



Training for Government Institutions on WTO TBT Matters

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Lusaka, Zambia
December 1-2, 2016

Standards Alliance

- U.S. facility to support developing countries implement commitments under the WTO TBT Agreement
- Partnership between the American National Standards Institute (ANSI) and the U.S. Agency for International Development (USAID)
- Public-private model, leveraging access to expertise in the U.S. private sector and government agencies
- Demand-based and results-oriented, focusing on strategic multi-year engagement
- 2013-2018



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Agenda

Thursday, December 1

- Overview of the TBT Agreement Information and Transparency Obligations
- Responsibilities of the Enquiry Point and Notification Authority
- Responsibilities of the Regulatory Authorities in Zambia

Friday, December 2

- Monitoring the Impact and Effectiveness of the Enquiry Point and Notification Authority
- Disseminating Notifications to Stakeholders
- Commenting on Notifications
- What Must Be Done in Zambia to Meet the Transparency Requirements of the TBT Agreement?
- Next Steps



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Overview of the WTO TBT Agreement Information and Transparency Obligations



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WTO TBT Agreement

- World Trade Organization (WTO) *Agreement on Technical Barriers to Trade* (TBT Agreement)
- TBT-related work in the WTO takes place in the Committee on Technical Barriers to Trade (TBT Committee)
 - open to all Members of the WTO

TBT Committee

- *Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995*
 - see [G/TBT/1/Rev.12](#), 21 January 2015

WTO TBT Agreement



The basic objective of the TBT Agreement is to ensure that these do not create unnecessary obstacles to trade

Technical Regulation

“Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which **compliance is mandatory**. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

- WTO definition from TBT Agreement Annex 1

Standard

“Document approved by a 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**. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.”

- WTO definition from TBT Agreement Annex 1



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Conformity Assessment Procedure

“Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled”

- WTO definition from TBT Agreement Annex 1



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TBT Agreement – Key Points

- Members have the right to issue technical regulations with acceptable rationale
- Members should use international standards
- Requirements for local government and non-governmental bodies
- Requirements for standards bodies
- Provisions for conformity assessment procedures and acceptance of results
- Information and notification requirements



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Members have the right to issue technical regulations with acceptable rationale

TBT Article 2.2

“technical regulations shall not be more trade-restrictive than necessary to fulfil a **legitimate objective**”

- protection of national security
- prevention of deceptive practices
- protection of human health or safety
- protection of animal or plant life or health
- protection of the environment



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Members should use international standards

TBT Article 2.4

“Where technical regulations are required and **relevant international standards** exist ... Members shall use them ... as a basis for their technical regulations ...”

Encourages Members to use international standards where appropriate to facilitate global trade



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Requirements for local government and non-governmental bodies

TBT Article 3

Members to notify technical regulations of local governments and take measures to ensure **local and non-governmental bodies** comply with provisions

Requirements for how local government and non-governmental bodies should prepare, adopt, and apply their technical regulations



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Requirements for standards bodies

TBT Article 4

Preparation, Adoption and Application of Standards

Members should ensure that central and local government and non-government standardizing bodies comply with the TBT Agreement (Annex 3) - *Code of Good Practice for the Preparation, Adoption, and Application of Standards*



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Provisions for conformity assessment procedures and acceptance of results

TBT Article 6

- Members should recognize each other's conformity assessment procedures, accept results
- Mutual recognition agreements are encouraged
- Cost of multiple testing
 - additional time and money
- Reduced if product is tested once and results accepted in all markets



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Information and notification requirements

TBT Article 10

Information About Technical Regulations, Standards and Conformity Assessment Procedures and Requirements to notify

Describes the responsibilities of the:

- Enquiry Point
- Notification Authority

“ . . . transparency is a fundamental pillar in the implementation of the TBT Agreement . . . ”

- *Fifth Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade Under Article 15.4; G/TBT/26, 13 November 2009*

What is Transparency?

