



# Note

## The WTO Technical Barriers to Trade (TBT) Agreement: Perspectives from East African Stakeholders

By Julian Mukiibi

### Summary

This brief note reviews the TBT Agreement's aims and objectives in light of developing countries perspectives, particularly the East Africa Community (EAC) member countries, where stakeholders' views were garnered on the issue.

## Introduction

The WTO Technical Barriers to Trade Agreement (TBT) aims to ensure that technical regulations, standards and conformity assessment procedures are non-discriminatory and do not create unnecessary obstacles to trade. At the same time, it recognises WTO members' right to implement measures to achieve legitimate policy objectives, such as protection of human health and safety, or protection of the environment.<sup>1</sup> The TBT Agreement encourages members to base their measures on international standards as a means to facilitate trade through transparency as well as ensuring a predictable trading environment.

The TBT Agreement provides that procedures used to determine whether a product conforms with applied standards have to be fair and equitable. It discourages measure that would give domestically produced goods an unfair advantage. In addition, the Agreement encourages Members to recognise each other's procedures for assessing whether a product conforms, since without recognition a product would have to be tested by both exporting and importing country, which may lead to incurring double costs.

Given that technical regulations and standards vary from country to country, in the WTO the TBT Committee is mandated as the clearing house for Members to share information and discuss concerns about the regulations and their implementation. The committee's work includes review of specific TBT measures and strengthening implementation of the WTO TBT

Agreement. It is in this context that the committee usually holds three formal meetings per year, in which it *inter alia* conducts an annual review of activities relating to implementation and operation of the TBT Agreement, including notifications, specific trade concerns, technical assistance activities, and TBT related disputes.

This brief note reviews the TBT Agreement's aims and objectives in light of developing countries perspectives, particularly the East Africa Community (EAC) member countries, where stakeholders' views were garnered on the issue.

## Objectives of the WTO TBT Agreement

The Technical Barriers to Trade Agreement (TBT) aims at ensuring that: mandatory product regulations; voluntary product standards; and conformity assessment procedures do not unnecessarily hinder international trade.<sup>2</sup>

Specifically, the TBT Agreement aims at balancing two important policy objectives of distinguishing between legitimate measures and protectionist measures, in other words the agreement purposes to prevent unnecessary obstacles to international trade, while allowing for regulatory autonomy to protect legitimate interests.

The goal of the TBT Agreement is to ensure that the progressive reduction of tariffs that has been achieved over time through negotiations is not curtailed by non-tariff barriers as a means of

<sup>1</sup> [https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm)

<sup>2</sup> Arthur E. Appleton – UNCTAD publication on WTO Dispute Settlement – UNCTAD/EDM/Misc.232/Add.22

protecting local industries in WTO member countries. While cognisant of members legitimate right to domestically implement requisite policies, the TBT Agreement seeks to ensure that measures that include Technical regulations, standards and conformity assessment procedures are not used for protectionist purposes.

In negotiating the TBT Agreement, members were cognisant of the critical need for regulatory autonomy that is often necessary to achieve certain objectives completely unrelated to protectionism of local industries. Such measures include those aimed at protecting consumer health and safety, the environment and national security. It is also argued that domestic regulations can further economies of scale by assuring consumer confidence through uniform technical and production standards.<sup>3</sup> The Agreement spells out a non-exclusive list of legitimate objectives, which include: (i) Protection of human, animal and plant life/health; (ii) Safety of humans; (iii) Protection of national security; (iv) Protection of the environment; and (v) Prevention of deceptive marketing practices.

All in all, the TBT Agreement seeks to ensure a balance between allowing for members regulatory autonomy for legitimate reasons through the use of technical regulations, standards, and conformity assessment procedures, while on the other hand assuring that such measures do not unnecessarily hinder international trade.

## Scope of the TBT Agreement

The general scope of the TBT Agreement covers technical regulations, standards and conformity assessments. These terms are defined in Annex 1 of the Agreement as follows:

### Technical regulations

Technical regulation refers to a document that lays down product characteristics or their processes and production methods. Including the applicable administrative provisions, with which compliance is mandatory, this may include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.<sup>4</sup>

In a WTO case of *EC-Sardines*<sup>5</sup> the Appellate Body set a three-part test for determining whether a measure is a technical regulation: (i) The document applies to an identifiable product or group of products; (ii) The document lays down one or more product characteristics; and (iii) Compliance with these characteristics must be mandatory<sup>6</sup>

Simply put, a requirement that all X products must be of a certain length Y would constitute a technical regulation.

