



Technical Barriers to Trade

1. WTO Agreement on Technical Barriers to Trade
2. TBT provisions in FTAs

Technical Barriers to Trade

**Module 1: WTO Agreement on
Technical Barriers to Trade**

Date



WTO TBT Agreement – introduction

- The main objective: to ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to international trade
- The TBT Agreement DOES NOT apply to sanitary and phytosanitary measures, also referred to as SPS measures. Mutually exclusive
- Scope of TBT Agreement
 - Measures: technical regulations, standards, and conformity assessment procedures.
 - Institutional coverage: central government, local government, regional and international bodies, non-governmental entities. WTO Members' obligations vary according to the type of body.
 - Temporal : measures in legal force



Definitions of technical regulation and standards

- Definition of technical regulation :
 - a document which lays down product characteristics; or their related processes and production methods;
 - with which compliance is mandatory.
- A standard is the same as technical regulation except that compliance with it is NOT mandatory.
- Examples - nutrition labelling; international paper sizes



Definition of conformity assessment procedure

- Definition of conformity assessment procedure: Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. Includes
 - Testing
 - Inspection
 - Certification



Core provisions of the TBT Agreement

1. Non-Discrimination;
2. Avoidance of unnecessary obstacles to international trade;
3. Harmonisation;
4. Facilitating acceptance of conformity assessment procedures
5. Transparency;
6. Special and Differential Treatment, and Technical Assistance to Developing Members (Development Dimension)



Core provisions of the TBT Agreement

1) Non-Discrimination

- Technical Regulations (Article 2.1 of the TBT Agreement): **Products imported** from the territory of any WTO 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 (Annex 3.D of the Code of Good Practice)
- Conformity Assessment Procedures (Article 5.1.1 of the TBT Agreement): These are prepared, adopted and applied so as to **grant access for suppliers of like products** originating in the territories of other WTO 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 is a supplier's right to an assessment of conformity.



Core provisions of the TBT Agreement

2) Avoidance of unnecessary obstacles to international trade

- Technical Regulations (Article 2.2 of the TBT Agreement), it means that a measure shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking into account the risks that non fulfilment would create.
 - 'Necessity' has been interpreted in WTO case law
 - Legitimate objectives eg national security; protection of human health or safety; protection of animal or plant life or health; protection of the environment and prevention of deceptive practices.
- Standards (paragraph E of the Code of Good Practice)
- Conformity Assessment Procedures (Article 5.1.2 of the TBT Agreement)



Core provisions of the TBT Agreement

3) Harmonization – Introduction

- Harmonization
 - WTO Members base their regulations, standards or conformity assessment procedures on the relevant international standards, guides or recommendations, or
 - when WTO Members recognize each other's measures as equivalent.
- Benefits of harmonization: eases production and trading conditions for producers, importers and exporters, especially from developing countries, which may face more financial constraints to adapt to the requirements of the export market.



Slide 1.8 Core provisions of the TBT Agreement

3) Harmonization – Relevant international standard

- When a WTO Member decides to create a new TBT measure – or revise one which is already in place – it should start its task by verifying if an international standard exists for the product or measure in question. If it exists, the WTO Member has the obligation to base its measure on it, unless the relevant international standard is an ineffective or inappropriate means to fulfil a legitimate objective.
- International standards are those prepared by international standardizing bodies, also called international standard setting organisations.
- The TBT Agreement, however, does not offer a precise definition
- If a country's TBT measure is based on international standard, such measure is rebuttably presumed not to be creating an unnecessary obstacle to trade



Core provisions of the TBT Agreement

3) Harmonization – Principles for the Development of Standards

- Principles for the development of international standards, guides and recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement"
- These principles provide guidance in the elaboration, adaptation and application of international standards by standardizing bodies:
 - Transparency
 - Openness
 - Impartiality and Consensus;
 - Effectiveness and Relevance;
 - Coherence;
 - Development Dimension.



Core provisions of the TBT Agreement

4) Facilitating the acceptance of conformity assessment results

- Article 6 of the TBT Agreement - “Recognition of Conformity Assessment by Central Government Bodies”.
- The TBT Committee has identified five non-exclusive approaches to facilitate the acceptance of conformity assessment results (
 1. Accreditation;
 2. Unilateral recognition of results of foreign conformity assessment as equivalent;
 3. Mutual Recognition Agreements (MRAs) for conformity assessment between governments;
 4. Co-operative or voluntary arrangements between domestic and foreign conformity assessment bodies;
 5. Supplier's Declaration of Conformity (“SDoC”)