“degree to which trade policies and practices, and the process by which they are established, are **open and predictable**”

- WTO Glossary



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Transparency obligations are found throughout the TBT Agreement . . .



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Transparency Requirements

TBT Article 2.9

“Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall:”



Transparency Requirements

TBT Article 2.9.1

“**publish a notice** in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation”



Transparency Requirements

TBT Article 2.9.2

“**notify** other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place **at an early stage**, when amendments can still be introduced and comments taken into account”



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Transparency Requirements

TBT Article 2.9.3

“upon request, **provide** to other Members particulars or **copies** of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards”



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Transparency Requirements

TBT Article 2.9.4

“without discrimination, **allow reasonable time for** other Members to make **comments** in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account”



Transparency Requirements

TBT Article 2.10

Concerns notification of the adoption of technical regulations in urgent cases related to

- safety
- health
- environmental protection
- national security



Transparency Requirements

TBT Article 5.6

Concerns the notification of proposed conformity assessment procedures, including

- testing
- inspection
- certification



Transparency Requirements

TBT Article 5.7

Concerns notification of the adoption of conformity assessment procedures in urgent cases related to

- safety
- health
- environmental protection
- national security



Transparency Requirements

TBT Article 10.7

“Whenever a Member has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade, at least one Member party to the agreement shall notify other Members through the Secretariat of the products to be covered by the agreement and include a brief description of the agreement.”



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Summary: How to meet the transparency requirements of the TBT Agreement?

- **Publish notices** of proposed technical regulations **at an early stage**
- Establish a **Notification Authority**
- **Notify** other WTO Members of new or revised technical regulations
- **Provide copies** of the proposed regulations
- **Allow for comments** from other WTO Members and take them into account when finalizing proposed regulations



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WTO TBT Committee Reviews

- TBT Committee reviews the operation and implementation of the TBT Agreement on an annual and triennial basis
- 21st Annual Review is most recent
 - see report - [G/TBT/38](#), 17 February 2016
- Seventh Triennial Review was completed in November 2015
 - see report - [G/TBT/37](#), 3 December 2015

Questions?

Responsibilities of the Enquiry Point and Notification Authority



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Global Trade



More than 80% of
global product trade
is affected by
standards and
technical regulations
that incorporate
standards

Source: Organization for Economic Cooperation and Development (OECD),
Regulatory Reform and International Standardization, TD/TC/WP (98) 36, January 1999



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To be able to sell their products in foreign markets, exporters must have:

Up-to-date and complete information about the technical requirements their products must meet, including:

- standards
 - e.g. quality, compatibility, processes, performance, test methods
- technical regulations
 - e.g. safety, health, environmental protection, packaging and labeling
- testing
- inspection
- certification
 - e.g. products, systems

A lack of information can itself be a **barrier to trade**



The Problem

Often it is difficult for companies to obtain up-to-date and complete information about the technical requirements their products must meet

The Solution

Recognizing this problem, the TBT Agreement requires the establishment and operation of an **Enquiry Point**



WTO TBT Enquiry Point

The obligation for each WTO Member to have an Enquiry Point allows Members to easily obtain information about technical requirements without having to identify and directly contact the agency responsible in another country

- Enquiry Point is the central contact point for handling requests for information
- Enquiry Point is responsible for obtaining the answers from the relevant national bodies and replying to the WTO Member making the enquiry



TBT Enquiry Point Responsibilities

Respond to enquiries relating to standards, technical regulations and conformity assessment procedures

Provide documents referenced in notifications

Provide information about membership in international and regional standards and conformity assessment bodies

Provide information about bilateral and multilateral agreements



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The Enquiry Point also should:

