

THE WORLD TRADE ORGANIZATION (WTO) AGREEMENT ON TECHNICAL BARRIERS TO TRADE (TBT)

IMPLICATIONS FOR DEVELOPING COUNTRIES

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Summary of the Agreement on TBT

The Agreement seeks to ensure that technical regulations, standards and procedures for assessment of conformity (with technical regulations and standards), as may be used in international trade, do not create unnecessary obstacles to such trade (see figure).

Technical regulations and standards refer to characteristics for products or related processes and production methods (PPMs) and may include or deal exclusively with terminology, symbols, marks, packaging or labelling requirements as they apply to a product or PPMs.

The difference between technical regulations and standards is that compliance is mandatory in the former case and voluntary in the latter.

Conformity assessment refer to the procedures to determine, directly or indirectly, that relevant requirements in technical regulations or standards are fulfilled. The procedures may include sampling, testing, inspection, evaluation, verification, assurance of conformity, registration, accreditation and approval as well as their combinations.

International standards and conformity assessment systems can improve efficiency of production and facilitate international trade. Consequently, their development should be encouraged.

International standards can contribute to the transfer of technology from developed to developing countries.

It is desirable, however, that technical regulations, standards and procedures for conformity assessment do not create unnecessary obstacles to international trade.

It is recognized that no country should be prevented from taking measures necessary to ensure:

- The quality of its exports,
- The protection of human health or safety,
- 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 interest (which are considered as legitimate objectives).

It is recognized that developing countries may have special difficulties in formulating and implementing technical regulations, standards and conformity assessment procedures and need assistance in this regard.

All products, including industrial and agricultural products, are encompassed by the provisions of this Agreement with the exception of provisions on sanitary and phytosanitary measures (SPS) (covered under the Agreement on SPS) and on purchasing specifications by governmental bodies (covered under the Agreement on Government Procurement).

Concerning technical regulations and their preparation, adoption and application, they should not create unnecessary obstacles to international trade. For this purpose, they should not be more trade restrictive than necessary to fulfil a legitimate objective (see above), taking account of the risks non-fulfillment would create, as evidenced by available scientific and technical information, processing technology or intended end uses of products.

Imported products should be given, in respect of technical regulations, no less favourable treatment than that accorded to like products of national origin and to like products originating in any other country.

International standards should be used as a basis for preparing technical regulations except when they are not appropriate to fulfil legitimate

interests (see above), for instance because of fundamental climatic or geographical factors or fundamental technological problems.

Technical regulations adopted in pursuance of legitimate interests and in accordance with relevant international standards are presumed not to create unnecessary obstacles to international trade.

When appropriate, technical regulations should specify products in terms of performance rather than design or descriptive characteristics.

Member countries should play an active role in the preparation of international standards for products for which they expect to adopt (or have adopted) technical regulations.

Information should be exchanged widely, upon request, directly or indirectly, or through the WTO Secretariat, concerning the preparation, adoption or application of technical regulations, particularly when they are not in accordance with international standards and with sufficient anticipation so as to allow for written comments, discussions and taking into account these comments and the results of the discussions.

Most of the above mentioned requirements are also applicable to local government bodies and to non-governmental bodies.

Members may accept as equivalent technical regulations of other Members when they fulfil the objectives of their own regulations.

A reasonable interval should be allowed between the publication of a technical regulation and its entry into force in order to allow time for producers/exporters, particularly in developing countries, to introduce the necessary adaptations.

Concerning the preparation, adoption and application of standards, Members should ensure that standardizing bodies (at central government, local government and non-governmental level, and also related regional standardizing bodies) accept and comply with the Code of good practice for the preparation, adoption and application of standards, which is the Annex 3 of the Agreement. This Code has also been adopted by the International Organization for Standardization (ISO) and the International Electrotechnical Committee (IEC) whose joint ISO/IEC Information Centre in Geneva should register the standardizing bodies that have accepted or withdrawn from this Code.

The Code on standardization practices requires standardizing bodies to adopt practices to ensure that, among other things:

Standards prepared do not create unnecessary obstacles to international trade.

