

REDUCING TECHNICAL TRADE BARRIERS

Second Triennial Review of the WTO Agreement on Technical Barriers to Trade (TBT) – Results and Scope

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Introduction to the TBT Agreement

The WTO (World Trade Organization) Agreement on Technical Barriers to Trade (TBT) - sometimes referred to as the Standards Code - aims to reduce impediments to trade resulting from differences between national regulations and standards.

Standards may vary from country to country. Having too many different standards makes life difficult for producers and exporters. The need for them to comply with different standards often involves significant costs. If the standards are set arbitrarily, they could be used as an excuse for protectionism. Standards could then become obstacles to trade. In order to prevent too much diversity, the TBT Agreement encourages countries to use international standards where these are appropriate. It fully recognizes the important contribution that international standards and conformity assessment systems (ensuring that the requirements of standards are met by given products and services) can make to improving efficiency of production and facilitating international trade.

The development of international standards does indeed reduce potential market access across barriers for imports on the home market of each WTO member country, and reduces the potential barriers to its exports to third country markets as well. ■

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Why was there a need for a Triennial Review of the operation and implementation of the WTO Agreement on Technical Barriers to Trade?

In the first place, such a Review provides answers to why the Agreement was set up and how it has functioned up to the present time. It offers members of the WTO a chance to ask for clarifications on the functioning of the Agreement, and also allows them to agree on improvements that should be made to it. It is an opportunity for the active participation of ISO (as an Observer) in the discussions.

Four other Standards Organizations have Observer status in the TBT Committee: the IEC (International Electrotechnical Commission); OIML (International Organization of Legal Metrology); the UN/ECE (United Nations Economic Commission for Europe); and the OCED (Organization for Economic Cooperation and Development).

This Review equally allows thought to be given to the means that may be brought in to facilitate the effective participation of developing countries in the international standardization and conformity assessment work.

Results of the Second Triennial Review in Geneva which ended in late 2000

The role of international standardization

International standards represent a vital element within the TBT Agreement and play a major role in its implementation.

However - and herein lies a challenge - the TBT Agreement does not provide any precise definition of what a "relevant international standard" actually is. This omission can be the source of serious confusion in trade exchanges, and so the TBT Committee has therefore sought to put this right. A broad and thorough debate took place in Geneva between the Committee Members and the Observers; below are some of the problems raised and the solutions offered.

WTO member countries needed to agree on the economic circumstances where particular standards cannot be regarded as "relevant". Japan, as party to no regional trade agreement, has proposed that international standards under the TBT Agreement must not

have adverse effects on competition in the relevant market such as, for instance, preventing technological development, and should not be given preference over characteristics or requirements of specific regions when the needs or interests exist in other regions as well.

Japan is also of the opinion that international standards can no longer cope with technological development, thereby lacking universality, and consequently relevance, under the TBT Agreement.

In the wake of the GATT

The provisions of the GATT 1947 contained only a general reference to technical regulations and standards. A GATT working group, set up to evaluate the impact of non-tariff barriers in international trade, concluded that technical barriers were the largest category of non-tariff measures faced by importers.

After years of negotiations at the end of the Tokyo Round in 1979, 32 GATT Contracting Parties signed the pluriannual Agreement on Technical Barriers to Trade (TBT) which laid down the rules for preparation, adoption and application of technical regulations, standards and conformity assessment procedures.

The new WTO Agreement on Technical Barriers to Trade, or TBT Agreement, negotiated during the Uruguay Round, strengthens and clarifies the provisions of the Tokyo Round Standards Code. It clearly distinguishes between technical regulations and standards.

The difference between a standard and a technical regulation lies in compliance. While conformity with standards is voluntary, technical regulations are by nature mandatory. They have different implications for international trade. If an imported product does not fulfill the requirements of a technical regulation, it will not be allowed to be put on sale. In the case of standards, non-complying imported products will be allowed on the market, but then their market share may be affected if consumers prefer products that meet local standards.

Conformity assessment procedures are defined by the TBT Agreement as technical procedures - such as testing, verification, inspection and certification - which confirm that products fulfill the requirements laid down in regulations and standards. Generally, exporters bear the cost of these procedures. Non-transparent and discriminatory conformity assessment procedures can become effective protectionist tools. ■

Canada and India highlighted *the importance of a consensus-based decision-making process in international standardization bodies*. The criteria required include: a balanced representation of interest categories, broad geographical representation, an appeals mechanism for the impartial handling of any substantial or procedural complaints, and notification of standardization activities in suitable media to afford interested persons or organizations an opportunity for meaningful contributions.

The TBT Committee noted that situations could arise where no relevant international standards for a given product existed. Could *the concept of equivalency* as proposed by New Zealand be applied as an interim measure? New Zealand does not see any conflict between use of equivalency and the development of international standards. Indeed, the former can be an important stepping stone towards the latter and has merit as a means of reducing unnecessary obstacles to trade. Hong Kong shared this view. The TBT Committee found it useful to further explore the equivalency of standards as a temporary measure to facilitate trade in the absence of relevant international standards.

