
WTO Agreement on Technical Barriers to Trade

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Why are standards a trade issue?

- Standards probably affect 100% of trade!
- Non-tariff barriers to trade (NTBs)
- Measures such as testing and inspection procedures, labelling requirements, etc.:
 - Can impose significant costs and other burdens on firms, and reduce exports
 - May be used to protect domestic industry



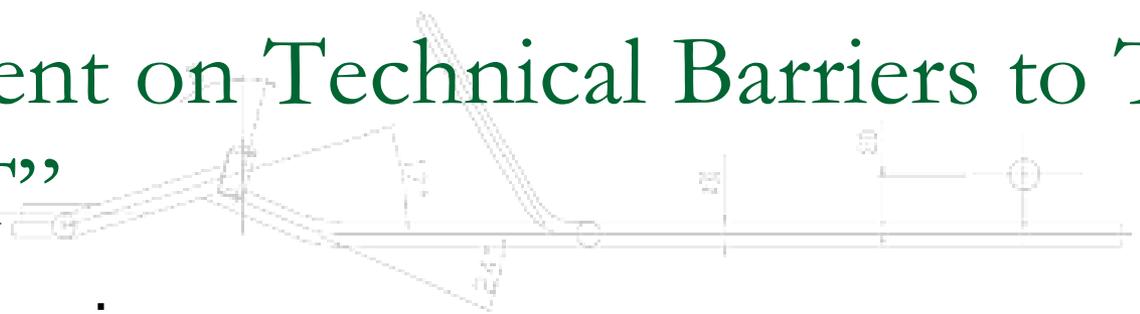
The WTO

WORLD TRADE
ORGANIZATION



- Seeks to discourage use of non-tariff measures
- But some non-tariff barriers are justified, for example to protect human health and safety
- The Agreements on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) set Members' obligations for measures within their scope
 - TBT Committee meets in Geneva 4 times a year

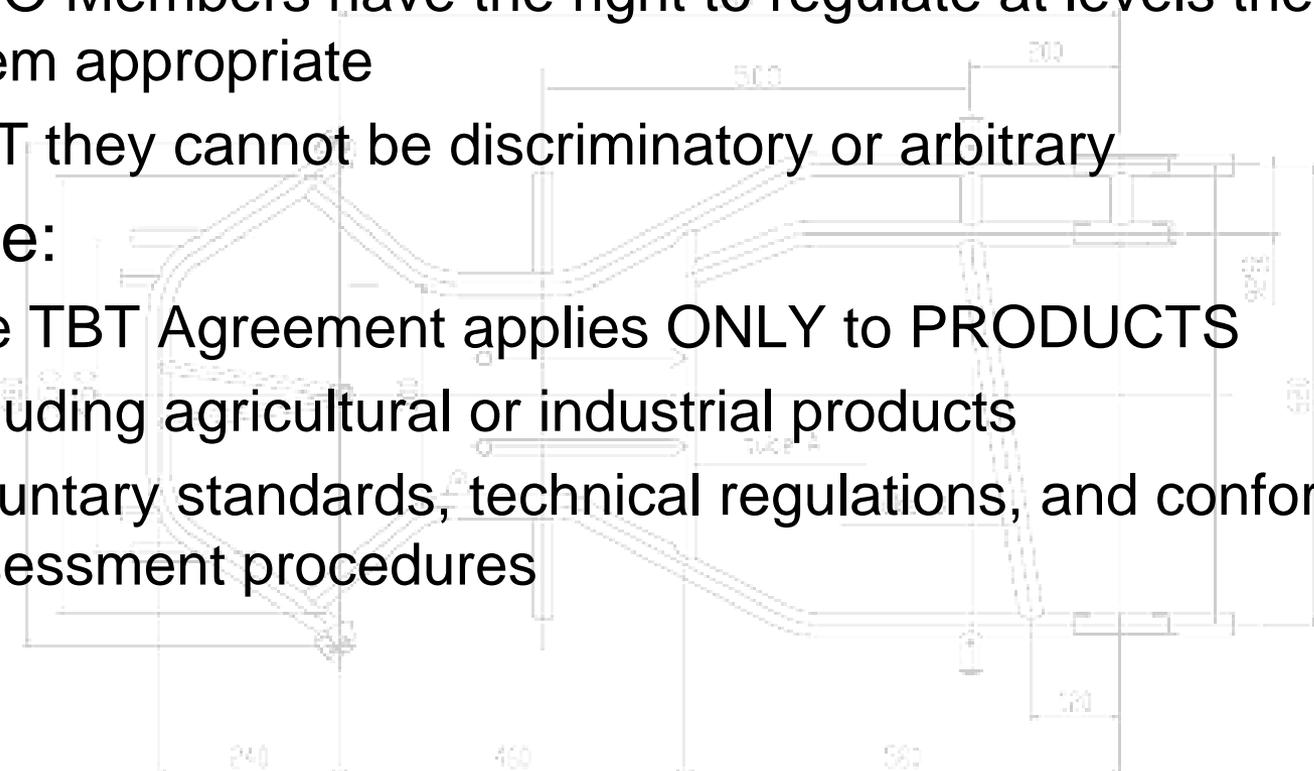
Agreement on Technical Barriers to Trade, or “TBT”



■ Basic premise:

- ❑ WTO Members have the right to regulate at levels they deem appropriate
- ❑ BUT they cannot be discriminatory or arbitrary

■ Scope:

- ❑ The TBT Agreement applies **ONLY** to **PRODUCTS**
 - ❑ Including agricultural or industrial products
 - ❑ Voluntary standards, technical regulations, and conformity assessment procedures
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What is a voluntary standard?

