



*Improving and Maintaining Market  
Access using the WTO Agreements  
on TBT and SPS*

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## **Improving and Maintaining Market Access using the WTO Agreements on TBT and SPS**

### **1 Technical barriers to trade**

Exporters have to meet the technical requirements for their products in their target markets. These requirements can be mandatory for requirements such as health, safety, protection of the environment or consumer protection and are laid down in the legislation of the importing country. On the other hand, requirements can also be imposed by buyers and products are also expected to comply with voluntary standards prevailing in the importing country. Furthermore, exporters have to demonstrate through conformity assessment (certification, testing, inspection) that their products meet the requirements laid down in technical regulations, sanitary and phytosanitary measures and standards in the importing country. As the technical requirements/standards for various products differ from country to country, these constitute what is known as “non-tariff barriers” which makes market access difficult for exporters.

### **2 Minimizing obstacles caused by technical barriers to trade**

Members of the World Trade Organization (WTO) have established a framework to minimize unnecessary obstacles to trade caused by technical barriers, i.e. standards, technical regulations, sanitary and phytosanitary measures, and conformity assessment procedures, through the WTO Agreement on Technical Barriers to Trade (TBT) and the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). The TBT Agreement applies to both industrial and agricultural products but it does not cover SPS measures which are dealt with in the SPS Agreement for measures related to food safety, human health, animal and plant health. It should be noted that, although the WTO Agreements on TBT and SPS are signed by Governments, their aim is to help the business community obtain market access for regulated products.

### **3 The WTO/TBT Agreement**

#### **3.1 Premise**

The WTO/TBT Agreement gives WTO Members the right to adopt technical regulations, standards and conformity assessment procedures for legitimate objectives such as protection of the environment but lays down obligations for their establishment and implementation so that they do not constitute unnecessary obstacles to trade. These *obligations* for regulatory bodies in the importing country become *rights* for business in the exporting country.

#### **3.2 Obligations of regulatory bodies**

International standards should be used as a basis for technical regulations and international guides/recommendations for conformity assessment procedures to facilitate

their harmonization. The same treatment should be given to both domestic and imported products by making technical regulations applicable to both. Retesting or recertification of products in the importing country could be avoided if the technical regulations in the exporting country are equivalent and there is a mutual recognition agreement for the conformity assessment procedures used to determine compliance with technical regulations.

In cases where proposed technical regulations or conformity assessment procedures are not based on international standards and are expected to have a significant effect on trade, countries are obliged to inform other WTO Members and give an opportunity for interested parties to comment on them.

### **3.3 Benefits for the business community**

#### **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.

#### **Monitoring proposed technical regulations and conformity assessment procedures in export markets**

When a proposed technical regulation or conformity assessment procedure is not in accordance with the relevant international standard, guide or recommendation, and it may have a significant impact on the trade of other Members, it must be notified to WTO. Enterprises that may be affected can submit comments on such proposals through their governments.

#### **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.

#### **Harmonization of technical regulations**

Members are generally required to harmonize their technical regulations by basing them on international standards. This should ultimately lead to a situation where enterprises will be able to export the same product to various markets without having to redesign it.

**No discrimination in conformity assessment procedures**

Conformity assessment procedures have to be the same for both domestic and imported products. For example, the certification mark for a product group which is available to domestic producers should also be available to foreign manufacturers under the same conditions. This enables foreign producers to compete on an equal footing, especially if the certification mark is widely recognized by consumers.

**Mutual recognition of conformity assessment procedures**

Member countries are encouraged, at the request of other Members, to negotiate agreements for the mutual recognition of the results of each other's conformity assessment procedures. If mutual recognition agreements have been reached, re-testing or re-certification of the product in an importing country that forms part of the agreement can be avoided. The mutual recognition of conformity assessment procedures is practised by Member States of the European Union.

**Equivalence of technical regulations**

Members are required to give positive consideration to accepting as equivalent the technical regulations of other Members, even if these regulations differ from their own, provided that they are satisfied that these regulations adequately fulfil the objectives of their own regulations. While the harmonization of existing technical regulations is a lengthy process, it does facilitate trade, as Member States of the European Union have found out.

**Dispute settlement mechanism**

If exporters are convinced that their product is being denied entry into a foreign market as a result of unjustified technical regulations or conformity assessment procedures, the matter can be taken up by their government on a bilateral basis with the government of the importing country. If the problem is not solved amicably at the bilateral level, the matter may be raised with the Dispute Settlement Body of WTO.

