



# Standards Alliance

## Standards, Metrology, & Conformity Assessment:

### Tools to Facilitate Trade and Market Access

An Interactive Reference Handbook 2022 Edition

## SECTION 2: TECHNICAL BARRIERS TO TRADE

PREPARED BY THE STANDARDS ALLIANCE, A PARTNERSHIP BETWEEN THE U.S. AGENCY FOR INTERNATIONAL DEVELOPMENT (USAID) & THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)



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American National Standards Institute



## SECTION 2



# TECHNICAL BARRIERS TO TRADE

As tariff barriers to trade decline globally, non-tariff barriers continue to emerge as obstacles to trade. Among these are standards-related trade barriers, often called Technical Barriers to Trade (TBT), which can arise from divergent measures countries use to assess and regulate goods. This can include differences intended to create barriers to market access from foreign countries or products.

TBTs can include voluntary standards, technical regulations, and conformity assessment procedures that disrupt trade flows or protect local markets from competition. Internationally, governments recognize the importance of minimizing these barriers to enhance trade flows and support global prosperity. This sentiment is reflected by the agreements establishing the World Trade Organization (WTO), primarily the WTO TBT Agreement.

### Examples of potential barriers to trade:

- Tariffs and nontariff measures (NTMs)
- Price controls
- Quotas

- Sanitary and phytosanitary (SPS) measures
- Standards
- Technical regulations
- Certification requirements

### WHY FOCUS ON TECHNICAL BARRIERS TO TRADE?

Due to increasing living standards worldwide, the number of technical regulations and standards adopted by countries continues to expand to meet consumer demand for safe and high-quality products. Further, concerns surrounding environmental pollution and protection have encouraged modern societies to explore standards that promote environmentally friendly products and production methods. Other ethical production standards that include metrics such as labor and equity are also on the rise. With the increasing adoption of these regulations and standards comes the potential to create TBTs that restrict international trade flow.

### KEY DEFINITIONS

Standards, technical regulations, and

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conformity assessment procedures are three distinct categories of TBTs, but the terms “standard” and “technical regulation” are often confused. In the TBT Agreement, standards refer to voluntary specifications or procedures, while technical regulations are mandatory.<sup>1</sup> For further reference, definitions from Annex 1 of the WTO TBT Agreement are included below.<sup>2</sup>

### Standards

“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.”

### Technical Regulations

“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.”

### Conformity Assessment Procedures

“Any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. Conformity assessment procedures include, inter alia, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations.”

When considering these three components, it is important to dive more

deeply into the WTO definitions to help clarify these measures. Standards are defined as voluntary documents developed by a wide array of public and private sector, or non-governmental, organizations. They outline guidelines or characteristics for products or processes. These guidelines can be descriptive (size, weight, dimensions) or performance-based.

When referring to conformity assessment, the TBT Agreement includes accreditation of third party competence and the recognition (usually by a government agency) of an accreditation program’s capability. Generally, manufactures and exporters bear the cost of these procedures. Non-transparent and discriminatory conformity assessment procedures can create harmful barriers to trade.

## AVOIDING TECHNICAL BARRIERS TO TRADE

In practice, TBTs generally result from legal and regulatory acts and the inadequate preparation, adoption, and application of different standards, technical regulations, and conformity assessment procedures. When these barriers are established, absent of a legitimate policy objective, they divert trade flows and create inefficiency in markets.

It is important to emphasize that differing standards, conformity assessment practices, and technical regulations between countries can have legitimate origins, such as differences in local tastes or levels of income, health risks, as well as geographical or other factors. For example, countries with areas prone to earthquakes might have stricter requirements for building construction materials; others, facing serious air-pollution problems, might want to impose lower tolerable levels of automobile emissions. Dietary differences between countries also have an impact.

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<sup>1</sup> Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of the TBT Agreement, standards are defined as voluntary and technical regulations are defined as mandatory.

<sup>2</sup> World Trade Organization (1995). Agreement on Technical Barriers to Trade. [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

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A preferred method to avoid TBTs is to ensure transparent approval and review processes for draft standards, conformity assessment, and technical regulations. Signatories to the WTO TBT Agreement have agreed to notify draft technical regulations and provide an open comment period for member feedback. This process helps countries avoid TBTs, while enhancing market trust and predictability for trading partners.

### **Potential Costs of Technical Barriers to Trade**

Increases in technical regulations and standards worldwide, increase the potential for regulatory divergence, TBTs, and ultimately financial costs.<sup>3</sup> For example, divergent regulatory requirements can lead to a decrease in economies of scale. This occurs when producers are forced to adjust production facilities or practices to comply with diverse technical requirements in individual markets, adding costs to each unit of production. This imposes handicaps on producers, particularly small and medium enterprises (SMEs) that tend to have lower profit margins, and can lead producers to pass increased costs on to their consumers.