International standards are used as a basis for the standards developed.

- In respect of standards, products originating in other countries are not given less favourable treatment than that accorded to like products of national origin and to like products from any other country.
- An active role is played in the preparation of international standards, with a view to harmonizing standards.
- Duplication or overlap with the work of other standardizing bodies is avoided.
- Standards should specify product requirements in terms of performance rather than design or descriptive characteristics.
- Information on their work programme is published at least every six months including the standards under preparation and those adopted in the preceding period and notifying accordingly the ISO/(EC Information Centre, preferably through the International standards information network (ISONET) of which standardizing bodies should make every effort to become a member.

Before adopting a standard, a period of at least sixty days should be allowed for the submission of comments on the draft standard by interested parties in the territory of WTO Members. For this purpose, a notification at the start of the commenting period should be published and copies of the draft standard should be provided, upon request. The comments received should be taken into account, in the further processing of the standard.

- Copies of the most recent work programmes or of the standards produced should be promptly provided, upon request, and the fees charged for this service, if any, should be the same for foreign and domestic parties, apart of the real costs of delivery.

Concerning the procedures for assessment of conformity with technical regulations and standards they should be prepared in such a way that they do not create unnecessary obstacles to international trade and grant access for suppliers of like products originating in other Member countries

under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country.

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.

The conformity assessment procedures should 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.

The procedures should be undertaken and completed as expeditiously as possible, the normal processing period should be communicated to the applicant upon request, the confidentiality of the information should be respected, the fees imposed should be equitable, the siting of facilities and the selection of samples should not cause unnecessary inconvenience, and there should be a procedure to review justified complaints.

Conformity assessment procedures should be based, whenever possible, on relevant guides or recommendations issued by international standardizing bodies, except when those guides or recommendations are inappropriate for the Members concerned for valid reasons such 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.

Members should play an active role in the preparation of international guidelines and recommendations for conformity assessment procedures.

Information should be exchanged widely, upon request, directly or indirectly, or through the WTO Secretariat, concerning the preparation, adoption or application of conformity assessment procedures, particularly when they are not in accordance with international guides and recommendations, and with sufficient anticipation so as to allow for written comments, discussions and taking into account these comments and the results of the discussions.

A reasonable interval should be allowed between the publication of requirements concerning conformity assessment procedures and its entry

into force in order to allow time for producers/exporters, particularly in developing countries, to introduce the necessary adaptations.

Most of the above mentioned requirements are also applicable to local government bodies and to non-governmental bodies.

With respect to the mutual recognition of conformity assessment procedures, Members are encouraged to accept the procedures in other Members, 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. For this purpose, consultations may be needed to obtain satisfactory evidence of the technical competence of the relevant conformity assessment bodies in the exporting Member. Accreditation of these bodies through verification of compliance with relevant international guides and recommendations should be taken into account as an indication of adequate technical competence.

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.

Concerning international and regional systems for conformity assessment, Members are encouraged to, wherever practicable, formulate and adopt international systems, become members thereof and participate therein. Those systems should not be inconsistent with the provisions of this Agreement.

The information provisions require that each Member should have an enquiry point which is able to answer all reasonable enquires from other Members as well as to provide the relevant documents regarding:

- 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.
- 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.

- Conformity assessment procedures adopted or proposed, 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.
- Membership and participation of the Member, or of relevant central or local government bodies within its territory in international, regional, bilateral or multilateral arrangements, bodies or systems within the scope of this Agreement.

In some cases, for legal or administrative reasons, Members may have more than one enquiry point provided that other Members are informed unambiguously on the scope of responsibility of each of these enquiry points and that any enquiries addressed to an incorrect enquiry point will be promptly conveyed to the correct one.

Enquiry points should also be established by each Member in order to handle enquiries concerning equivalent information originated in non-governmental and regional bodies or systems.

Developed country Members should provide, upon request, English, French or Spanish translations of the documents covered by a specific notification or, in case of voluminous documents, of summaries of such documents.