Core provisions of the TBT Agreement

5) Transparency

- The TBT Agreement contains detailed transparency obligations, which appear in various provisions of the Agreement:
 - Articles 2 and 3 (technical regulations);
 - Articles 5, 7, 8 and 9 (conformity assessment procedures);
 - Annex 3, paragraphs J, L, M, N, O and P (standards); and
 - Articles 10 (general transparency provision) and 15 (final provisions)
- The transparency obligations of the TBT Agreement can be grouped into three sets of obligations:
 - A. Notification requirements
 - B. Publication requirements
 - C. Establishment and functioning of TBT Enquiry Points



Core provisions of the TBT Agreement

5) Transparency – notification requirements

- 1. Notifications of draft technical regulations and conformity assessment procedures:
- 2. Notifications related to Agreements on issues related to technical regulations, standards or conformity assessment procedures.
- 3. Notifications related to standardizing bodies: adherence to or withdrawal from the Code of Good Practice and existence of a work programme.



Core provisions of the TBT Agreement

5) Transparency – publication requirements

WTO Members have the following publication obligations:

- Before adoption of the measure: publish early notice
- After adoption of : promptly publish, or make otherwise available, all adopted measures, including those which do not have a significant effect on the trade of other WTO Members and measures which are in accordance with an international standard.

Reasonable interval of no less than 6 months between the publication of a TBT measure and its entry into force

Standardizing bodies shall publish, at least every six months (i) their work programme, and (ii) a notice of the existence of the work programme.



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Core provisions of the TBT Agreement

6) Development dimension

- Technical assistance and Special and Differential Treatment
- Technical assistance
 - Article 11 of the TBT Agreement
 - Technical assistance for effective participation of developing countries in international standard setting organisations.
- Special and Differential Treatment
 - Preamble, Articles 2.12, 5.9, 10.5, 10.6
 - Article 12 of the TBT Agreement



Core provisions of the TBT Agreement

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- Special and Differential Treatment
 - Preamble, Articles 2.12, 5.9, 10.5, 10.6
 - Article 12 of the TBT Agreement
 - Preparation and application of technical regulations, standards and conformity assessment procedures (Art 12.3)
 - Harmonization (Art 12.4)
 - Time-limited exceptions (Art 12.8)
 - Use of consultations (Art 12.9)

Technical Barriers to Trade

Module 2: TBT provisions in FTA

Date



TBT provisions in FTAs: overview

- Reference to the TBT Agreement in FTAs
- Technical regulations in FTAs: harmonization and equivalence
- Conformity assessment procedures: harmonization, recognition of results and conclusion of mutual recognition agreements
- Transparency
- Resolution of TBT disputes
- Marking and labelling, and finally
- TBT sector specific provisions; examples:
 - Textiles and clothing
 - Electrical, electronic and telecommunication products
 - Pharmaceuticals and medical products



Reference to the TBT Agreement in FTAs

- (Re)affirmation of rights and obligations under the WTO TBT Agreement.
- WTO TBT Agreement governs.
- (Parts of) WTO TBT Agreement incorporated into the FTA
- WTO TBT Agreement applies in addition to FTA

- Incorporation of TBT Committee Decisions (contained in G/TBT/1/Rev.15); examples
 - Six Principles for the Development of International Standards, Guides and Recommendations– most common
 - Indicative list of approaches to facilitate acceptance results of conformity assessment,



Harmonization of technical regulation among FTA parties

The TBT Agreement promotes regulatory harmonization by requiring that members use relevant international standards, guides or recommendations as a basis for their standards, technical regulations, conformity assessment procedures, except when such international standards are ineffective or inappropriate to achieve their legitimate goals (Articles 2.4, 5.4 and Annex 3, paragraph F of the TBT Agreement).

FTA commitments with respect to technical regulations can differ from and go beyond the TBT Agreement in two major ways:

- 1) by requiring that parties harmonize among them their technical regulations; and/or
- 2) by requiring that the parties accept as equivalent the technical regulations of the other parties.