At times, countries attempt to protect domestic industries from competition while requiring open trade for their exports. These practices can include additional testing or product certification at borders that extend beyond national requirements placed on local companies. Additional layers of review for foreign products add costs that curtail competition and are ultimately passed on to the consumer.

Unnecessary regulatory differences impose further costs that prevent businesses, especially SMEs, from engaging in trade.<sup>4</sup> Incompatible product requirements, while sometimes legitimate due to specific WTO exclusions, can create unintended regulatory

silos, or national systems operating outside the international system. These issues can often be avoided by including a wide array of public and private sector stakeholders in standards and regulatory development.

For example, many countries invite consumer interest groups, international companies, and trade associations to participate in standards development. This ensures various national and international perspectives are considered in the standards development process. When adequately involved, SME participation can reduce trade costs while respecting differences in regulatory objectives. This cooperation may take several forms, many of which are directly relevant to trade outcomes.

Further costs arise from a lack of transparency in the standardization or regulatory process. Without clear and publicly available information on standards and technical regulations, many companies face high costs associated with evaluating the technical impact of foreign regulations and preparing to make organizational changes to meet new requirements. Additionally, in terms of adjustments costs, exporters are often at a disadvantage relative to domestic firms when confronted with new regulations.

### **THE WORLD TRADE ORGANIZATION AGREEMENTS AS A FOUNDATION<sup>5</sup>**

The WTO and the WTO Agreement on Technical Barriers to Trade form the foundation of international best practice related to standards, conformity assessment, and technical regulations. The main function of the WTO is to ensure that trade flows as smoothly, predictably, and freely as possible; therefore, a basic understanding of the WTO and its agreements is a useful starting point in the development of a nation's quality infrastructure and to avoid TBTs.

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<sup>3</sup> OECD (2017). International Regulatory Cooperation and Trade. Retrieved from [https://read.oecd-ilibrary.org/governance/international-regulatory-co-operation-and-trade\\_9789264275942-en#page8](https://read.oecd-ilibrary.org/governance/international-regulatory-co-operation-and-trade_9789264275942-en#page8)

<sup>4</sup> OECD (2019). Improving the business environment for SMEs through effective regulation. Retrieved from <https://www.oecd.org/cfe/smes/ministerial/documents/2018-SME-Ministerial-Conference-Parallel-Session-1.pdf>

<sup>5</sup> World Trade Organization (2021). Retrieved from [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

The WTO currently has 164 members with 25 countries having formally stated their intention to accede or join. By acceding to the WTO, countries commit to the agreements that underpin the organization and support the free flow of goods and services. These Agreements have been negotiated and signed by all 165 members. The Agreements provide the legal framework for international trade in goods (General Agreement on Tariffs and Trade – GATT), services (General Agreement on Trade in Services – GATS), and intellectual property (Trade-Related Aspects of Intellectual Property Rights – TRIPS) and are based on three overarching principles: non-discrimination, market predictability, and technical assistance. They are essentially contracts, binding governments to keep their trade policies within agreed limits.

WTO agreements emphasize the importance of ensuring countries' technical regulations, standards, testing, and certification procedures are non-discriminatory and do not create unnecessary barriers to international trade. In addition, WTO agreements further recognize the rights of member countries to enact measures to achieve legitimate policy objectives, including the protection of human health and safety, and protection of the environment.

### Origin of the WTO Technical Barriers to Trade Agreement<sup>6</sup>

The TBT Agreement was developed out of multiple rounds of multilateral trade negotiations, beginning with the GATT in 1947. Its general principles were refined during the 1979 Tokyo Round of negotiations, which resulted in the signing of the Agreement on Technical Barriers to Trade (Tokyo Round



Standards Code) by the 32 GATT Contracting Parties. The Agreement established the rules for preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures.

These rules were further strengthened during the Uruguay Round of GATT negotiations in 1994, the result of which was the establishment of the WTO.

The current TBT Agreement entered into force on January 1, 1995, as one of the Agreements Establishing the WTO. The Agreement covers all trade in goods and reflects the foundational principles of the WTO, including non-discrimination and the promotion of market predictability.