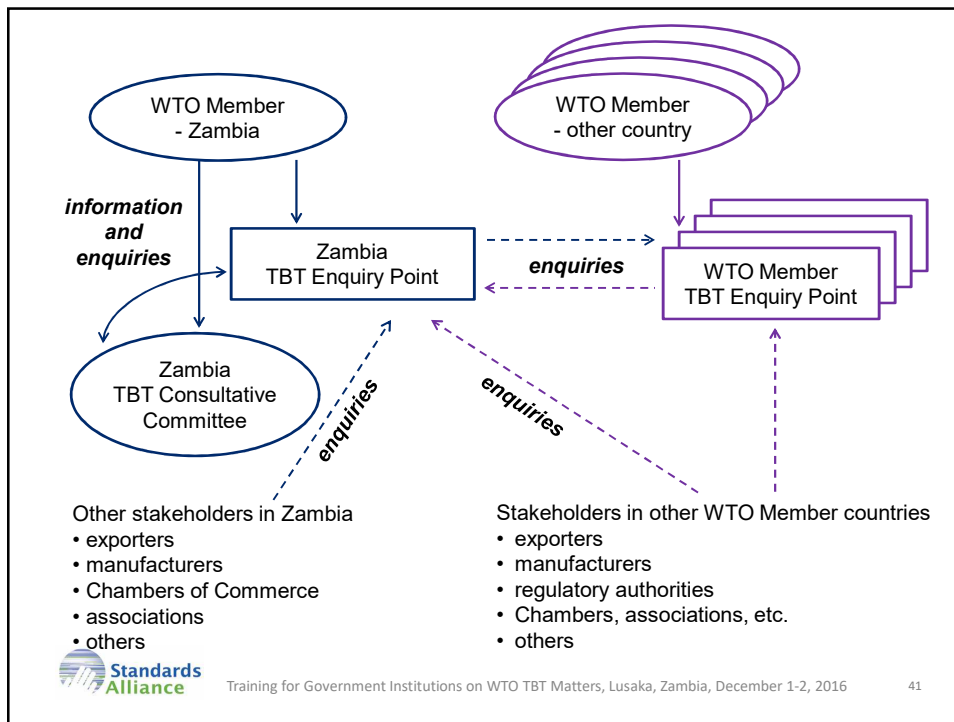
- Collect notifications received from other WTO Members and disseminate to
 - exporters
 - regulatory authorities
 - other stakeholders



Standards
Alliance

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Responsibilities of the Notification Authority

- Monitor proposed and adopted technical regulations and conformity assessment requirements
- Determine if significant effect on trade
- Notify, identifying
 - products covered
 - objective
 - rationale
 - etc.

What is a Notification?

WTO definition:

“A **transparency obligation** requiring member governments to report trade measures to the relevant WTO body if the measures might have an effect on other Members”



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What is a TBT Notification?

- 1 to 2 page summary
- provides WTO Members with an opportunity to review and comment on proposed measures
- [sample TBT notification](#)
- [sample TBT notification](#)
- [full text](#)



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What to Notify?

4 types of TBT notifications:

1. Statement of the implementation and administration of the TBT Agreement (Article 15.2) – one time
2. **Technical regulations and conformity assessment procedures**
3. Bilateral and multilateral agreements (Article 10.7)
4. Adherence to, or withdrawal from, the Code of Good Practice and the existence of work programs (Annex 3)



When to notify?

- If a relevant international standard does not exist
- OR*
- If the technical content is not in accordance with international standards
- AND*
- If the measure may have significant effect on international trade
- At an early stage
 - when a draft of the full text is available
 - when comments can be taken into account
 - when amendments can still be made
 - In urgent cases
 - as soon as possible



Significant Effect on Trade?

- Determine whether the proposed regulation is "trade significant" taking into consideration
 - value of imports
 - potential growth of imports
 - difficulty for exporters in other countries to comply with the proposed requirements
 - includes both import-enhancing and import-reducing effects
 - if in doubt, contact the issuing regulatory authority, industry association, etc.



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How to notify?