The WTO Secretariat will circulate copies of 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. The notifications addressed to the WTO Secretariat should be in English, French or Spanish.

Concerning notification procedures to the WTO Secretariat, a single central government authority should be designated by each Member. This does not include notifications by the standardizing bodies to the ISO/IEC Information Centre which should be handled as indicated in the Code of good practice on standardization (Annex 3). In those cases where, for legal or administrative reasons, there are two or more central government authorities responsible for the notification proce-

dures, Members should be given full information on the scope of responsibility of each of these authorities.

Members are encouraged to provide technical assistance to developing countries upon request, on mutually agreed terms and conditions, and giving priority to the needs of the least developed countries, on different subjects, including:

- Establishment of national standardizing bodies;
- Participation in international standardizing bodies;
- Establishment of regulatory bodies;
- Establishment of bodies for the assessment of conformity with standards or technical regulations;
- The best methods by which technical regulations can be met;
- Steps that should be taken by producers to have access to systems for conformity assessment at national, regional or international levels, including the establishment of institutions and legal framework.

It is recognized that developing country Members, in particular the least developed ones, may have special difficulties, problems and needs, including infrastructural and institutional problems, in the field of preparation and application of standards, technical regulations and conformity assessment procedures. Furthermore, that special development and trade needs as well as their stage of technological development, may hinder their ability to discharge fully their obligations under the Agreement, a fact which should be fully taken into account by Members. Based on this, the Committee on TBT is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this agreement.

A Committee on Technical Barriers to Trade is established, composed of representatives of each of the Members and should meet at least once every year to review the operation of the Agreement.

Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement should take place under the auspices of the Dispute Settlement Body which should follow the appropriate provisions of the GATT 1994 Agreement.

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 technical nature. Technical Expert Groups should follow the procedures as established in the Annex 2 of the TBT Agreement.

Following the entry into force of the Agreement establishing the WTO, each Member should inform the Committee of measures in existence or taken to ensure the implementation of this Agreement as well as of any changes of such measures thereafter.

How developing countries can benefit from the Agreement

Developing countries can benefit from the GATT TBT Agreement by using it as a means to enhance their export development efforts and, in particular, by taking appropriate advantage of its provisions concerning information, technical assistance and special and differential treatment which is granted on a priority basis to the least developed countries.

Furthermore, in order to benefit significantly from the Agreement, developing countries should make every effort to establish or upgrade their institutional arrangements and mechanisms related to technical information, standardization, quality assurance, technical regulations, inspection, testing, certification and accreditation, and take the necessary steps to play an active role in international standardization and certification activities.

Consequently, developing countries should give priority attention to identifying their needs concerning information, standardization, testing, inspection, certification, technical regulations and participation in international related activities, which are relevant to the products moving in their international trade or with high export potential. This will permit them to clearly identify the technical assistance and the special and differential treatment needs to be proposed to the Members or to the Committee within the framework of the Agreement.

In particular, developing countries should take advantage of the fact that the Agreement recognizes that they may face difficulties in accepting international standards and in meeting technical regulations and standards adopted by developed countries, even when they are based on international standards, and that developing countries adopt certain technical regulations, standards or

conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Therefore, it may not be expected that developing countries 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.

Furthermore the Agreement recognizes that developing countries are not in a position to participate effectively in international standardization activities and call upon Members to take all reasonable measures to grant technical assistance in this area. Consequently, developing countries should apply for this assistance to be rendered.