The TBT Agreement obliges members to ensure technical regulations, voluntary standards, and conformity assessment procedures do not create unnecessary obstacles to trade. Although it is difficult to give a precise estimate of the burden of complying with different foreign technical regulations and standards on international trade, it certainly involves significant costs for producers and exporters. A 2016 study by the U.S. Department of Commerce estimated that 92% of global exports may face foreign technical regulations that make it difficult to compete in international markets.<sup>7</sup>

While it emphasizes the avoidance of unnecessary barriers to trade, the TBT Agreement also recognizes the rights of member countries to enact measures to achieve legitimate policy objectives, including the protection of human, animal, and plant life; public health and safety; and the environment. Transparency is a centerpiece of the TBT Agreement. This component of the Agreement requires members to establish a national

<sup>6</sup> World Trade Organization (1995). Agreement on Technical Barriers to Trade. [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

<sup>7</sup> [https://legacy.trade.gov/td/osip/documents/osip\\_standards\\_trade\\_full\\_paper.pdf](https://legacy.trade.gov/td/osip/documents/osip_standards_trade_full_paper.pdf)

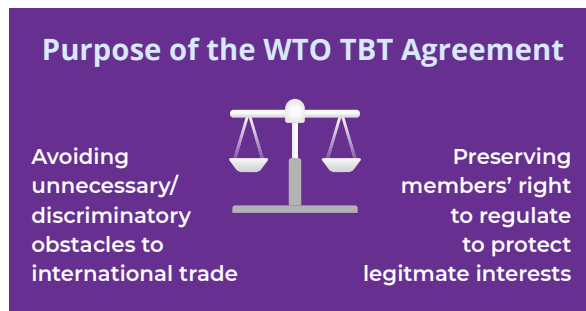


enquiry point and notification authority for the purpose of notifying and clarifying draft technical regulations and conformity assessment procedures to the WTO Secretariat.

This process supports market predictability by allowing member nations to understand and gain clarification on new technical regulations that may have disrupted trade.

### The TBT Agreement: Main Structure and Content<sup>8</sup>

The TBT Agreement is comprised of a preamble, 15 articles, and three annexes that codify the international process for the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures that affect the trade of goods. The annexes of the Agreement provide definitions for terms used in the agreement; procedures for technical expert groups; and the Code of Good Practice for the Preparation, Adoption and Application



of Standards.

A key distinction in the TBT Agreement is the difference between a standard and a technical regulation. In the Agreement, standards are voluntary while

technical regulations are mandatory. Producers voluntarily meet standards to demonstrate that their products achieve a stated level of quality and/or performance. Often, standards – or their components – are referenced in regulation. When this occurs, the standard becomes a mandatory requirement, or technical regulation, that must be met by all goods or services within the jurisdiction of the regulation.<sup>9</sup>

The TBT Agreement requires members to ensure technical regulations, voluntary standards, and conformity assessment procedures do not create unnecessary obstacles to trade. Although it is difficult to give a precise estimate of the burden of complying with divergent technical regulations and standards, it certainly involves costs for producers and exporters. A 2016 study by the U.S. Department of Commerce estimated that 92% of global exports may face foreign technical regulations that make it difficult to compete in international markets.<sup>10</sup>

While it emphasizes the avoidance of unnecessary barriers to trade, the TBT Agreement also provides very specific exemptions for member countries to enact measures to achieve legitimate policy objectives related to the protection of human, animal, and plant life; public health and safety; and the environment.

Transparency is a centerpiece of the TBT Agreement and requires members to establish a national enquiry point and notification authority for the purpose of notifying and

**Example:** The United States–Mexico–Canada Agreement (USMCA) is a free trade agreement concluded between Canada, Mexico, and the United States that emphasizes the importance of standards as the foundation for trade and investment. The USMCA enshrines the principles of the TBT Agreement, requiring the three parties to use international standards as the basis for technical regulation. This requirement supports greater regulatory harmonization and aids the avoidance of unnecessary obstacles to trade.

<sup>8</sup> World Trade Organization (1995). Agreement on Technical Barriers to Trade. [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

<sup>9</sup> Standards as defined by ISO/IEC Guide 2 may be mandatory or voluntary. For the purpose of the TBT Agreement, standards are defined as voluntary and technical regulations are defined as mandatory.

<sup>10</sup> [https://legacy.trade.gov/td/osip/documents/osip\\_standards\\_trade\\_full\\_paper.pdf](https://legacy.trade.gov/td/osip/documents/osip_standards_trade_full_paper.pdf)

clarifying draft technical regulations and conformity assessment procedures to the WTO Secretariat. This process supports market predictability by allowing member nations to understand and comment on technical regulations that may disrupt trade.

#### **TBT Agreement Principles:**

- Requires equal treatment for domestic and foreign products
- Obligates that regulations may not limit trade unnecessarily
- Prohibits import bans with no scientific evidence. Members shall ensure that technical regulations are applied only to the extent to protect human, animal, or plant life or health and is based on scientific principles.
- Prohibits import bans imposed on goods by a given process. Members shall specify technical regulations based on product requirements based on performance, rather than design or descriptive characteristics.
- Prohibits import bans based on a technically meaningless standard. Where technical regulations are required and relevant international standards exist, members shall use them.
- Prohibits import bans by means of a packaging/labeling regulation. Members shall ensure the technical regulations are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade.