The Committee also considered the particular role of international standards used as a basis for technical regulations. Assuming that *differing international standards covering the same issue* exist, they would impose on countries adopting technical regulations a choice between several relevant international standards. The effect of such a choice would in turn create unnecessary regulatory barriers to trade and thus negatively impact on the objectives of the TBT Agreement. When raising this question, the European Union (EU) illustrated the point by the following example. If use of a specific standard within a technical regulation is made mandatory, and country A incorporates one among the variety of different international standards devoted to the same subject, it is thereby complying with the obligation of the TBT Agreement for member countries to use international standards as a basis for technical regulations. If countries B and C adopt technical regulations covering the same subject but use different international standards as a basis for their mandatory regulation, they are also observing the Agreement. Nevertheless the market remains fragmented, as countries A, B and C, although each is complying with the Agreement, would require different standards as a basis for mandatory regulation. Consequently those countries could reject imports of products meeting different international standards but covering the same issue.

Such a result would certainly not correspond to the spirit and purpose of the TBT Agreement, the objective of which is to facilitate trade and to reduce market fragmentation, among others, by means of the use of

international standards. It is the EU's understanding that for achieving this purpose *such standards should be coherent*. The EU therefore supports the ISO/IEC procedures the aim of which is to avoid *the coexistence of conflicting standards*. The EU also supports the *principle of singularity* proposed by Brazil, according to which for each area of standardization no more than one international standardizing body should be active. This body should produce a single and coherent set of international standards. International standardizing bodies should act jointly or in cooperation in cases of overlapping when their areas of activity converge, be it for scientific, technological or regulatory reasons. This is also Mexico's point of view: in the case of two international standardizing bodies working in the same area, a coordination mechanism should be put in place so as to *avoid duplication*.

ISO gave its assurance that it would report to the TBT Committee on action taken to avoid duplication and ensure consistency between international standards. ISO also promised to report on its activities to address the specific needs of developing countries.

Taking these suggestions fully into account, and in order to clarify and to strengthen the concept of international standards under the Agreement and to contribute to the advancement of its objectives, *the TBT Committee adopted a list of six principles that should be observed by international standardizing bodies*: transparency, openness, impartiality, and consensus, effectiveness and relevance, coherence, development dimension.

Transparency. All essential information on current work programmes, as well as on proposals for standards under consideration and on the final results should be made accessible to all interested parties in all WTO member countries.

Openness. Membership of an international standardizing body should be open on a non-discriminatory basis to relevant bodies of all WTO member countries. This would include openness with respect to participation at the policy development level and at every stage of standards development, such as: proposal and acceptance of new work items, technical discussions on proposals, submission of comments on drafts, reviewing existing standards, voting and adoption of standards and dissemination of adopted standards.

Impartiality and consensus. All relevant bodies of WTO member countries should be provided with meaningful opportunities to contribute to the development of an international standard so that the standard development process will neither privilege nor favour the interests of a particular supplier,

country or region. Consensus procedures should be established that seek to take into account the views of all parties concerned and to reconcile any conflicting arguments.

Impartiality includes: access to participation in work, submission of comments on drafts, consideration of views expressed and comments made, decision-making through consensus, obtaining of information and documents, dissemination of the international standards, fees charged for documents, right to transpose the international standards into regional or national standards, revision of the international standards.

Effectiveness and relevance. To facilitate international trade and prevent unnecessary trade barriers, international standards need to be relevant and 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 when different needs and interests exist in other countries or regions. Whenever possible, international standards should be performance-based rather than based on design or descriptive characteristics.

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

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. Developing countries should not be excluded de facto from the process. Provisions for capacity building and technical assistance within standardizing bodies are important in this context.

According to the TBT Committee, these principles and procedures should also be observed when guides and recommendations are elaborated. ISO confirmed that they are observed in the preparation process of the CASCO guides.

The Committee agreed that regular information-exchange with relevant bodies involved in the development of international standards was useful and should be reinforced.

The Committee is perfectly aware of the fact that ***international standardization is an area in which developing country participation is still limited and constrained***. Some of the reasons identified for this situation are the lack of technical capacity, the location of technical secretariats and technical meetings, the translation of international standards into national languages, as well as other constraints in the areas of financial and human resources which handicap participation in meetings. To assist in resolving this problem, the Committee noted that it was important to prioritize the international standardization activities related to products of particular interest to developing countries. It is also critical for those countries to assess products/sectors of priority interest to them for international standardization, so that resources can be appropriately targeted. Another solution is to facilitate effective participation by means of information technologies, such as using e-mail and video-conferencing as alternatives to traditional meetings. Switzerland expressed its hope that the Committee would develop a demand-driven technical cooperation programme related to the TBT Agreement.

Conformity assessment procedures

The goal of conformity assessment is to ensure that the requirements of standards and technical regulations are met by given products and services. This is critical in order for buyers of those goods and services to have confidence that legitimate regulatory objectives are met and that the goods and services meet their health, safety and other needs. Undoubtedly, confidence in the conformity assessment practices and procedures of other countries is also important to the facilitation of trade.