### Standards

Standard under the TBT Agreement is defined as a document approved by a recognised body, that provides, for common and repeated use,

<sup>3</sup> Supra foot note 1

<sup>4</sup> TBT Agreement Annex 1 (1)

<sup>5</sup> AB Report EEC-Trade Description of Sardines

WT/DS231/AB/R quoted in supra foot note 2

<sup>6</sup> *ibid*

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.<sup>7</sup>

An illustration of a standard would be a guideline defining what category a product will be graded as per its characteristics, for instance weight, or length.

### Conformity assessments

Conformity Assessment Procedure, refers to any procedure used directly or indirectly to determine that relevant requirements in technical regulations or standards are fulfilled.<sup>8</sup> This includes *inter alia* procedures for sampling, testing and inspections, evaluation, verification and assurance of conformity, registration, accreditation and approval as well as their combinations.<sup>9</sup>

A conformity assessment procedure is therefore that which determines whether a technical regulation or standard has been conformed with.

The scope of the TBT Agreement is applicable to technical regulations, standards and conformity assessment procedures used to determine whether or not technical regulations and standards are complied with.<sup>10</sup>

It is worth noting that the difference between a technical regulation and a standard is that well as compliance with the former is mandatory,

compliance with the latter is voluntary. Conformity assessment procedures are applicable to both technical regulations and standards in order to determine whether they have been complied with, as the case may be.

## Common Principles in the TBT Agreement

The TBT Agreement provides for certain principles and rules that are important in its application, these include: Non-discrimination, prevention of unnecessary obstacles to trade, harmonisation, use of international standards, equivalence and Mutual recognition, transparency, and derogations in the event of urgent measures.

Although all the common principles and rules are important, transparency is considered the cornerstone of the TBT Agreement, it consists of three core elements:

- Provisions on notification of draft technical regulations and conformity assessment procedures and the “one-time notification of each members organizational set-up” for implementation of the agreement
- The establishment of enquiry points and notification authority, and
- Publication requirements for technical regulations and conformity procedures and standards.

In summary, governments are required to notify other members, through the WTO Secretariat, of proposed measures that may have significant

<sup>7</sup> TBT Agreement Annex 1 (2)

<sup>8</sup> TBT Agreement Annex 1 (3)

<sup>9</sup> Ibid

<sup>10</sup> Supra footnote 2.

effect on other members' trade and that are not based on relevant international standards.<sup>11</sup>

## EAC Stakeholders' Perspectives on WTO TBT

An informal survey of stakeholders in the East Africa Community (EAC) member countries of Burundi, Kenya, Rwanda, Tanzania and Uganda indicated that the WTO TBT Agreement is very important for the region given that most of their exports are often faced with non-tariff barriers including TBT.

In Uganda the government has gone as far as imposing a self ban on exports of certain products due to non-conformity with requisite standards, so as to first address capacity issues internally.

In Tanzania some stakeholders indicated that accessing certain markets especially in developed countries has been curtailed by the need to comply to certain standards that are costly to attain, and hence such markets are foregone.

In the case of Rwanda, there have been some positive developments with the Rwanda Standards Board gaining accreditation by the

Dutch Accreditation Council an internationally recognised standards body, and therefore able to provide certification of local products locally and affordably.

Generally, in EAC there is still the challenge of little awareness amongst stakeholders on the WTO TBT Agreement and how it can be leveraged to address certain challenges to do with market access in other countries.

All in all, stakeholders in the region call for mutual recognition of standards setting bodies so as to enable market access and affordable compliance costs. Never the less, the WTO TBT Agreement and regular work of the WTO in this respect is very important for these countries, since it provides an opportunity for presenting and resolving specific trade concerns that may arise in the markets of their interest.

### References

WTO (2014). The WTO Agreements Series: Technical Barriers to Trade. Available at <https://goo.gl/dMjbjE>

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WTO Agreement on Subsidies and Countervailing Measures, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1868 U.N.T.S. 120

<sup>11</sup> The TBT Agreement an Overview



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