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Canada

Transparency Provisions in the TBT Agreement: Overview

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Outline

- The WTO Agreement on Technical Barriers to Trade
- Importance of Transparency
- Transparency Obligations under the WTO/TBT Agreement
- Recap





WTO TBT AGREEMENT

- Seeks to strike a balance between the right to take measures in pursuit of legitimate objectives while not creating unnecessary obstacles (barriers) to trade.
- Obligations apply to central, sub-national and local governments as well as non-governmental entities.
- Disciplines apply to the preparation, adoption and application of technical regulations, conformity assessment procedures, and standards.
- Requires transparency of technical regulations, conformity assessment procedures, and standards.



IMPORTANCE OF TRANSPARENCY

- **Transparency:** is a fundamental principle of the multilateral trading system.
- In 2009, the Committee stressed that transparency is
 - a **key element of Good Regulatory Practice** (G/TBT/1/Rev.10, pg 16)
- Why Is Transparency a Trade Policy Issue?
 - Obligations establish a mechanism for trading partners to become aware of applicable mandatory requirements .
 - Transparency is a means through which we learn about non-tariff trade barriers (NTBs). Hard obligation binds Members to notify measures that could impact trade at an “early appropriate stage.”
 - Trading partners voice displeasure at non-notification at Committee; through WTO Trade Policy Reviews; and, diplomatically.



WTO/TBT TRANSPARENCY PROVISIONS contained in:

- **Articles 2 and 3** (technical regulations);
- **Articles 5, 7, 8 and 9** (conformity assessment procedures);
- **Article 10** (information exchange provisions);
- **Article 15** (final provisions); and
- **Annex 3 Code of Good Practice** (standards).



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Technical Regulations & Conformity Assessment Procedures



TRANSPARENCY OBLIGATIONS

The TBT Agreement Requires that Members:

- **publish** a notice in a publication at an early appropriate stage;
- **notify** other Members through the Secretariat of the proposed relevant measure;
- Upon request, provide **copies** of the proposed relevant measure; and
- Allow for reasonable **comment period**, and take received written comments and the results of these discussions into account.



PUBLISH / NOTIFY

- Requirement for relevant proposed technical regulations, conformity assessment procedures to be published promptly.
 - Allows for Members to become acquainted with mandatory requirements
 - Members' official publications listed in G/TBT/GEN/39 series
- Require the notification of proposed measures:
 - When they are not in accordance with international standards.
 - Which may have a significant impact on the trade of another Member.
 - At an early appropriate stage, when amendments can still be introduced and comments taken into account.
 - In urgent circumstances (2.10.1 & 5.7.1) Members can bypass a normal comment period but notification and an opportunity for comment are required



PROVISION OF TEXTS

Decisions & Recommendations (G/TBT/1/Rev.10, page 30-33)

- Links in notification format
- Ability to attach documents
- Translations
- Collaboration between Members



COMMENTS

Decisions & Recommendations (G/TBT/1/Rev.10, page 23-25)

- Efficient and effective handling of comments stressed by Committee – GTBT26, para 42.
- Domestic coordination to encourage comments received are followed up and taken into account in finalizing the draft measure.
- Comment Period: 60 days (norm)

Procedures:

- ✓ Acknowledge receipt of comments
- ✓ Explain how Member will proceed to take comments into account
- ✓ Provide commenting Member with copy of adopted measure.



Article 10: Information Exchange Provisions



TRANSPARENCY OBLIGATIONS

Article 10.1: Members are required to operate an Enquiry Point to:

- Answer reasonable enquiries from Members and interested parties.
- Provide relevant documents regarding proposed or adopted measures by central or local bodies of:
 - Technical Regulations;
 - Conformity assessment procedures; and
 - Standards (purchase);
 - Membership and participation in international and regional standardizing bodies, conformity assessment systems.

Article 10.7 Notify other Members when they have reached an agreement with any other country or group of countries on related issues.



OBLIGATIONS & INFORMATION EXCHANGE

Article 10.10: Requires a single central government authority to be responsible for notification procedures pursuant to Articles 2.9, 2.10, 3.2; 5.6 and 5.7, 7.2.

Article 10.11: More than one national notification authority is permitted for legal or administrative reasons.

Scope of responsibility of each of these authorities must be communicated to other Members and must be unambiguous.

Information Exchange:

Enquiry Point coordinators meet bi-annually in Geneva for information exchange and best-practices discussions.



INSTITUTIONAL STRUCTURE OF THE ENQUIRY POINT

- Decision to be made by Member:
 - Establish new or utilize existing organization?
 - Separate or combine both functions into one office?
- Logical choices:
 - Utilize existing organization
 - Centralize both roles in one office
- Benefits of combining both functions in one office:
 - Reduced staffing
 - Faster processing
 - Overarching view of transparency activities within member
 - Central government need only to fund one organization



OTHER CONSIDERATIONS: RESOURCES

- *Funding:*
 - Annual funding from central government
 - Contractual arrangement with parent agency
- *Information Technology*
 - *Hardware*
 - *Software* (Internet Browsers; Operating System; MS Office Suite)
 - *Network*
- *Equipment:*
 - Telephone, fax, photocopier, mail, computer, printer, databases
- *Human:*
 - *Number of staff:* 2-4, dedicated to work of NNA & NEP
 - *NNA knowledge:* Understanding of TBT Agreement; analytical ability to be able to know which measures to notify; report generation; invoicing; budgeting.
 - *NEP knowledge:* Technical knowledge preferred, but not necessary. Just need to be aware of who to contact and how to coordinate with other body to ensure response provided to requester.



Article 15: Final Provisions



IMPLEMENTATION STATEMENTS

“Each Member shall, promptly after the date on which the WTO Agreement enters into force for it, inform the Committee of measures in existence or taken to ensure the implementation and administration of the Agreement” – Article 15.2

Why?

- Provides overview of how individual Members have chosen to implement the Agreement

Enables Members to take stock of their existing legislation and institutional structure, and identify any further steps needed to meet their obligations.

When?

- One-time notification; in case of changes, revision needed.



WHAT TO INCLUDE IN THE STATEMENTS

(GTBT1REV10, page 17)

- Relevant laws and regulations
- Publications used to announce technical regulations, standards, conformity assessment procedures
- Comment period
- Name and address of Enquiry Point
- Name and address of other agencies that have specific functions under the TBT Agreement



Annex 3: Code of Good Practice for the Preparation, Application and Adoption of Standards



TRANSPARENCY OBLIGATION - STANDARDS

- Article 4 and Annex 3 (“the Code”) requires Members to ensure central standardizing bodies accept & comply with the Code.
- Members shall “take reasonable measures” to ensure regional, local and non-governmental standardizing bodies comply.
 - *paragraph C* – Notify acceptance of / withdrawal from Code of Good Practice for the Preparation, Adoption and Application of Standards
 - *paragraph J* – Notify existence of Work Programmes
 - *paragraph M* – Provide copy of draft standard
 - *paragraph N* – Take comments into account
 - *paragraph O* – Publish adopted standard
 - *paragraph P* – Provide recent work programme



RECAP: TBT TRANSPARENCY OBLIGATIONS

- Publish relevant technical regulations, conformity assessment procedures; and agreements
- Notify the WTO Secretariat of draft and adopted relevant technical regulations and conformity assessment procedures; and of agreements between Members
- Establish and operate TBT Enquiry Point responsible for dealing with queries
- Submit statement on implementation and administration of the TBT Agreement

Transparency is a fundamental principle of the multilateral trading system



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