The TBT Agreement

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The WTO Agreement
on Technical Barriers to Trade

the “TBT Agreement”
use of international standards

avoiding unnecessary obstacles to international trade

allowing for regulatory autonomy to protect legitimate interests
Scope of TBT Agreement?
TBT Agreement is applicable to:

“1.3 All products, including industrial and agricultural products, shall be subject to the provisions of this Agreement.”
What are “TBT measures”?
<table>
<thead>
<tr>
<th>to protect:</th>
<th>from:</th>
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<tbody>
<tr>
<td>human or animal life</td>
<td>risks arising from additives, contaminants, toxins or disease-causing organisms in their food, beverages, feedstuffs;</td>
</tr>
<tr>
<td>human life</td>
<td>plant- or animal-carried diseases (zoonoses);</td>
</tr>
<tr>
<td>animal or plant life</td>
<td>pests, diseases, or disease-causing organisms;</td>
</tr>
<tr>
<td>a country</td>
<td>damage caused by the entry, establishment or spread of pests</td>
</tr>
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Food safety

Protection of the environment

Animal welfare

Organic agriculture

Nutrition

Quality
What is a TBT measure?
Technical Regulation

document
which lays down
product characteristics
or
their related
processes and production methods
with which compliance is mandatory

...
Definition of a “standard”
(in TBT Agreement)

recognized body
that provides, for common and repeated use
rules, guidelines or characteristics
for products or related processes and production methods
with which compliance is not mandatory

TBT Agreement, Annex 1, para 2
Conformity Assessment Procedure
(Annex 1 of TBT Agreement, para 3)

“Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.”
What are the key disciplines?
Non-discrimination

Most-favoured nation (MFN) treatment and national treatment (NT)
“Members shall ensure that in respect of technical regulations, products imported from the territory of any 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.” (emphasis added)
“like products”

“treatment no less favourable”
Avoidance of unnecessary obstacles to international trade
“Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade.” …

(Article 2.2, first sentence)

Article 2.5 of the TBT Agreement
“For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.” …

(Article 2.2, second sentence)
“Such legitimate objectives are, inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.” …

(Article 2.2, third sentence)
“In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products.”

(Article 2.2, fourth and last sentence)
“Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.” …

(Article 2.5, second sentence)
unnecessary / necessary

with a view to or with the effect of

legitimate objectives

assessment or risk / available scientific information

rebuttable presumption (2.5)
“unnecessary obstacle”

“legitimate objective”
Is it necessary to regulate for

- Chemical composition
- Color and size
- Quality
- Production method
- Nutrition
SPS and TBT (1995) created new disciplines on necessity; focus of GATT was on non-discrimination.
The use of international standards

“harmonization”
“Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations ...”

(Article 2.4, first part)
“...except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems” ...

(Article 2.4)
Three issues

- Use! (2.4)
- Explain / presumption (2.5)
- Participation (2.6)
... Members shall use ...
Transparency

Notifications / enquiry point / Committee 3 x Year
1. Drafting of the Measure
2. Publication of a Notice
3. Notification to other Members
4. Provision of Copies
5. Discussion of the Comments
6. End of Comment Period
7. Adoption of the Measure
8. Publication of the Measure
9. Entry into Force of the Measure

Min. 6 months
Min. 60 days

"Regulatory life-cycle"
How does it all work?
Where does the Committee work fit in?

Approximately 15,600 “TBT notifications” (end-2012)

Raised in TBT Committee

Request formal consultations

Bilateral consultations

Request clarification from Enquiry Point

(not raised formally)

364 “STC” (Dec12)

4 (+ 2 on-going) Disputes

Dispute(s)
“TBT disputes”

Total number of requests for consultation containing at least one TBT claim

45

Who?
US (11) and Can (10) main complainants
EU (20) main respondent

“fully fledged TBT panels”
(with AB and Panel Reports issued)

Other claims?
All had GATT claims
Almost half SPS claims (20)
Many Ag claims (17)

Pending panels
(Seals, Tobacco, ...)

TBT Claims?
Article 2.1 and 2.2 most commonly raised (all 45)
Many on conformity assessment too (15)
Several on international standards (7)
Doha
Ministerial Declaration
(2001)

(para 16)

negotiations
“We agree to negotiations which shall aim, by modalities to be agreed, to reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries. ...”
Referred to as “NAMA” negotiations

non-agricultural market access
several TBT related proposals
Technical barriers to trade

Technical regulations and product standards may vary from country to country. Having many different regulations and standards makes life difficult for producers and exporters. If regulations are set arbitrarily, they could be used as an excuse for protectionism.

The Agreement on Technical Barriers to Trade tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles, while also providing members with the right to implement measures to achieve legitimate policy objectives, such as the protection of human health and safety, or the environment.

> TBT Information Management System: a database of WTO information on TBT (Notifications, specific trade concerns, other documents, enquiry points, etc)

News  back to top

- 30 November 2012: Members aim to reduce trade obstacles by streamlining work on technical barriers
- 29 June 2012: WTO Appellate Body issues reports on US “country of origin” disputes
- 13 June 2012: Members question technical barriers on alcoholic products

> More news on technical barriers to trade

TBT events

- 13-15 June 2012: TBT Committee Meeting, Geneva
- 26-21 March 2012: TBT Committee Meeting, Geneva

> Previous events

TBT toolbox

> TBT Agreement

http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm
World Trade Report 2012

Trade and public policies: A closer look at non-tariff measures in the 21st century
non-discrimination

“like products”

requirements?

situations (SPS)

unnecessary obstacle

“new”

policy objective

choice of measure

case-by-case
Standards

Qualified obligation to use

TBT open / SPS closed

exceptions

sardines

Transparency

Publication

Notifications

Consultation

Enquiry Points
Summing up ...