Indeed, there is broad support from both developed and developing countries for working towards the goal through ***the principle of "one standard, one test", and if required, "one certification, one time"***, as stated in the First Triennial Review of the TBT Agreement.

Where debate continues, however, is as to the different methods of pursuing the principle. Different mechanisms exist to facilitate acceptance of results of conformity assessments: mutual recognition agreements (MRAs), voluntary cooperative agreements between domestic and foreign conformity assessment bodies, government designation, unilateral recognition of results of foreign conformity assessment, manufacturers'/suppliers' declarations.

Japan thinks that the three principles of the standards' development process (transparency, open-

ness and impartiality) should apply equally to the development process of conformity assessment guides and recommendations (such as CASCO Guides and standards) and documents developed by international and regional systems for conformity assessment (such as IAF - International Accreditation Forum - Guidelines for CASCO documents).

A new development, encouraged by the TBT Agreement, is the conclusion of MRAs on the results of conformity assessment procedures, concluded between countries having established confidence in each others' testing bodies and procedures. The trend to conclude such MRAs is confined - to date - to the developed countries. For example, the European Union has concluded MRAs for the results of conformity assessment with Australia, Canada, New Zealand, Switzerland and the United States. Plurilateral MRAs seem to be more cost-effective than bilateral ones.

Accreditation, that is based on international standards and Guides, represents an independent test of the technical competence of conformity assessment bodies. Broad global acceptance of accreditation, which addresses both regulatory requirements and market needs, has provided the basis for the emergence of a number of international and regional examples of accreditation agreements. Further work is needed to encourage greater acceptance of these agreements, particularly among regulators and the public, and stronger participation from developing countries in their development.

The examination of other less formal approaches to conformity assessment, including ***suppliers' declaration of conformity***, could be encouraged in order to determine the costs and benefits and which industrial sectors would most benefit. The supplier may be a manufacturer, distributor, importer, assembler or service organization. The TBT Committee noted a broad support for the suppliers' declaration procedure as specified in ISO/IEC Guide 22.

Private multilateral agreements between certification organizations, such as the successful IEC system for Conformity Testing and Certification of Electrical Equipment (IECEE CB Scheme) should also be studied to assess applicability to other sectors.

Chile stated that conformity assessment was the most serious problem for developing countries, requiring further concrete steps to be taken by the Committee. Developing country exporters, in particular SMEs, in some cases find themselves faced with conformity assessment requirements in export markets that are difficult to meet. According to the Committee, this can be due to the limited physical and technical resources for national conformity assessment, insufficient numbers of accredited laboratories at the national or

regional level, high costs as well as legal difficulties in obtaining foreign accreditation, difficulties in establishing internationally recognized accreditation bodies, difficulties in participating in international conformity assessment systems, as well as difficulties related to the implementation of ISO/IEC Guides on conformity assessment procedures.

Canada is promoting *a common global approach to conformity assessment* and believes that ISO/IEC Guide 60 (Code of Good Practice for conformity assessment), which is designed to promote equal right of access to conformity assessment worldwide, provides a good framework for the performance of all conformity assessment bodies whether governmental or non governmental, domestic or international. However, this Guide is not widely used and needs to be reviewed and updated, if necessary, to better meet the objectives of the TBT Agreement. In the meantime, the ISO Committee on Conformity Assessment (CASCO) has decided to undertake the necessary work.

Before making a final decision on the best way to proceed, WTO negotiators must at all costs keep a number of key questions in mind:

- a) determine the costs versus advantages of the various approaches;
- b) eliminate any duplication of trial prescriptions;
- c) foresee the same procedures for local, national and regional or international bodies whether governmental or non governmental;
- d) reduce the charges weighing on industry and regulation bodies;
- e) take into account the needs of consumers;
- f) favour non-discriminatory and transparent approaches that facilitate exchanges; and

- g) assess the respective advantages of bilateral as against multilateral approaches, unisectoral as against multisectoral.

Overall assessment of the Second Triennial Review

The Second Triennial Review of the TBT Agreement has allowed substantial progress to be achieved in the right direction. Most members of the Committee welcomed its balanced and forward-looking outcome, which represents a good basis for future discussions. Everybody highlighted the importance of having set guidelines to be used by international standards organizations for standards development. While these guidelines are viewed as a good achievement, it remains to be seen how they will work in practice. For the United States, these principles can at any rate be used in the future to evaluate adverse trade implications if and when they arise.

ISO welcomes the fact that the TBT Committee wishes to strengthen the cooperation between the international standardizing bodies and its governmental delegations. For strengthened cooperation goes hand in hand with greater mutual trust.

The unanimous agreement on the positive spirit and outcome of this Second Triennial Review augurs well for the future because it represents, for developing as well as for developed countries, a better functioning and better balanced tool for trade facilitation in the interest of the international trading community as a whole. ■

More information on the TBT Agreement can be found on the following web site:

http://www.wto.org/wto/english/tratop_e/tbt_e/tbt_e.htm