WTO Agreement on Technical Barriers to Trade (TBTs) Obligations

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June 25, 2018
Overview

- What is a Technical Barrier to Trade (TBT)?
- What is the WTO Agreement on Technical Barriers to Trade?
- How to support the WTO TBT Agreement with Good Regulatory Practices (GRPs).
- Linkages between the WTO TBT Agreement and the WTO Trade Facilitation Agreement (TFA) Agreements reduce trade costs.
- What are some examples of TBTs?
What is a Technical Barrier to Trade (TBT)?
Exports Covered by WTO TBT Notifications

92.9% of world exports (2014)

91.7% of U.S. exports (2015)

Calculations based on WTO notifications from January 1, 2006 to August 18, 2015 by all WTO members

(Source: Okun-Kozlowicki, “Standards and Regulations: Measuring the Link to Goods Trade,” June 2016)
Members have the right to regulate at levels they deem appropriate to achieve legitimate objectives, provided that they do not discriminate in an arbitrary or unjustified manner.
**WTO TBT Agreement Objective**

*Prevent the use of technical regulations, standards, or conformity assessments as unnecessary barriers to trade.*

<table>
<thead>
<tr>
<th>Technical Barriers to Trade (TBT) Measures</th>
</tr>
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<tbody>
<tr>
<td><strong>Standards</strong></td>
</tr>
<tr>
<td>Standards are approved by a recognized body which is responsible for establishing rules, guidelines, or characteristics for products or related processes and production methods. They may also deal with terminology, symbols, packaging, markings, and labeling requirements.</td>
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<tr>
<td><strong>Compliance is not mandatory.</strong></td>
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Key WTO TBT Agreement Obligations

- National Treatment
- Most Favored Nation
- Transparency
- Not Trade Restrictive
- Acceptance of International Standards
Key TBT Agreement Obligation - Transparency

• Was the measure developed in a transparent manner?

• WTO Members must maintain an Inquery Point for Members to ask questions on proposed regulations.

• Obligates WTO Members to notify technical regulations and conformity assessment procedures to other Members for notice and comment, with a reasonable interval for implementation (6 months).
Public Consultation on Regulations

- International – Notifications from TBT
Preventing TBTs through Monitoring of Proposed Regulations

The best chance to influence the regulation is during the comment period or prior to release of the final draft.

- **WTO TBT Notifications:**
WTO TBT Notifications have more than doubled since 2006
WTO TBT Notifications (continued)

Notifications by objective, 1995–2018

<table>
<thead>
<tr>
<th>Objective</th>
<th>1995–2018</th>
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<tr>
<td>Protection of human health or safety</td>
<td>9,940</td>
</tr>
<tr>
<td>Prevention of deceptive practices</td>
<td>3,003</td>
</tr>
<tr>
<td>Quality requirements</td>
<td>2,531</td>
</tr>
<tr>
<td>Protection of the environment</td>
<td>2,429</td>
</tr>
<tr>
<td>Consumer information, labelling</td>
<td>1,071</td>
</tr>
<tr>
<td>Other</td>
<td>642</td>
</tr>
<tr>
<td>Reducing trade barriers and facilitating harmonization</td>
<td>633</td>
</tr>
<tr>
<td>Harmonization</td>
<td>633</td>
</tr>
<tr>
<td>Protection of animal or plant life</td>
<td>448</td>
</tr>
<tr>
<td>Cost saving and productivity enhancement</td>
<td>788</td>
</tr>
<tr>
<td>Not specified</td>
<td>730</td>
</tr>
<tr>
<td>National security requirements</td>
<td>533</td>
</tr>
</tbody>
</table>

Number of notifications

1995–2018
WTO TBT Notifications (continued)

Distribution of new notifications by region, 2018

Africa 34.1%

Europe 9.1%

Commonwealth of Independent States 3.4%

North America 11.1%

South and Central America and the Caribbean 13.3%

Middle East 11.4%

Asia 17.7%

African Countries:
- Burundi
- Rwanda
- Kenya
- Senegal
- Liberia
- South Africa
- Malawi
- Tanzania
- Namibia
- Uganda

(Source: http://tbtims.wto.org/en/PredefinedReports/NotificationReport (as of 6/1/18))
• What is the measure’s objective?

• Legitimate Objectives under the TBT Agreement include:

  • National security requirements

  • Prevention of deceptive practices (e.g., misleading labeling)

  • Protection of human health/safety, animal, plant life/health, environment
Key questions for determining whether a measure may be more trade restrictive than necessary:

- Does the proposed measure appear to address the stated or implied objective with requirements that are clear?

- What *available* scientific/technical information did the regulator consider? (Did they miss anything?)

- Is there potential overlap/duplication with another regulation/regulator?

- Is there a less trade restrictive alternative we can identify?
Conformity Assessment Issues:

- How long do the procedures take?
- Are the procedures clear and easy to follow?
- Information requirements: do they go beyond what is necessary to assess conformity and determine fees?
- Are fees equitable?
Using the WTO TBT Committee
Supporting the WTO TBT Agreement with Good Regulatory Practices (GRPs)

• Internationally recognized practices adopted unilaterally by a government that can be used to improve the quality and cost-effectiveness of domestic regulations

  ➢ “These include transparency/public consultation, evidence-based decision-making (e.g., impact analysis, risk assessment, retrospective reviews), and internal coordination”

• GRPs help ensure transparency and consistency of regulatory decision-making and application to preemptively avoid trade barriers

• Included in recent bilateral trade agreements, including KORUS, TPP, and NAFTA
Example of Positive Regulatory Change

• Over 40 years ago, the U.S. Environmental Protection Agency classified milk as an oil because it contains animal fat.

• As a result, dairy farmers had to prove they could contain a milk spill under the Oil Spill Prevention, Control, and Countermeasures (SPCC) program.

• The government treated spilled milk like spilled oil!

Source: Report by Administrator of OMB’s Office of Information and Regulatory Affairs, August 31, 2016
WTO TBT Agreement and Trade Facilitation Agreement (TFA): Leveraging linkages to reduce trade costs

HOW DOES THE TFA CUT RED TAPE AT THE BORDER FOR EASIER TRADE?

• Reduces trade costs by an average of 14.3%
• Increases availability and ease of access to information
• Expediates release and clearance of goods
• Harmonizes processes and standards
HOW DOES THE TFA CUT RED TAPE AT THE BORDER FOR EASIER TRADE?

- Increases cooperation between customs and other authorities
- Provides assistance for implementation
Case Studies

• Russia – Medical Devices and Pharmaceuticals (Transition Time)

• Chile – Cell Phones Chargers (Notification and International Standard)

• Ecuador – Autos (International Standard)
Key Takeaways

• In order to develop technical regulations in the least trade restrictive manner possible:
  – Principles of Transparency, Fairness, and Coherence
  – Industry and private sector feedback
  – International standards
  – Internal government coordination
Thank You! I look forward to working with you on WTO TBT related issues!

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