#### **KEY PRINCIPLES OF THE TBT AGREEMENT: AN OVERVIEW**

The TBT Agreement recognizes a number of foundational principles that are essential to the proper functioning of barrier-free international trade in goods. By encouraging equal treatment among member states, these principles have helped guide progress toward lowering trade barriers and encouraging international trade. These principles are briefly outlined below.

**National Treatment:** National treatment allots imported and domestically produced goods

equal treatment (Article 2.1).

**Most Favored Nation (MFN):** The MFN principle grants all WTO members equal trade advantages c for example, equal tariff or quota rates. With permission from the WTO, Members are allowed to grant preferential trade terms to developing Members (see Special and Differential Treatment).

#### **Special and Differential Treatment:**

Developing country Members are permitted preferential treatment in their implementation of WTO agreements and provisions and Members are invited to provide favorable treatment to developing Members.

**Harmonization:** Members are encouraged to use existing international standards for the basis of their national regulations whenever appropriate.

**Equivalence:** Members are asked to consider the recognition of technical regulations and conformity assessment practices of other Members when these requirements meet the goals of national requirements.



As part of the development component of the WTO, many organizations support the implementation of the WTO Agreements. The Standards Alliance, a public-private partnership between the American National Standards Institute (ANSI) and the U.S. Agency for International Development (USAID), is one such program that supports partners on issues related to the TBT Agreement and NQI.

**Example:** A technical regulation on fire-resistant doors should require that the door successfully pass all the necessary tests on fire resistance. Thus it could specify, “The door must be fire resistant with a 30-minute burn through time”; it should not specify how the product must be made, e.g., that “the door must be made of steel, one inch thick.”

**Mutual Recognition:** Members are strongly encouraged to negotiate agreements of mutual acceptance of conformity assessment results.

**Notification:** Members are required to establish a national enquiry point and notification authority to support regulatory transparency. These bodies are required to notify draft technical regulations and conformity assessment procedures and respond to member enquires regarding pending legislation.

**Transparency:** Members are required to notify Members of any draft technical regulations that may influence international trade. Members are also required to publish TBT measures regularly. More information on transparency requirements is included in the following section.

### Technical Assistance

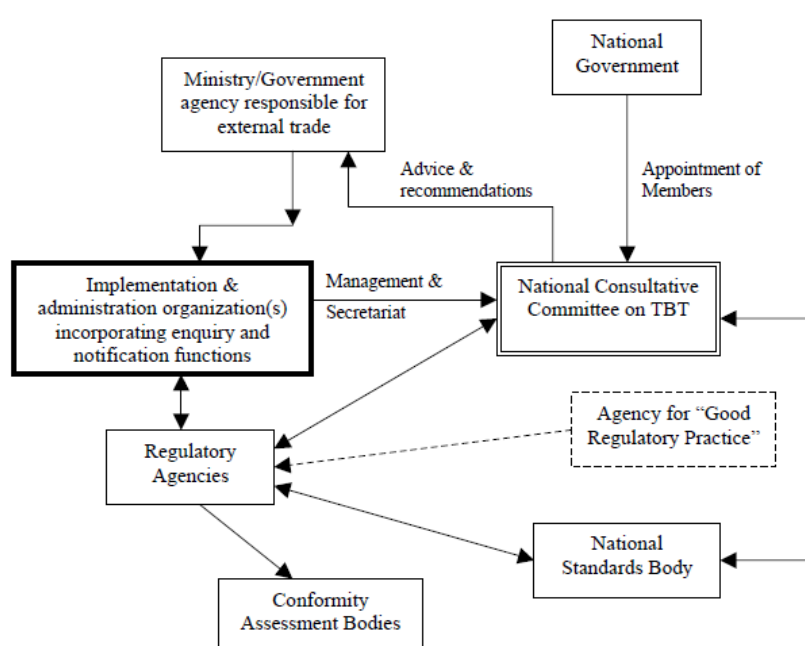
Any Member can request technical assistance

from the WTO Secretariat or other Members to support the implementation of the TBT Agreement (Article 11). Requests for technical assistance received from least-developed Members have priority.

## AN IN-DEPTH LOOK AT THE TBT AGREEMENT PROVISIONS

### Participation in International Standards Bodies

Widespread and open participation in international standards bodies ensure that international standards reflect diverse production and trade interests while creating space for innovation and knowledge sharing. The TBT Agreement encourages Members to participate, within the limits of their resources, in the work of international bodies for the preparation of standards (TBT Article 2.6) and guides or recommendations for conformity assessment procedures (TBT Article 5.5).<sup>11</sup>



The example at left shows that a national government has established a TBT committee that guides the development of technical regulations to ensure WTO compliance.