J Technical cooperation needs of developing countries

The main technical cooperation requirements are within the following areas:

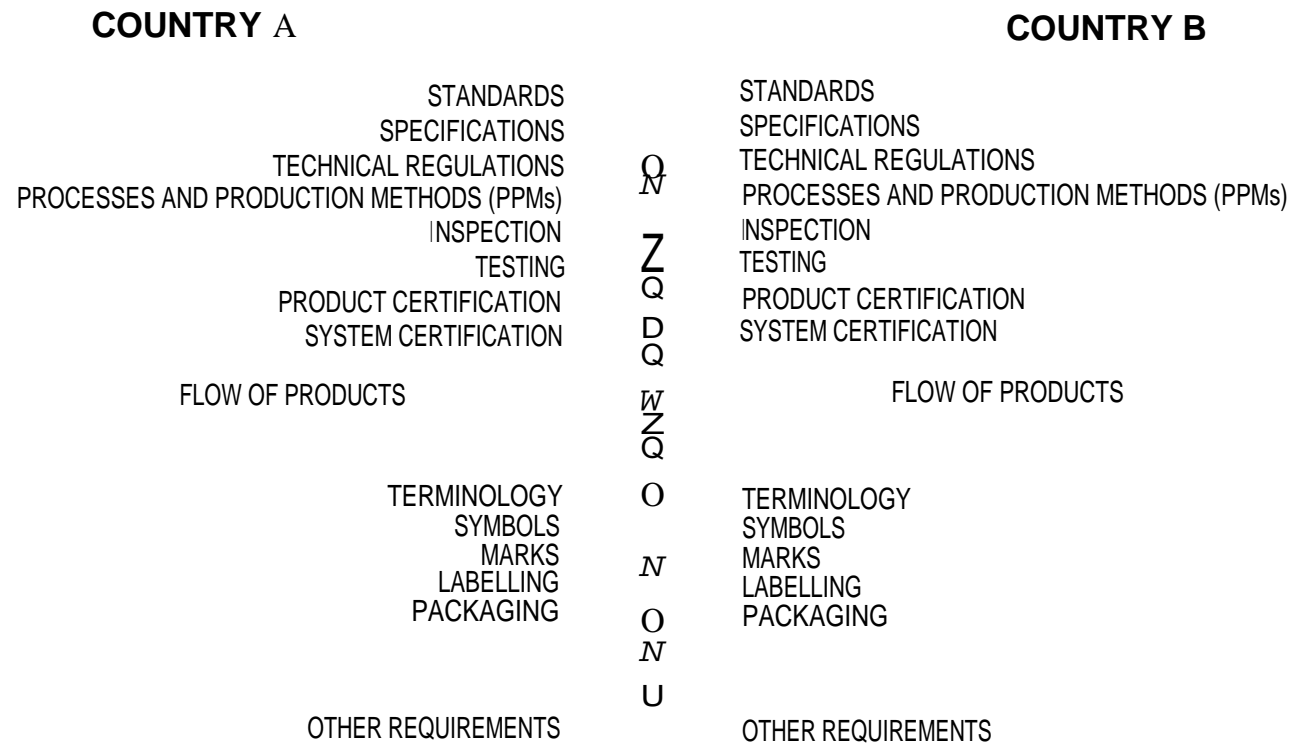
- Establishment of the notification mechanism;
- Establishment of the enquiry point(s);
- Establishment or improvement of national standardizing bodies;
- Establishment of testing facilities;
- Establishment of inspection and certification bodies;

- Establishment of accreditation mechanism; Effective participation in international standardization activities, particularly in ISO, IEC and CODEX Alimentarius activities;
- Effective participation in international activities related to conformity assessment procedures, mutual recognition agreements, eco-labelling schemes, etc.;
- Participation in training programmes on the above mentioned subjects, at international level;
- Implementation of training programmes and awareness creation programmes at national level;
- Implementation of information services to disseminate information to exporters on standards, technical regulations and certification requirements in target markets, including eco-labelling.

[TC, mainly through its Export Quality Management service, is in a position to offer assistance to developing countries in most of the above mentioned areas, provided that funds are allocated for this purpose through specific projects at national, regional, subregional and international levels. These projects should be prepared and implemented in close collaboration with the WTO, ISO, IEC, the FAO/WHO CODEX Alimentarius and other selected international, regional and national organizations in related fields such as ARSO, AIDMO, COPANT, APCS, etc.

Figure

TECHNICAL BARRIERS TO INTERNATIONAL TRADE



The TBT Agreement provides a framework for reducing or eliminating technical barriers to trade.