



# Note

## Developing Countries' Participation in the WTO Committee on Technical Barriers to Trade

By Philip Poppelreuter

### Summary

At the WTO, regular work under the Committee on Technical Barriers to Trade (TBT) enables members to ensure their exporters are not unfairly affected by measures adopted by trading partners. Yet, due to the low profile kept by many small developing countries, few discussions have focused on measures of their interest. After analysing their participation so far, this paper will explore the benefits and avenues for engaging more effectively in the TBT Committee.

## Introduction

Tariffs and traditional non-tariff measures (NTMs) such as quantity and price controls on manufacturing goods have experienced a sharp decline in the recent decades, following multiple negotiation rounds on tariff reduction under the GATT and the WTO. Simultaneously, new forms of NTMs have gained importance, including Technical Barriers to Trade (TBT)<sup>1</sup>, which shall help governments to ensure that only those products enter their domestic market that are safe to consume and respect environmental standards.

TBT measures comprise technical regulations and procedures for assessment of conformity (CAP) with technical regulations and standards, however, not covering those measures which are included in the Agreement on Sanitary and Phytosanitary Measures (SPS).<sup>2</sup> As such, TBT measures are protectionist in nature and can easily turn into considerable trade barriers when being abused to protect domestic production.

Over the recent decades, a variety of new, different and complex TBT measures in the areas of labelling, quality and technical standards has caused substantial costs for the export industry of other countries, thereby undermining the process of trade liberalisation.<sup>3</sup>

However, it is important to note that while TBTs increase the cost of exporting for trading partners, those applied by small developing countries tend to have minimal impacts on traders from more advanced markets where stricter regulations are often in place.

Within the framework of the WTO, the agreement on TBT measures aims to achieve a balance between legitimate regulatory policy objectives and free trade.

## The TBT Agreement

The TBT Agreement, which is binding to all Members, is based on most of the core elements of other WTO agreements, including the principle of non-discrimination, promoting predictability of access to markets, technical assistance and Special and Differential Treatment for developing countries in the implementation process of the agreement<sup>4</sup>, and covers non-tariff trade barriers for both agricultural and industrial goods, thereby distinguishing between three categories of measures, namely:

- Technical regulations, which define product characteristics and refer to the processing and production methods of the respective product, respectively. Members' compliance with the technical regulations is mandatory.

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<sup>1</sup> Since the begin of the data recording in 1995, the number of total TBT notifications has increased by 619% until 2017 (<http://tbtims.wto.org/en/PredefinedReports/NotificationReport>, as of 30 November 2017.)

<sup>2</sup> Ghodsi/Michalek, Technical Barriers to Trade Notifications and Dispute Settlement within the WTO, p. 220.

<sup>3</sup> Fontagné/Orefice, Let's Try Next Door, p. 3. / Evenett/Fritz, The Tide Turns?.

<sup>4</sup> WTO, The WTO Agreements Series. Technical Barriers to Trade, p. 11.

- Standards, which are defined as “[a] document approved by a recognised body that provides for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods (...).”<sup>5</sup> Contrary to the situation for technical regulations, standards are non-mandatory.
- Conformity assessment procedures (CAPs), which are defined as “any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled.”<sup>6</sup> Requirements which are linked to CAPs comprise product registration, testing, certification and inspecting and are perceived to be a crucial obstacle for market access among Members.<sup>7</sup>

The main purpose of the agreement is to ensure that governments do not use technical regulations and standards as tools to create unnecessary burdens to trade in order to protect their domestic production. In particular, it envisages to avoid that exporters face excessively time-consuming procedures when assessing whether their export product meets the criteria established by the domestic laws and regulations of the importing country.<sup>8</sup>

Along these lines, Members are strongly encouraged to use international standards with regard to technical regulation requirements,

assuming that these international standards do not have a trade-distortive impact and are expedient towards the harmonisation of universally applied standards. However, the Agreement recognises the right of each Member to frame its own rules to protect legitimate public policy objectives, such as the one mentioned above.<sup>9</sup>

## WTO Members' Obligations under the TBT Agreement

Under the TBT Agreement Members are required to notify to the WTO Secretariat those technical regulations and CAPs that potentially have a significant, trade-distortive impact and are not based on international standards.<sup>10</sup> Most importantly, these notifications must be submitted at an early stage, which allows potentially affected exporting Members to provide written feedback on the planned technical regulations and CAPs. In any case, there must be a reasonable period of time between the submission of the draft technical regulations, standards or CAPs and the actual implementation of these measures.<sup>11</sup>

For the purpose of transparency, all Members who notify TBT measures to the WTO Secretariat are required to establish enquiry points and a notification authority to ensure that

<sup>5</sup> *Ibid.*, p. 58.