Source: World Bank

<sup>11</sup> World Trade Organization (1995). Agreement on Technical Barriers to Trade. Retrieved from [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)



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## Avoiding Unnecessary Obstacles to Trade

Unnecessary obstacles to trade can result when a regulation is more restrictive than necessary to achieve a given policy objective,<sup>12</sup> or when it does not fulfill a legitimate objective, or when a conformity assessment procedure is unnecessarily strict. According to the TBT Agreement, specifying, whenever appropriate, product regulations in terms of performance rather than design or descriptive characteristics will also help in avoiding unnecessary obstacles to international trade (see example above).

Governments can minimize the risk of developing unnecessarily restrictive regulations by considering alternative measures that have less trade-restricting effects. Members can assess these risks using technical and scientific information, technology, or end-uses of the products.

Labelling is one of the subjects assigned to the WTO Committee on Trade and Environment (CTE). It is part of an item (3b) on the committee's work program, in which the committee is assigned to consider the relationship between the provisions of the WTO's agreements and the requirements governments make for products in order to protect the environment. In addition to labelling, this includes standards and technical regulations, as well as packaging and recycling requirements.

Some countries have formed a National Commission or Committee for the Preparation, Adoption, and Application of Technical Regulations to minimize the development of restrictive trade measures.

## When Is Conformity Assessment an Unnecessary Obstacle to Trade?

WTO members' obligation to avoid unnecessary obstacles to trade also applies to conformity assessment procedures. An unnecessary obstacle to trade could result from stricter or more time-consuming procedures than are necessary to assess that

a product complies with the domestic laws and regulations of the importing country. For instance, information requirements for conformity assessment should be no greater than needed, and the setting of facilities to carry out conformity assessment and the selection of samples should not create unnecessary inconvenience to the agents.

## Legitimate Objectives for Technical Regulations

The TBT Agreement recognizes the existence of legitimate divergences of preference, income, geographical and other factors between countries. For these reasons, the Agreement accords to Members a degree of flexibility in the preparation, adoption, and application of their national technical regulations.

Article 2.2 of the TBT Agreement specifies that legitimate objectives include national security requirements, prevention of deceptive practices, protection of human health or safety, protection of animal and plant life or health, or the environment. An Example: "Environmental labelling schemes are complex, causing concerns about developing countries' and small businesses' ability to export. How do you use labelling to inform consumers about environmental protection without jeopardizing these weaker players? Opinions are divided. Two WTO committees are grappling with the question."<sup>13</sup>

## Transparency and Notifications: The WTO Notification System

According to the TBT Agreement, transparency is the process whereby the creation, terms, and application of technical regulations, standards, and conformity assessment procedures are made public, and opportunities are provided for the public (including other WTO Members) to comment on proposed technical regulations, standards, and conformity assessment procedures.

The WTO notification system is

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<sup>12</sup> World Trade Organization (2018). Labelling. Retrieved from [https://www.wto.org/english/tratop\\_e/envir\\_e/labelling\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/labelling_e.htm)

<sup>13</sup> World Trade Organization (1995). Agreement on Technical Barriers to Trade. [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)



The Standards Alliance provides targeted technical assistance to partner countries to support the development and implementation of strong quality institutions and effective quality policy. These efforts increase international compliance with the TBT Agreement and provide important benefits to consumers.

handled through the [TBT-Information Management System \(TBT IMS\)](#). This system is a comprehensive online database that allows users to search all TBT notification as well as Specific Trade Concerns (STCs). STCs are official concerns raised in the TBT committees. This database also includes information on Enquiry Points, Statements on Implementation, Agreements between Members, and other TBT-related documents.<sup>14</sup>

### Enquiry Point and Notification Authority

As an integral part to the obligation of transparency, each WTO Member must set up a national enquiry point (NEP) and national notification authority (NNA). The NEP acts as a focal point where other WTO Members can obtain information and documentation on technical regulations, standards, and test procedures. The NNA sends notifications of draft technical regulations to the WTO Secretariat, typically through the [online notification portal called ePing](#). This includes pending or adopted measures, as well as on participation in bilateral or multilateral standard-related agreements, regional standardizing bodies, and conformity assessment systems (Article 10).<sup>15</sup>

### The Code of Good Practice

Contained in Annex 3 of the TBT agreement, the Code of Good Practice for the Preparation, Adoption, and Application of Standards establishes disciplines in respect of central government, local government, and non-governmental and regional standardizing bodies developing voluntary standards. The Code aims to harmonize standards, promoting participation of all Members in the development of international standards when possible.

The Code of Good Practice provides overarching principles that guide the acceptable development of international standards, so that voluntary standards follow the appropriate criteria to be received internationally. These six principles are transparency, openness, impartiality/consensus, effectiveness/relevance, coherence, and development dimension. The Code of Good Practice also encourages signatories to use existing international standards, or the relevant parts of them, as a basis for any standardization activities. Members are encouraged to consider whether existing international standards meet the need of the standard developing body before developing new standards.