- Review appropriate legislative publication(s)
- Determine if proposed or adopted technical regulations or conformity assessment requirements should be notified
- Information should be as complete as possible
- No section should be left blank
- indicate "not known" or "not stated" if necessary
- Recommend including supporting document
- Notify in at least one of the WTO official languages (English, French, or Spanish)
- Keep copies of everything!



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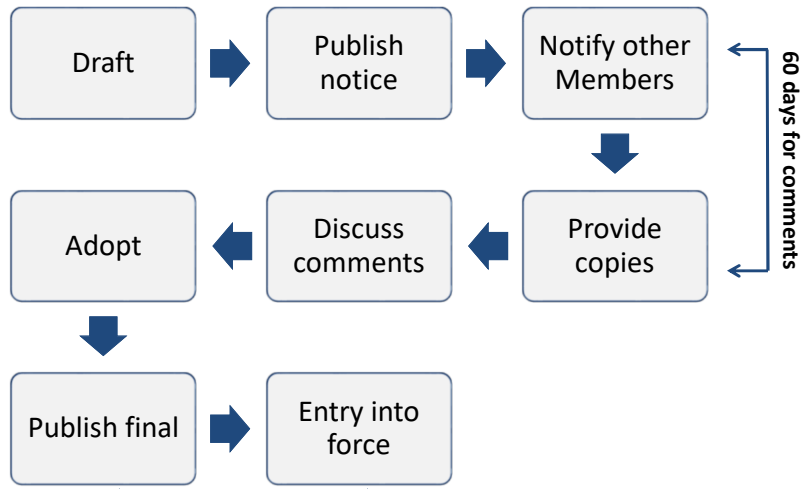
How to Submit Notifications?

- Submit notifications to the WTO using one of the following methods:
 - online through the TBT Notification Submission System (TBT NSS)
 - **only the Notification Authority** can use the TBT NSS to submit notifications
 - by email to the WTO using the form specified by the TBT Committee (G/TBT/W/153, 29 January 2001)

Referenced Documents

- Best to include supporting document in the transmission to the WTO
 - WTO will upload the document and include a link to it
 - alleviates the need to send documents after notifications are issued
 - WTO Members can download the full text for those notifications of interest to their stakeholders

Timeline



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Urgent Notification

- When safety, health, environmental protection, or national security problems arise or threaten to arise
- Upon adoption
 - notify the measure immediately
 - specify the products covered, the objective and rationale, and nature of urgent problem



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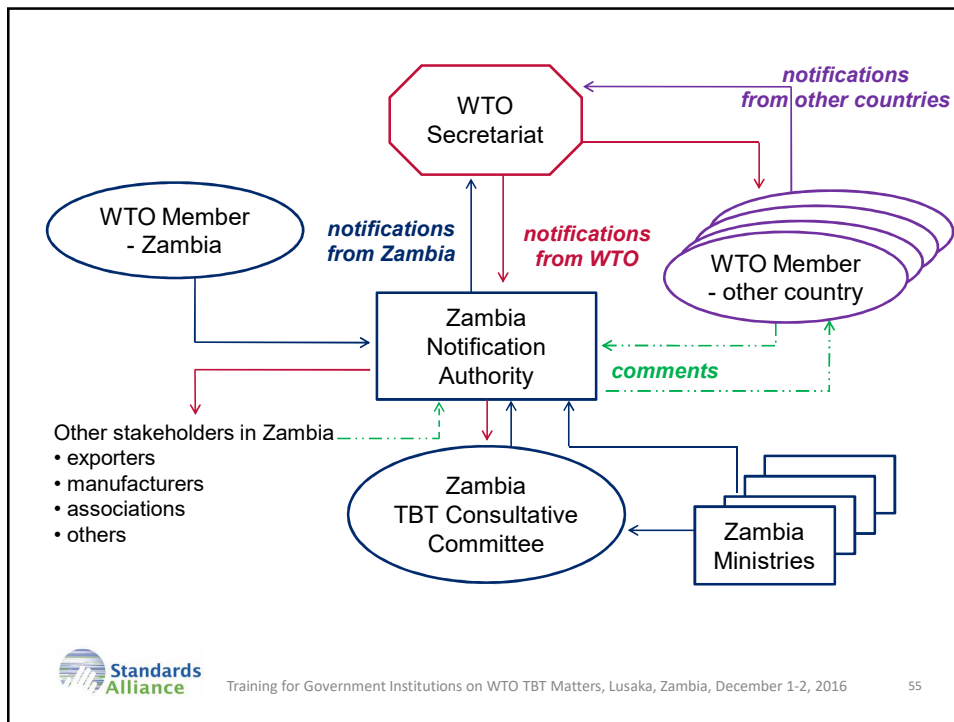
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Supplementary Notifications

