tbtcode.iso.org/sites/wto-tbt/home.html>.



International Organization for Standardization  
Case postale 401  
CH-1214 VERNIER, GENEVA  
Switzerland

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

**Country/Customs territory/Regional arrangement:** .....

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

.....

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

.....

.....

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

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

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

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

.....  
(Title)

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

---

# 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

## Decision

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

### 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.

---

<sup>1</sup> G/TBT/M/1, 28 June 1995, para. 13.

**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>2</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 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.

---

2 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).

**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 far-reaching proposal and then on the next most far-reaching 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>3</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.

## CHAPTER XI – Revision

### **Rule 39**

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

---

<sup>3</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.

## Annex A

### 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 B

### 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.

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 case-by-case 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.

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

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 one-year 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 1 July 2020, the following intergovernmental organizations had been granted observer status in the TBT Committee:

- African, Caribbean and the Pacific Group (ACP)\*
- African Organization for Standardisation (ARSO)\*
- Bureau International des Poids et Mesures (BIPM)\*
- CARICOM Regional Organization for Standards and Quality (CROSQ)\*
- European Free Trade Association (EFTA)\*
- Food and Agriculture Organization (FAO)
- Gulf Cooperation Council (GCC) Standardization Organization (GSO)\*
- Intergovernmental Authority on Development (IGAD)\*
- International Electrotechnical Commission (IEC)
- International Monetary Fund (IMF)
- International Organization of Legal Metrology (OIML)\* International Organization for Standardization (ISO)
- International Telecommunication Union (ITU)\*
- International Trade Centre (ITC)
- Latin American Integration Association (ALADI)\*
- Organization for Economic Co-operation and Development (OECD)
- Southern African Development Community (SADC)\*
- United Nations Economic Commission for Europe (UNECE)
- United Nations Conference on Trade and Development (UNCTAD)
- United Nations Industrial Development Organization (UNIDO)\*
- WHO/FAO Codex Alimentarius Commission
- World Bank
- World Health Organization (WHO)
- World Organisation for Animal Health (OIE)

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\* *Ad hoc* observer status.

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# List of abbreviations

<b>APEC</b>	Asia-Pacific Economic Cooperation
<b>CAP</b>	conformity assessment procedure
<b>COOL</b>	country of origin labelling
<b>FAO</b>	Food and Agriculture Organization
<b>GATS</b>	General Agreement on Trade in Services
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GPA</b>	Agreement on Government Procurement
<b>GRP</b>	good regulatory practice
<b>HS</b>	Harmonized System
<b>ICS</b>	International Code for Standards
<b>IP</b>	intellectual property
<b>IPPC</b>	International Plant Protection Convention
<b>ITC</b>	International Trade Centre
<b>LDC</b>	least developed countries
<b>MFN</b>	most-favoured nation
<b>NGO</b>	non-governmental organizations
<b>NQI</b>	national quality infrastructure
<b>NTM</b>	non-tariff measures
<b>OECD</b>	Organisation for Economic Co-operation and Development
<b>OIE</b>	World Organisation for Animal Health
<b>RIA</b>	regulatory impact assessment
<b>S&amp;D</b>	special and differential
<b>SPS Agreement</b>	Agreement on the Application of Sanitary and Phytosanitary Measures
<b>STC</b>	specific trade concerns
<b>TA</b>	technical assistance
<b>TBT Agreement</b>	Agreement on Technical Barriers to Trade
<b>TFA</b>	Trade Facilitation Agreement
<b>TRIPS</b>	Trade-Related Aspects of Intellectual Property
<b>UNDESA</b>	United Nations Department of Economic and Social Affairs
<b>WHO</b>	World Health Organization
<b>WTO</b>	World Trade Organization
<b>WTO Agreement</b>	Marrakesh Agreement Establishing the World Trade Organization

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This work is published under the responsibility of the WTO Secretariat. The opinions expressed and arguments employed herein do not necessarily reflect the opinions or views of WTO members.

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