WTO Members with national standardizing bodies must accept and comply with the provisions of the Code. A standardizing body wishing to adhere to or withdraw from the Code must notify using the appropriate notification format (paragraph C of the Code). The Code has been accepted by 192 standardization bodies. Those that have accepted the Code must notify other Members of their work program and where it can be obtained.

## RELATED QUALITY PRACTICES ASSOCIATED WITH THE TBT AGREEMENT

### Good Regulatory Practice

Over the past two decades, delegates to the TBT have increasingly stressed the importance of Good Regulatory Practice (GRP) in avoiding unnecessary barriers and facilitating trade.<sup>16</sup>

<sup>14</sup> World Trade Organization (2021). Technical Barriers to Trade Information Management System. <http://tbttims.wto.org/>

<sup>15</sup> WTO (2018). WTO TBT Enquiry Point Guide. [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_enquiry\\_point\\_guide\\_e.pdf](https://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_point_guide_e.pdf)

<sup>16</sup> World Trade Organization (2021). Technical barriers to trade. [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm)

While the TBT Agreement itself does not address Good Regulatory Practice (GRP), the WTO plays an ongoing and important role in supporting international regulatory cooperation and implementation of GRP at the domestic level, while reducing unnecessary barriers to trade.<sup>17</sup> The TBT and SPS Agreements, in particular, offer a framework for cooperation and use of relevant international standards in regulation. GRPs – or the systemic application of procedures, tools, and institutions that ensure regulatory outcomes are transparent, stable, effective, and inclusive – are increasingly recognized internationally.

Many bilateral and multilateral trade agreements have incorporated language on the application of GRPs. Examples include Chapter 28 on GRPs under the USMCA, the ASEAN Guidelines on GRP, and several EU proposals for Free Trade Agreement (FTA) chapters on GRP (i.e., Japan, Indonesia, Mexico). Generally, GRP can be separated into three pillars: government coordination, stakeholder engagement or transparency, and regulatory impact assessment (RIA).

### Regulatory Impact Assessment

When designing a policy, law, regulation, or any type of “rule,” governments should always consider its likely effects. Regulatory impact Assessment (RIA) provides crucial information to decision-makers to analyze the costs and benefits of regulatory and non-regulatory policy options, including inaction, to achieve public policy goals. RIA examines the anticipated consequences of a range of policy options. This thorough analysis provides policy makers with data to support a regulatory decision or a decision not to intervene in markets where the costs of doing so outweigh the benefits. RIA provides policymakers, civil servants, and other public sector practitioners with a



practical instrument for better designing and implementing regulatory systems and strategies. RIA principles cover a wide range of institutional organizations, tools, and practices, and present a

list of critical steps as well as “do’s and don’ts” for developing frameworks. Extensive research and analysis has been undertaken by the Organization for Economic Cooperation and Development (OECD) on conducting RIA, including methodological issues, country experiences, and challenges in implementation. The materials also offer guidance on improving performance of RIA, encouraging early integration with policymaking while promoting regulatory coherence across institutions. RIA will continue to remain a key component of evidence-based approaches to policymaking.<sup>18</sup> Please visit [OECD's website on RIA](https://www.oecd.org/regreform/regulatory-policy/ria.htm) for more information.

### The Committee on Technical Barriers to Trade

The TBT Agreement is further strengthened by regular meetings of the TBT Committee. The TBT Committee typically meets three times per year to discuss specific trade concerns regarding technical regulations and standards and conformity assessment procedures, and to consult with other Members on issues related to the TBT Agreement. The Committee also meets on a triannual basis to deliberate on matters relating to the operation or interpretation of the TBT Agreement. Summary reports of the meetings as well as annual reviews and officially record discussions can be found on the [WTO TBT Official Documents website](https://www.wto.org/Trade-Disputes/tbt/tbt_official_documents.htm).

## WHY IS THE TBT AGREEMENT NECESSARY? BENEFITS TO HARMONIZATION

### Producers’ Benefits

The arguments for harmonization of technical regulations and standards are well known.

<sup>17</sup> World Trade Organization (2019). Facilitating trade through regulatory cooperation: The case of the WTO's TBT/SPS Agreements and Committees. [https://www.wto.org/english/res\\_e/booksp\\_e/tbtsp19\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/tbtsp19_e.pdf)

<sup>18</sup> OECD (2021). Regulatory impact assessment. <https://www.oecd.org/regreform/regulatory-policy/ria.htm>



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Interoperability is necessary for the connection and compatibility of parts of products, i.e. telecommunications equipment or car parts. Lack of technical compatibility might otherwise generate barriers to international trade. For example, television sets suitable for the U.S. market could not be sold in Europe due to divergences in color broadcasting formats (NTSC vs. PAL or SECAM). The costs of designing and manufacturing the same product in various configurations may be high. Harmonization can greatly reduce these costs and supports more consistent product quality and performance.