Technical regulations in FTAs: harmonization and equivalence

Three main different formulations could be distinguished in harmonization provisions:

- 1) Parties commit to harmonize or align their respective technical regulations.
- 2) Parties commit when possible to harmonize technical regulations among them.
- 3) Parties are encouraged to harmonize their technical regulations (most frequent)



Equivalence of technical regulations

Three main different formulations could be distinguished in harmonization provisions:

- 1) Parties commit to harmonize or align their respective technical regulations.
- 2) Parties commit when possible to harmonize technical regulations among them.
- 3) Parties are encouraged to harmonize their technical regulations (most frequent)



Conformity assessment procedures

1. Harmonization of conformity assessment procedures
 - Under Article 5.4 TBT Agreement: Members agree to use relevant international guidelines to develop their conformity assessment procedures, except when such guides are inappropriate to achieve the Members' legitimate goal.
2. Acceptance of equivalence of the results of conformity assessment procedures
 - Under Article 6.1, members must ensure when possible that the results of conformity assessments conducted in other countries are accepted as equivalent to their own procedures.
3. Conclusion of mutual recognition agreements.
 - Under Article 6.3, Members are encouraged to enter into negotiations for the conclusion of mutual recognition agreements for the results of conformity assessment procedures



Conformity assessment procedures

1) Harmonization of conformity assessment procedures

- Few FTAs contain strong commitments on the harmonization of conformity assessment procedures among FTA parties
 - Some FTAs provide for the harmonization of conformity assessment procedures among the parties. Examples: EU accession, EAC, COMESA, EU-Turkey
 - Some FTAs adopt a softer approach by stating that the parties shall make compatible or harmonize their conformity assessment procedures to the extent possible or practicable. These mainly involve Asian and Latin American countries.
 - In some other FTAs, Parties are only encouraged to harmonize their conformity assessment procedures or agree to cooperate to promote their harmonization.



Conformity assessment procedures

3) Conclusion of mutual recognition agreements

- With respect to mutual recognition agreements, few FTAs provide for the conclusion of this type of agreement, However a sizeable share of FTAs encourage the parties to conclude one.
- In addition, under some FTAs, the parties need to explain the reasons, in general upon request, for not concluding a mutual recognition agreement.
- In some cases, mutual recognition agreements are negotiated separately from the FTA or added later in the trade relationship between Parties
- In the background documentation several examples of MRAs are provided, as well as a compilation of notifications of MRAs submitted to the WTO by countries (those under Article 10.7 of the TBT Agreement)



Transparency

Recap of main transparency provisions of TBT Agreement

- notify to WTO the draft technical regulations and conformity assessment procedures.
- take in account and discuss comments. The Member notifying must not only take third-party comments into account, but upon request also discuss them with the interested parties.
- publish technical regulations, conformity assessment procedures and standards.
- allow for a reasonable period of time between the publication and the entry into force of the measure.
- establish enquiry points



Transparency

FTA provisions on TBT transparency

- Several types of TBT transparency provisions in FTAs that
 - a) specify the relationship between the notification under the TBT Agreement and the FTA
 - b) specify the type of measures that must be notified
 - c) specify a deadline for comments on the drafts of proposed technical regulations and conformity assessment procedures
 - d) require publication of answers to comments from third parties
 - e) specify the period of time between the publication/adoption of a technical regulation and conformity assessment procedures and their entry into force
 - f) specify that a party must explain the reasons for not accepting the results of a conformity assessment
 - g) require a Party to explain the reasons for deviation from international standards



Transparency

FTA provisions on TBT transparency

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 5. specify the period of time between the publication/adoption of a technical regulation and conformity assessment procedures and their entry into force
 6. specify that a party must explain the reasons for not accepting the results of a conformity assessment
 7. require a Party to explain the reasons for deviation from international standards



Resolution of TBT disputes

- All FTAs with TBT provisions also contain provisions on dispute settlement.
- Different approaches to jurisdiction of a dispute settlement mechanism of the FTA or the WTO in case of dispute involving TBT provisions of an FTA:
 - Only a minority of FTAs provides exclusive jurisdiction to WTO's dispute settlement or excludes an FTA's dispute settlement mechanism in case of an TBT dispute.
 - For most FTAs, the general provisions on dispute settlement apply.
 - Choice of forum: Parties should decide whether a party who has initiated proceedings under one mechanism should not be able to use the other mechanism.



Marking and labelling

- Marking and labelling are mentioned only very briefly in the TBT Agreement. Variation of provisions across FTAs:
 - endeavour to minimise requirements for marking or labelling.
 - a party may determine the form of labelling or marking, but shall not require the approval, registration or certification of labels as a precondition for sale
 - Language: reserve rights to require the information on a label or marks in a specific language; permit information in other languages
 - encourage parties to accept non-permanent or removable labels.
 - If registration and identification of economic operators is required – issue identification numbers without delays
 - promote harmonization or develop common labelling.
 - (corrections to) labelling may take place in the country of destination prior to the commercialisation of the goods. Can be very trade facilitative