**4 The WTO/SPS Agreement****4.1 Premise**

WTO Members have the right to take sanitary and phytosanitary measures necessary for the protection of human, animal or plant life or health, provided that such measures do not discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members. SPS measures shall not be applied in a manner which would constitute a disguised restriction to international trade.

**4.2 Obligations of regulatory bodies**

International standards, guidelines or recommendations developed by the Codex Alimentarius Commission, the International Office of Epizootics and the International

Plant Protection Convention should be used for the development of SPS measures. WTO Members should accept the SPS measures of exporting countries as equivalent if they achieve the same level of SPS protection and are encouraged to enter into arrangements for the mutual recognition of the equivalence of specified SPS measures.

WTO Members have to fulfil some obligations when establishing SPS measures when international standards are not available or a higher level of protection is required than provided for in international standards, and the SPS measures affect international trade. These measures must have a scientific justification and must be based on an appropriate risk assessment. Countries are also required to give an opportunity to interested parties in other countries to comment on these proposed SPS measures and to take their comment into account.

### **4.3 Benefits for the business community**

#### **Advantages for exporting countries**

Essential information needed by exporters, e.g. on the conditions that must be met by exports in order to be allowed access to the importing country, can be obtained from the national enquiry point in the importing country. The obligations imposed by the Agreement on importing countries prevent an unfair exclusion from their markets when exporting countries abide by the requirements laid down in the SPS Agreement. The WTO Dispute Settlement mechanism provides for an independent arbitration of disputes. A coherent market access strategy can be developed using the SPS Agreement as a framework.

#### **Advantages for importing countries**

When national SPS measures conform with the requirements of the Agreement, they are unlikely to be challenged by other countries as illegitimate barriers to trade and business can be confident that it will not be exposed to unanticipated foreign competition. Furthermore, these national SPS measures would not be subject to trade disputes which are costly to both parties.

### **4.4 Market access strategy using the WTO/SPS Agreement**

The rights and obligations in the SPS Agreement allow the development of a coherent market access strategy by relevant government agencies working in co-operation with businesses that are exporting or intending to export.

The first step is to identify those situations where market access problems are caused by technical barriers to trade and to sort out those caused by SPS measures or TBT measures. Then there is a need to understand the rationale behind the measures and obtain information about the scientific justification and risk assessment. This issue is usually addressed between the relevant agencies of the importing and exporting countries but contact between exporters and importers can also be helpful.

It is imperative to prioritise issues so that finite government and private sector resources in the exporting country are allocated to tackling barriers that have a reasonably good chance of success of being removed or reduced. Other issues to be considered are the volume of potential exports and the time estimated to solve the problem. A market access agenda can then be drawn up together with an associated programme of activities.

The first approach should be bilateral. A market access case should be submitted to the relevant authorities of the importing country. In some cases this may require statements and supporting arguments that the SPS measures being objected to are in consistent with the SPS Agreement. In other cases, detailed scientific or technical studies or data collection may be required to establish the validity of the claims being made by the exporting country. As countries have to deal with many different access requests, it is advisable to obtain priority for consideration of the request through discussions and negotiations.

If the bilateral approach does not solve the problem, a multilateral approach can be adopted. Informal discussions can be started by the exporting country at the time of meetings of the SPS Committee at WTO. If the problem is not solved in private, it can be taken up formally in the SPS Committee which has a regular agenda item for discussion of issues of specific trade interest. Some cases where aggrieved exporting countries have raised their concern about particular access problems in the SPS Committee have apparently strongly influenced the development or revision of policy in an importing country.

The WTO Dispute Settlement mechanism can be used if agreement cannot be reached between the parties. Formal consultations can be started and some disputes are resolved at this stage. However, the whole process with panel hearings, draft and final reports and appeal may take a long time. The process is expensive because of the need to commit expert resources and it may strain relations between trading partners. However, the Dispute Settlement mechanism is very effective.

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ITC supports developing and transition economies, and particularly their business sectors, in their efforts to realize their full potential for developing exports and improving import operations.

ITC works in six areas:

- ▶ Product and market development
- ▶ Development of trade support services
- ▶ Trade information
- ▶ Human resource development
- ▶ International purchasing and supply management
- ▶ Needs assessment, programme design for trade promotion



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