- Developed by industry or government
- Rules, guidelines or characteristics for products, or related processes and production methods
- NOT MANDATORY
- Can be: symbols, packaging, marking or labeling requirements



TBT coverage of voluntary standards

- Code of Good Practice (Annex 3 of TBT)
 - Takes most requirements for mandatory technical regulations and applies them to development and application of voluntary standards
 - Article 4:
 - Central government standardizing bodies required to comply with Code of Good Practice and Members must ensure such compliance
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What is a “technical regulation”?

- Requirement for product characteristics or their related processes and production methods
- MANDATORY
- Can be requirements for: symbols, packaging, marking or labeling requirements

| Nutrition Facts | | | |
|---------------------------------------------------------------------------------------------------------------------------------------|----------------------|--------------|---------|
| Serving Size 3 oz (85g) | | | |
| Servings Per Container 1 | | | |
| Amount Per Serving | | | |
| Calories 180 | Calories from Fat 90 | | |
| % Daily Value* | | | |
| Total Fat 10g | | 15% | |
| Saturated Fat 40g | | 20% | |
| Trans Fat 0.5g | | | |
| Cholesterol 70mg | | 23% | |
| Sodium 60mg | | 3% | |
| Total Carbohydrate 0g | | 0% | |
| Dietary Fiber 0g | | 0% | |
| Sugars 0g | | | |
| Protein 22g | | | |
| Vitamin A 0% | • | Vitamin C 0% | |
| Calcium 2% | • | Iron 15% | |
| *Percent Daily Values are based on a 2,000 calorie diet. Your daily values may be higher or lower depending on your caloric needs: | | | |
| | Calories: | 2,000 | 2,500 |
| Total Fat | Less than | 65g | 80g |
| Saturated Fat | Less than | 20g | 25g |
| Cholesterol | Less than | 300mg | 300mg |
| Sodium | Less than | 2,400mg | 2,400mg |
| Total Carbohydrate | | 300g | 375g |
| Dietary Fiber | | 25g | 30g |
| Calories per gram: | | | |
| Fat 9 • Carbohydrate 4 • Protein 4 | | | |

Mandatory FDA regulations for labeling of packaged foods

What are “conformity assessment procedures”?

- Procedures used to make sure that technical regulations or standards are fulfilled
- Includes:
 - sampling, testing and inspection;
 - evaluation, verification and assurance of conformity;
 - registration



Reasons countries have for establishing technical regulations or CAPs...

- “Legitimate objectives” include:
 - National security requirements
 - Prevention of deceptive practices (such as misleading labeling)
 - Protection of human health/safety, animal, plant life/health, environment
 - Unacceptable objective:
 - Protecting domestic industry only
 - Examples?
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Obligations of Members

Non-Discriminatory Treatment

- Members shall ensure that products imported from the territory of any Member shall be accorded National Treatment or Most Favored Nation (MFN) Treatment
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Obligations of Members

No Unnecessary Obstacles to Trade

- Members shall not prepare, adopt or apply a standard with a view to or with the effect of creating an unnecessary obstacle to trade, taking into account risks that non-fulfillment would create
 - Measures are not more trade restrictive than necessary to achieve the government's legitimate objective
 - Note, there may be necessary obstacles to trade
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Unnecessary Obstacles to Trade...

- Burden of proof is on the complaining Member to show:
 - The objective for setting the standard is not legitimate
 - Or, although legitimate, there is an:
 - Alternative measure
 - That is reasonably available,
 - Is significantly less trade restrictive,
 - And fulfills the legitimate objective
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International Standards