Sector-specific TBT provisions

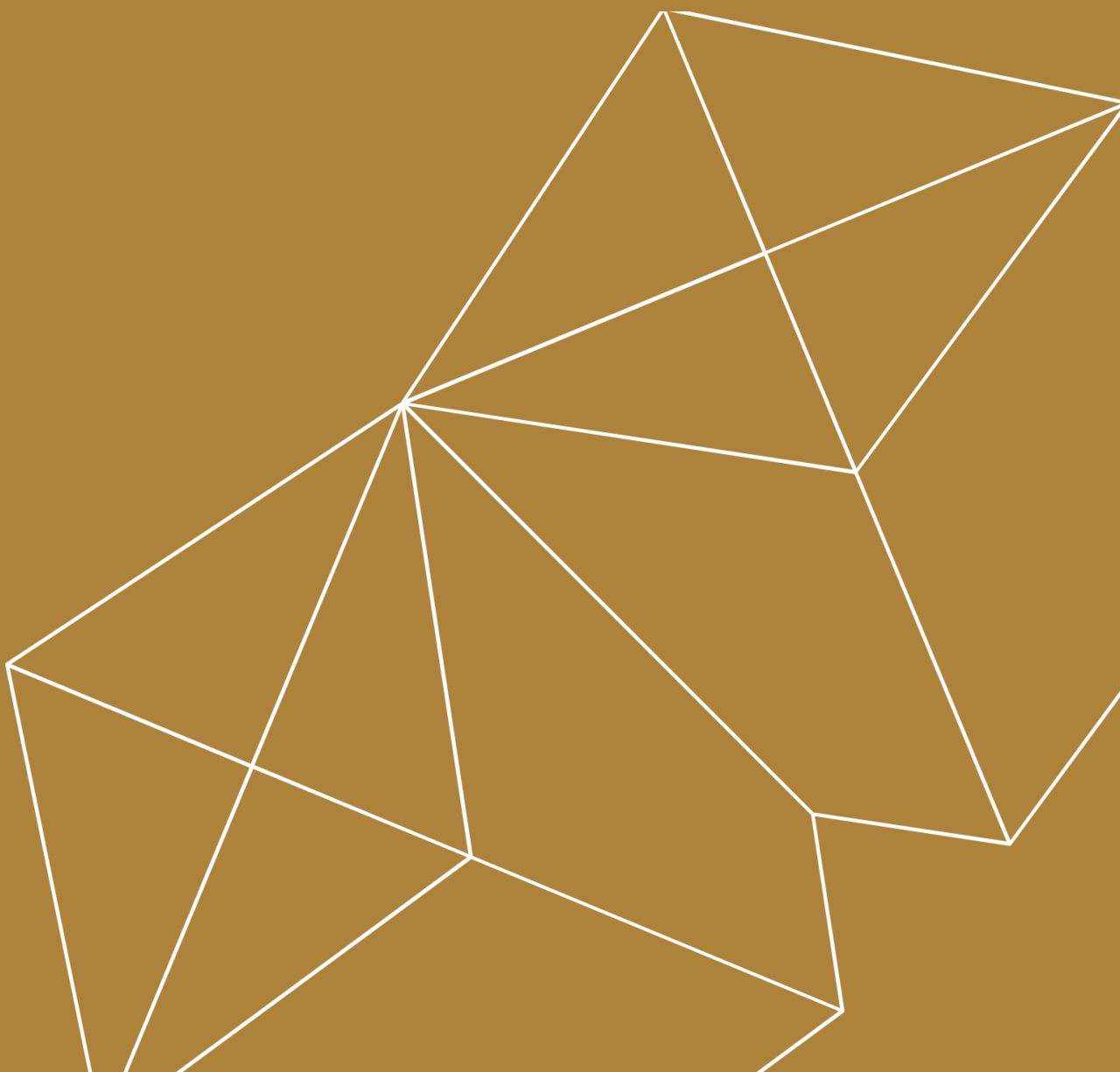
- Inclusion of these provisions is relatively recent development
- Examples of sector specific TBT provisions across FTAs in the following sectors:
 - Textiles and clothing
 - Electrical, electronic and telecommunication products
 - Pharmaceuticals and medical products



Conclusions

- Nowadays, FTAs systematically include TBT provisions which go beyond and complement the WTO TBT Agreement. These commitments are mostly organized in a separate Chapter. This reflects the growing interest for TBT issues and their increased importance.
- A lot of FTA provisions that go beyond the WTO are related to transparency. Yet, so far few FTAs require large-scale harmonization of technical regulations and conformity assessment procedures among the parties, equivalency or recognition of conformity assessment results.
- More and more sector-specific rules have popped up across FTAs that facilitate trade in specific sectors. Some of these rules might be very important for sectors of export interest, whether it be food, cosmetics or textiles and clothing. This consideration is important when negotiating an FTA.

Divider



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