- **Addendum** provides additional information or changes to an original notification
 - good to indicate on the addendum if the final regulation has been substantially modified from the notified proposal
- **Corrigendum** corrects an error in an original notification
- **Revision** replaces an existing notification
- Addendum or corrigendum should be read in conjunction with the original notification
- Addenda, corrigenda, and revisions to notifications carry the same document symbol and number as the original, followed by Add., Corr., or Rev.

Notify Agreements

- Notification required under Article 10.7 of the TBT Agreement
- See Section 4.3.3 and page 60 of [G/TBT/1/Rev.12](#), 21 Jan 2015 for explanation



Coordinating Activities Between the EP and NA

- Establish written procedures to coordinate activities between the Enquiry Point and the Notification Authority
 - EP is aware of notifications issued by Zambia
 - copies of full texts of documents relevant to notifications are available to the EP

Questions?



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Responsibilities of the Regulatory Authorities in Zambia



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To meet the requirements of the WTO TBT Agreement, regulatory authorities must . . .

- Base technical regulations and conformity assessment procedures on relevant international standards
- Publish notices of proposed technical regulations and conformity assessment procedures at an early stage
- Provide copies of proposals
- Allow time for comments
- Take comments into account when finalizing requirements



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Do regulatory authorities in Zambia

Base technical regulations and conformity assessment procedures on relevant international standards?

- Yes ✓
- No – How to remedy this?



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Do regulatory authorities in Zambia

Publish notices of proposed technical regulations and conformity assessment procedures at an early stage?

- Yes ✓
- No – How to remedy this?

Do regulatory authorities in Zambia

Provide copies of proposals?

- Yes ✓
- No – How to remedy this?

Do regulatory authorities in Zambia

Allow time for comments?

- Yes ✓
- No – How to remedy this?

Do regulatory authorities in Zambia

Take comments into account when finalizing requirements?

- Yes ✓
- No – How to remedy this?

Good Regulatory Practice

- Internationally recognized processes and procedures that can be used to improve the quality and cost-effectiveness of domestic regulations
 - Internal coordination
 - Regulatory impact assessment (RIA)
 - by establishing a systematic and consistent framework for assessing the potential impacts of government action, including impacts on trade
 - Public consultation mechanisms to improve transparency

Good Regulatory Practice (GRP)

- TBT Committee decisions and recommendations related to GRP
 - see Section 1 of [G/TBT/1/Rev.12](#), 21 Jan 2015

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Monitoring the Impact and Effectiveness of the TBT Enquiry Point and Notification Authority



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Benefits of the Zambia TBT Enquiry Point

- Network of Enquiry Points around the world provides information about (and access to) technical requirements for Zambian exporters
 - increases the competitiveness of products from Zambia in overseas markets
- Zambia Enquiry Point provides information to companies selling in Zambia (domestic & foreign)
- Consumers in Zambia benefit from increased availability of products



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Management Support for the TBT Enquiry Point

- It is important that management understands the functions and benefits of the Enquiry Point
- Clear description of Enquiry Point responsibilities
- Record-keeping and reporting
- Monitoring the impact and effectiveness of the Enquiry Point



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Monitoring the Impact and Effectiveness of the TBT Enquiry Point – Why?