- Must use them “as a basis,” unless “ineffective or inappropriate”
 - Members must also participate in international standards development through international standardizing bodies
 - Purpose is harmonization- to facilitate trade
 - “Rebuttable presumption” that if based on international standard, a measure is not an unnecessary obstacle to international trade
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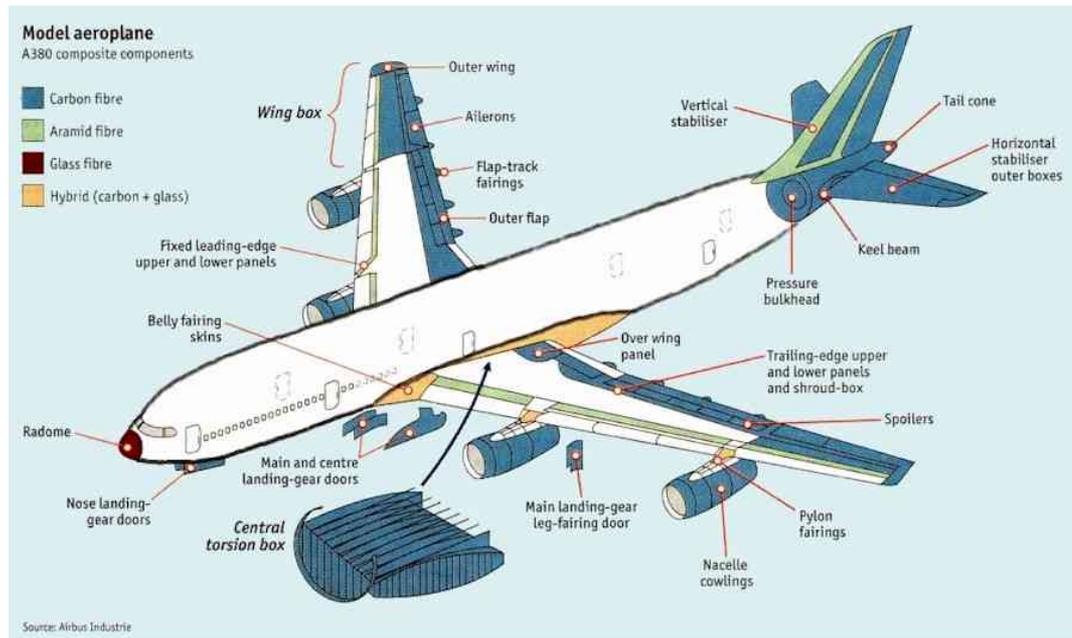
TBT Committee International Standards:

Decisions and Recommendations: G/TBT/1/Rev.9

- Principles for development of international standards, guides, and recommendations:
 - Transparency
 - Openness
 - Impartiality and Consensus
 - Effectiveness and Relevance
 - Coherence (avoid duplication by cooperation)
 - Development dimension
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Performance vs. Design-based Standards

- Must use performance over design based standards wherever appropriate
 - (“soft” obligation)



Transparency requirements:

- IF technical regulation or conformity assessment procedure is:
 - Not in accordance with an international standard, and
 - Will have a significant effect on trade, then
 - Members are obligated to:
 - Publish a notification of the regulation/procedure,
 - Notify WTO of the regulation,
 - Provide copies upon request, allow for comments,
 - And take those comments “into account”
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Notification requirements...

- Members must provide “reasonable time” to make comments:
 - TBT Committee has said 60 days
 - Must provide “reasonable interval” between publication and entry into force:
 - TBT Committee has said “not less than 6 months” except when would be ineffective for fulfilling legitimate objective
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Enquiry Point



- WTO Member enquiry points must:
 - Be able to answer “all reasonable enquiries” from other Members and interested parties and
 - Be able to provide relevant documents;
 - On any technical regulations, standards, or conformity assessment procedures.

- For USA:
 - NIST is enquiry point for all TBT measures
 - USDA is enquiry point for SPS measures

Peru Sardines Case

EC-Trade Description of Sardines

WT/DS231 (AB- 2002-3)



- Found that EC Sardine Regulation which permitted only a certain European sardine species (*sardina pilchardus* Walbaum, found in Eastern North Atlantic, Mediterranean and Black Seas) to be marketed as “preserved sardines” inconsistent with Article 2.4 bc was contrary to relevant international standard (Codex)
- Peru wanted the Codex standard in order to market its products: *Sardinops sagax sagax*, found in Eastern Pacific Ocean

TBT Chapters in U.S. FTAs

- US-Bahrain FTA entered into force January 2006
 - Main provisions of FTA TBT Chapters:
 - Increased recognition of conformity assessment bodies of the other Party
 - Transparency:
 - non-discriminatory opportunities for persons to participate;
 - notifications to Parties at same time made to WTO;
 - minimum 60 days for comments;
 - requires publication (print or electronically) of responses to significant comments at time of final adoption of regulation.
 - 5 year grace period to implement transparency provisions – for Bahrain this ended Jan. 2011.
 - Establishes TBT Chapter Coordinators
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Hypothetical – TBT Question

A small food manufacturer in your country comes to you with a complaint: it has become aware of a trading partner's new regulation that will require labeling of certain "high risk" packaged foods. The labeling requirement is that high risk packaged foods must bear a large red "stop sign" on the packaging to protect the health of the country's consumers. No neighboring countries have similar requirements.



How can we use the TBT Agreement to solve the trade problems? What are the questions we should ask?

Thinking about Trade Problems

- Relevant questions:
 - Is this a TBT-relevant measure? Is it implemented by a government entity – central, department, sub-regional?
 - Does it affect international trade?
 - Is there a relevant international standard?
 - Was the measure notified to the WTO?
 - Is the measure discriminatory?
 - Is the measure too restrictive? Any alternatives?
 - If so, what is the country's justification?
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