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## Technical Barriers to Trade

### Part 2: Basic principles of the Agreement on Technical Barriers to Trade

The aim of the WTO Agreement on TBT is to ensure that technical regulations and standards (including packaging, marking and labelling), and assessing conformity with these regulations and standards, are not formulated and applied in order to create unnecessary technical barriers to trade.

The WTO Agreement on TBT encourages countries to use international standards in formulating technical regulations and voluntary standards, and in trade.

It also requires that countries use guidelines and recommendations developed by international standardization organizations as the basis for their conformity assessment procedures.

If countries use international standards, guidelines or recommendations as bases for technical regulations and conformity assessment procedures, these will not be regarded as creating unnecessary barriers to trade. Countries are therefore urged to participate in the work of international standardization organizations. This ensures that international standards and guidelines incorporate their needs and are available for products for which they wish to adopt technical regulations, develop voluntary standards, or develop conformity assessment systems and procedures.

To provide an incentive to countries to use international standards, the Agreement provides that where international standards or guidelines or a conformity assessment system has been used as a basis for a technical regulation, it shall be presumed that they do not create unnecessary obstacles to trade.

In all cases where proposed technical regulations or conformity assessment measures are not based on international standards and are expected to have a significant effect on trade, such regulations must be, where relevant,

based on scientific and technical information. Moreover, countries, under these circumstances are obliged to:

- ◆ Publish notifications of the proposed technical regulations and conformity assessment procedures
- ◆ Provide reasonable opportunity to other interested parties to comment on the proposed technical regulations and conformity assessment procedures
- ◆ Take into account these comments in finalizing the drafts
- ◆ Justify the requirements of the technical regulations, should they be requested to do so

### TBT Agreement acknowledges countries' right to regulate

The WTO Agreement on TBT recognizes that no country should be prevented from taking measures to ensure:

- ◆ The quality of its exports
- ◆ The protection of human life or health
- ◆ The protection of animal or plant life or health
- ◆ The protection of the environment
- ◆ The prevention of deceptive practices
- ◆ The protection of its essential security interests, which are considered legitimate interests

Thus any measure taken by a country with the above in view will not be considered as a technical barrier to trade.

#### Examples - Right to Regulate – Example 1

A member of the European Union proposes to introduce an 'Ordinance on highest concentration allowed concerning certain heavy metals in packaging.' The purpose of the regulation is to set a limit for the concentration of cadmium in packaging and packaging waste that is in line with the EU Directive (94/62/EC)

This regulation has a legitimate objective (protection of the environment)

#### Examples - Right to Regulate – Example 2

Council Directive 76/769/EEC places restrictions on the marketing and use of certain dangerous substances and preparations (azocolourants) in, inter alia, leather articles which may come into direct and prolonged contact with the human skin or oral cavity, such as footwear, gloves, wrist watch straps, handbags, purses/wallets, briefcases, chair covers, purses worn round the neck, etc.

This regulation is intended for a legitimate objective (protection of human health)

### Examples - Right to Regulate – Example 3

Oil Pressure Stove (O.C) Order, 1997, issued by Ministry of Industry, Dept. of Industrial Policy & Promotion, India, has made compliance of Oil Pressure Stoves sold in India with prescribed Indian Standards mandatory.

This regulation is intended for a legitimate objective (protection of human life)

The WTO/TBT Agreement also provides a framework 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 by using the principles of:

- ◆ Transparency
- ◆ Mutual Recognition
- ◆ Equivalence
- ◆ Non-discrimination
- ◆ Harmonization

#### **Transparency:**

##### Information on requirements in export markets

For enterprises, obtaining information on technical regulations and conformity assessment procedures in export markets can be a major problem. The TBT Agreement has alleviated this difficulty by requiring WTO Members to establish enquiry points from which information can be obtained on these issues. Enterprises can thus get information relevant to their export products through their national enquiry point or direct from the national enquiry points of the countries to which their products are being exported. The information about the enquiry points can be accessed at:

[www.intracen.org/btp/issues/sps/national\\_enquiry\\_points.pdf](http://www.intracen.org/btp/issues/sps/national_enquiry_points.pdf)

##### Monitoring proposed standards in export markets

Standardizing bodies in WTO member countries have to comply with the provisions of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 of the TBT Agreement). They are required to publish their work programmes at least once every six months. This should enable enterprises to keep track of proposed standards in the markets to which they wish to export. They can either contact the relevant standardizing body direct or obtain the required information through their own national standards body.

#### **Non-discrimination:**

The technical regulations and standards should be applied so as not to discriminate among imported products by origin (MFN) principle and do not extend to imported products treatment that is less favourable than that extended to domestically produced products (national treatment principle).

#### **Mutual Recognition and equivalence:**

Product testing and inspection by regulatory authorities in importing countries in order to establish conformity with regulations could cause practical problems to foreign suppliers, even if the authorities follow the principles and rules described above. Foreign suppliers shoulder the costs of sending samples to importing countries and often need to employ agents who can expedite testing and inspection. Moreover, where the technical regulations require manufacturing facilities to be inspected by authorized inspectors of the importing country, in order to obtain confirmation, for instance, that good manufacturing standards are being followed, the foreign suppliers have to shoulder the inspector's travel expenses.

To reduce such disadvantages for foreign suppliers, the Agreement urges member countries to accept, where possible, the results of conformity assessment tests carried out in exporting countries. It further suggests that countries should show willingness to accept the certificates issued by regulatory authorities in exporting countries, even when the procedures "differ from their own" provided they are satisfied that these are "equivalent" to their own procedures. The Agreement, however, recognizes that it will be possible for an importing country to accept the procedures of the exporting country as equivalent only where it has confidence in the "adequate and enduring technical competence" of the regulatory authority of the exporting country and therefore in the "continued reliability of their conformity assessment results". To facilitate acceptance by importing countries of conformity assessment certificates, the Agreement further encourages arrangements for the "mutual recognition" of member countries' conformity assessment procedures.