### Consumers' Benefits

Additionally, technical harmonization increases consumer welfare. Within a harmonized regulatory environment, competition ensures that consumers have a wide and economically attractive choice of products. This presupposes, however, that harmonized standards do not go beyond fulfilling their legitimate regulatory objective (i.e., that they do not stifle innovation or otherwise discourage producers from introducing new products or product variants).

### IMPORTANCE OF MUTUAL RECOGNITION

One of the main difficulties exporters face is the costly redundant testing or certification as part of differing conformity assessment procedures. These costs would be drastically reduced if a product could be tested once and the testing/certification results be accepted in all markets. This is made possible through a growing network of mutual recognition arrangements (MRAs) among regulators and international and regional accreditation bodies.

In practice, countries agree to accept the results of one another's conformity assessment procedures, although these procedures might differ. This is achieved by mutual recognition of the verification (also called accreditation) of conformity assessment bodies. In this arrangement, participants agree to accept results that have been accredited

by a recognized signatory to an agreement. This minimizes duplication of testing and certification, reduces costs, and decreases delays to market access. Article 6.3 of the TBT Agreement strongly encourages WTO Members to enter into negotiations with other Members for the mutual acceptance of conformity assessment results.<sup>19</sup>

### THE SPS AGREEMENT

The Sanitary and Phytosanitary (SPS) Agreement complements the TBT Agreement, specifically focusing on food safety and potential barriers to trade from overly burdensome food-based regulation. The SPS Agreement was formalized in 1995 as an Establishing Agreement of the WTO.<sup>20</sup> It describes international best practices for animal and plant health to support food safety. As in the TBT Agreement, the SPS Agreement provides space for WTO Members to adopt relevant national standards for food safety. However, as the SPS Agreement deals with many human safety concerns, it requires that standards and regulations are based on scientific evidence and applied to the extent necessary to protect human, animal, or plant life or health.

As with the TBT Agreement, Member countries are encouraged to use existing international standards, recommendations, and guidelines. However, the SPS Agreement allows for the use of higher standards given scientific justification or based on an appropriate assessment of risks, as long as the approach is consistent and not arbitrary. Different standards and inspection methods are still allowed.

Sanitary (human and animal health) and phytosanitary (plant health) measures can vary in their approach, particularly due to differences in climate, local pests or diseases, and food safety conditions, among others.<sup>21</sup> Such measures are designed to protect humans, animals, and plants from pathogens, diseases, and other risks such as pests or toxins.

Examples include prohibiting products

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<sup>19</sup> World Trade Organization (1995). Agreement on Technical Barriers to Trade. [https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

<sup>20</sup> World Trade Organization (1998). Understanding the WTO Agreement on Sanitary and Phytosanitary Measures. [https://www.wto.org/english/tratop\\_e/sps\\_e/spsund\\_e.htm](https://www.wto.org/english/tratop_e/sps_e/spsund_e.htm)

<sup>21</sup> World Trade Organization (2010). WTO Agreement Series: Sanitary and Phytosanitary Measures. [https://www.wto.org/english/res\\_e/booksp\\_e/agrmntseries4\\_sps\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/agrmntseries4_sps_e.pdf)

| THE SPS AGREEMENT TYPICALLY DEALS WITH:  | THE TBT AGREEMENT TYPICALLY DEALS WITH:   |
|--|---|
| <ul style="list-style-type: none"> <li>✓ Additives in food or drink</li> <li>✓ Contaminants in food or drink</li> <li>✓ Poisonous substances in food or drink</li> <li>✓ Residues of veterinary drugs or pesticides in food or drink</li> <li>✓ Certification: food safety, animal or plant health</li> <li>✓ Processing methods with implications for food safety</li> <li>✓ Labelling requirements directly related to food safety</li> <li>✓ Plant/animal quarantine</li> <li>✓ Declaring areas free from pests or disease</li> <li>✓ Preventing disease or pests spreading to a country</li> </ul> | <ul style="list-style-type: none"> <li>✓ Regulations for electrical appliances</li> <li>✓ Regulations for cordless phones, radio equipment, etc.</li> <li>✓ Textiles and garments labelling</li> <li>✓ Testing vehicles and accessories</li> <li>✓ Regulations for ships and ship equipment</li> <li>✓ Safety regulations for toys</li> <li>✓ Labelling of food, drink, and drugs</li> <li>✓ Packaging requirements for fresh food</li> <li>✓ Packaging and labelling for dangerous chemicals and toxic substances</li> </ul> |

from disease areas, inspections, treatment or processing requirements, allowable maximum levels of chemicals such as pesticides, or limiting certain additives in food. These can be applied to domestically produced food or local animal/plant disease, as well as imported products.