- Ongoing management/government support
 - for Enquiry Point activities
 - sustainability / growth
 - funding
 - for training
 - for participation in WTO EP/NA meetings
 - held periodically in Geneva to provide WTO Members with an opportunity to discuss issues relating to transparency and information exchange and to share experiences on how to operate an effective Enquiry Point and Notification Authority
 - e.g. “Eighth Special Meeting on Procedures for Information Exchange” and the Thematic Session on Transparency (November 2016)



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Monitoring the Impact and Effectiveness of the TBT Enquiry Point – How?

- Measure metrics, such as
 - number of users
 - types of users
 - service standards
 - time to respond to enquiries
- Survey users' satisfaction with service
- Case studies
- Testimonials



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Benefits of the Notification Authority

- Notification process provides early notice of proposed changes to technical requirements
 - benefits exporters
 - benefits companies selling in Zambia
 - benefits consumers in Zambia



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Monitoring the Impact and Effectiveness of the Notification Authority

- Ongoing management/government support
 - sustainability
 - for training
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Notifications

How to measure the
success of the WTO
TBT notification
process?



Notifications

23,404

=

the number of WTO TBT notifications
issued in the first 20 years (1995 – 2015)

Example - Requirements Changed

- G/TBT/N/BRA/339
 - Brazil notification concerning conformity assessment procedures for toys
 - imported toys would be subject to 2 sets of tests, while domestic toys would only be tested 1 time
 - China, EU, Thailand, and USA raised concerns
 - Brazil amended the requirements to allow 1 test for imported toys



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Example - Proposed Measure Withdrawn

- G/TBT/N/COL/120
 - Colombia notification of a draft regulation on alcoholic beverages
 - labelling requirements that were too strict and would have entailed significant costs for exporters
 - concerns from the EU and USA
 - Colombia withdrew the proposal (G/TBT/N/COL/120/Add.1)



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Discussion

How can the TBT Enquiry Point and the Notification Authority in Zambia be of most benefit to the country?

- Considering the roles and responsibilities of the Enquiry Point and Notification Authority
 - What can the EP and NA do to increase their effectiveness?
 - What can the government do to maximize the benefits of the TBT Agreement to stakeholders in Zambia?

Disseminating Notifications to Stakeholders

Electronic Notification System

- The TBT notifications issued by WTO Members contain useful and time-sensitive information that should be distributed as widely as possible to stakeholders in an efficient manner
- Electronic Notification System (ENS) is a web-based electronic service for disseminating this information



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ENS

- Provides subscribers with the opportunity to access, review, and comment on draft regulatory measures proposed by WTO Members before they are finalized
- Helps exporters to be informed about changing technical requirements that could affect their products
- Provides information to regulatory authorities about the technical measures proposed by their counterparts in other countries



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Examples of WTO Member's ENS

- Several WTO Members have developed alert services, including
 - Brazil
 - European Union
 - Kenya
 - United States



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Notify US

- Free web-based e-mail service for U.S. stakeholders
- Opportunity to review and comment on proposed foreign technical regulations that can affect U.S. businesses and their access to international markets
- Subscribers receive, via e-mail, notifications of drafts or changes to domestic and foreign technical regulations
 - included in the e-mail is a link to the Notify U.S. website for more information and to order complete texts of the regulations for review and comment
- Operated by the TBT Enquiry Point



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NotifyKenya TBT

- Electronic notification system of the Kenya Bureau of Standards (KEBS)
- Launched in July 2014
- Developed with assistance from USAID East Africa Trade Hub and support of the Standards Alliance



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ENS Developments from the WTO