### From TBT to SPS

During the Uruguay Round, agricultural negotiations strove to lower barriers that countries used to protect domestic markets. Some countries feared that disguised protectionist measures in the form of sanitary or phytosanitary regulations would circumvent the attempted elimination of agriculture-specific non-tariff measures and the tariff reductions. This concern provided a major driving force that led negotiators to create a separate Agreement on the Application of SPS Measures (the “SPS Agreement”), in parallel with the major agricultural trade negotiations.

Much like many of the WTO Establishing Agreements, the SPS and TBT Agreements are complementary, and build on previous GATT rules (i.e., Article XX, section b). Further, the SPS Agreement closely complements the Agreement on Agriculture, which covers domestic support, market access, and export subsidies, and entered into force in 1995.<sup>22</sup>

The SPS Agreement includes the following main rules:

- SPS measures may not impose unfair restrictions on trade.
- Measures may not discriminate between

domestic and non-domestic procedures or among members.

- Measures should be based on accepted international standards if they exist (Codex Alimentarius).
- Publication must be prompt and access, via the enquire point, easy. Inspection procedures must be quick and fair.

### How Do the SPS and TBT Agreements Differ?

Both the TBT and SPS Agreements aim to prevent unnecessary barriers to trade. While measures that limit trade can generally be viewed under the TBT Agreement, a measure with the specific goal of protecting health is taken under the SPS Agreement. The splitting of the two categories allows for high-level international consensus of non-health measures, while allowing exceptions for health-protection measures for the purpose of adaptability based on domestic circumstances, so long as they are justified by science.

**The SPS Agreement:** Applies only to measures directly affecting the life or health of humans (mostly food safety), animals, and plants.

**The TBT Agreement:** Applies to every kind of measure for whatever purpose. As noted earlier in this section, this can include measures related to national security, prevention of deceptive practices, protection of the environment, and protection of human health or safety, or animal or plant life or health.

<sup>22</sup> World Trade Organization (2021). Agreement on Agriculture. [https://www.wto.org/english/docs\\_e/legal\\_e/14-ag\\_01\\_e.htm](https://www.wto.org/english/docs_e/legal_e/14-ag_01_e.htm)

## TBT REFERENCE INFORMATION

Official TBT documents from the WTO ([www.wto.org](http://www.wto.org))

[http://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm)

- [The TBT Agreement](#)
- [Technical explanation of WTO Agreement on Technical Barriers to Trade](#)
- [National enquiry points by country in alphabetical order](#)
- [Notifications submitted by Members on technical regulations and conformity assessment procedures](#)
- [Notifications related to Code of Good Practice for the Preparation, Adoption and Application of Standards](#)
- [Working documents of the TBT Committee](#)
- [What are Technical Barriers to Trade?](#)
- [Sign up to receive TBT notifications by e-mail](#)
- [Technical Assistance related to Technical Barriers to Trade](#)



### General documents of the TBT Agreement in relation to Technical Assistance

- [Transparency provisions of the TBT Agreement](#)
- [Databases on TBT-related technical assistance](#)
- [The TBT Committee](#)
- [Harmonization](#)
- [Transparency](#)

### TBT Workshop presentations

- [Workshop on Different Approaches to Conformity Assessment](#)
- [TBT Workshop on Supplier's Declaration of Conformity](#)

## SPS REFERENCE INFORMATION

- [TBT Workshop on Statements on the Implementation and Administration of the Agreement under Article 15.2](#)
- [TBT Learning Event on Labeling](#)
- Introduction to SPS measures: ["Understanding the SPS Agreement"](#)
- [How to apply the transparency provisions of the SPS Agreement](#)
- [The Full SPS Agreement](#)
- [Interactive course on the SPS Handbook](#)
- [Members' Transparency Toolkit on Work in SPS](#)
- [New mentoring system available for national notification authorities and enquiry points](#)
- [SPS notification formats](#)
- [A practical guide on how to notify SPS measures to the WTO, establish an enquiry point, and respond to enquiries](#)

### CONTINUE READING HANDBOOK ▶

STANDARDS, METROLOGY, & CONFORMITY ASSESSMENT:  
TOOLS TO FACILITATE TRADE AND MARKET ACCESS

SECTION 3: STANDARDS & TECHNICAL REGULATIONS ▶

SECTION 4: METROLOGY ▶

SECTION 5: CONFORMITY ASSESSMENT ▶

ANNEX ▶

INTRO & GLOSSARY ▶

SECTION 1: AN OVERVIEW OF NQI ▶