- In recent years, other countries have expressed interest in developing their own ENS
- Discussions at the TBT Committee to consider a universal system for use by all WTO Members
- In its report of the Seventh Triennial Review, the WTO Secretariat noted the request that it “explore the development of an export alert system for TBT notifications, in cooperation with other organizations” and to report back to the TBT Committee at the Eighth Special Meeting on Procedures for Information Exchange (November 2016)



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ePing

- Launched November 8, 2016
 - United Nations Department of Economic and Social Affairs (DESA)
 - World Trade Organization (WTO)
 - International Trade Centre (ITC)
- New system allows access to TBT and SPS (sanitary and phytosanitary) notifications
- www.epingalert.org



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Features of ePing

- User-friendly tool
- Both SPS and TBT notifications
- Global reach
- Daily/weekly email alerts
- Specify areas of interest (products and destination markets)
- Fast and easy-to-use search table
- Create search filters
- Export search results
- Add/read related information
- Define and categorize favourites and receive reminder emails
- Discuss/ask questions



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Commenting on Notifications

Comments

- TBT Article 2.9.4
 - “. . . allow **reasonable time** for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.”
 - TBT Committee recommendation is 60 days for comments
- Handling of comments
 - see 4.3.1.7 of G/TBT/1/Rev.12

Example from the United States

- Legal framework
- How to submit comments
- Handling public comments
- Role of the TBT Enquiry Point



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Legal Framework For Public Comments on U.S. Regulations

- By law, U.S. Federal agencies must consult the public when developing regulations
 - Under the Administrative Procedure Act, agencies “shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation.”
- President Obama’s January 2011 Executive Order 13563, *Improving Regulation and Regulatory Review*: “Regulations shall be adopted through a process that involves public participation.”



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How to Submit Comments

(U.S. example)

- Federal agencies must publish their regulations for public comment in the *Federal Register* (national gazette) and, simultaneously, on the Regulations.gov rulemaking portal
- While there is no minimum requirement, agency public comment periods generally range from 30 to 60 days
- During the comment period, the public can submit comments to:
 - *Federal Register* web portal
 - Regulations.gov web portal
 - Mail/fax to the agency
- Comments submitted online to the *Federal Register* or mailed/faxed to an agency are posted on Regulations.gov



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Submitting Effective Comments

(U.S. example)

- Regulations.gov provides the public with tips for submitting effective comments
 - see [Tips for Submitting Effective Comments](#)
- Public Comments Make a Difference - [Fact Sheet](#)



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Handling Public Comments

(U.S. example)

- Identify significant comments
- Categorize comments, based on type of issue (e.g. feasibility, costs, compliance period, etc.)
- Group with similar comments
- Analyze comments to:
 - Determine whether recommended changes are feasible
 - Determine whether recommended changes are enforceable
 - Determine whether recommended changes are within program goals and are legal
- Develop recommended responses to comments, including any changes to the regulation
- Review internally within the agency and seek policy guidance on recommendations
- Draft final rule



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Role of the TBT Enquiry Point

(U.S. example)

- Distributes U.S. comments on measures proposed by WTO Members (through TBT notifications) to appropriate WTO member and to U.S. government trade and export agencies
- Forwards WTO member comments on proposed U.S. measures to U.S. regulators, and trade and export agencies



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TBT Enquiry Point

(U.S. example)

- U.S. TBT Enquiry Point provides guidance on submitting comments



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In Zambia . . .

- Who is responsible for coordinating comments on notifications from other WTO Members?
- Who is responsible for submitting comments from Zambia to the other Members?



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Questions?



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What Must Be Done in Zambia to Meet the Transparency Requirements of the TBT Agreement?



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What must be done in Zambia to meet the transparency requirements of the TBT Agreement?

- Awareness of obligations
- Buy-in from all stakeholders and at all levels
- Assess the way technical regulations are developed in Zambia and change the process as required
- Importance of internal coordination
- Ensure good communication between the regulatory authorities in Zambia and the Enquiry Points and Notification Authority
- Other????



Next Steps

- Recommendations?