<sup>6</sup> *Ibid.*, p. 59.

<sup>7</sup> McDaniels/Karttunen, Trade, Testing and Toasters, p. 21.

<sup>8</sup> Ghodsi/Michalek, Technical Barriers to Trade Notifications and Dispute Settlement within the WTO, p. 224.

<sup>9</sup> Ayral, TBT and Trade Facilitation Agreements. Leveraging Linkages to Reduce Trade Costs, p. 5. /

Bernstein/Hannah, Non State Global Standard Setting and the WTO, p. 585.

<sup>10</sup> Horn/Mavroides/Wijkström, In the Shadow of the DSU, p. 5-6.

<sup>11</sup> Molina/Khoroshavina, TBT Provisions in Regional Trade Agreements, p. 16.

all other Members have permanent access to information with regard to new technical regulations, standards and CAPs an importing Member intends to implement.

## The WTO TBT Committee

The TBT Agreement established the TBT Committee, which has three broad areas of activity: Firstly, it reviews TBT measures notified by importing Members, and allows other Members to raise Specific Trade Concerns (STCs) about them. Secondly, it provides both exporting and importing countries a platform to discuss the raised STCs. Thirdly, it acts as a monitoring platform for the implementation of the TBT Agreement, through exchange of experiences among Members on a variety of generic, cross-cutting topics such as transparency, conformity assessment, good regulatory practice and evaluation of the adoption of decisions. It also gives recommendations to Members on how to facilitate the implementation.

The TBT Committee does not have the mandate to settle the conflicts which are raised by Members. It follows that STCs are not a formal dispute mechanism but rather a way to request for more transparency and clarification, which serves a twofold objective for an exporting Member or a group of exporting Members: on the one hand, they can seek more information on an intended TBT measure, which affects their

exports. On the other hand, they can indicate that there is a reasonable suspicion that particular notified TBT measures violate the provisions established under the TBT Agreement.<sup>12</sup>

Moreover, the TBT Committee strives to avoid that concerns about intended new TBT measures are brought to the WTO Dispute Settlement Mechanism, where the period until a final verdict is prolonged and very costly, and creates uncertainty and tensions among the involved Members.

## Functioning of the TBT Committee

The TBT Committee is made up of technical experts and meets formally three times a year. Members are free to choose their representatives at the TBT Committee meetings, often capital-based trade officials and officials from national regulatory and standardising bodies. In addition to the formal meetings, the TBT committee organises workshops and informal meetings to deal with particular issues which are pressing at a given time.

With regard to its major objective of strengthening the implementation of the TBT Agreement, the TBT Committee has launched the triennial review in 1995, which takes place every three years and presents the experiences made by Members. By means of the guidelines developed within these reviews, a more effective

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<sup>12</sup> Horn/Mavroides/Wijkström, In the Shadow of the DSU, p. 1.

application of technical regulations, standards and CAPs has been ensured, thereby slowing the creation of unnecessary obstacles to trade.

In 2009, the TBT Committee laid down a procedure to streamline the discussion of STCs.<sup>13</sup> In case that a Member wants to raise an STC about a new TBT measure of an importing country, it is required to show that firstly, the imported products involved are “like” and secondly, that the imported products have suffered from less favourable treatment.<sup>14</sup>

Once a measure has been notified to the WTO Secretariat, all Members are given 60 days to request copies of the draft measure and submit written comments on the new TBT measure. Within the 60 days period, notifying members are obliged to discuss the received comments and taking them into account when preparing their final measure. After the assessments and views on a specific TBT measure between one or more exporting countries and one or more importing countries have been exchanged, the Member(s) who raised the STC can decide whether they want to let the matter rest or if they want to challenge the initiator(s) of the new TBT measure further. If it turns out that the differences of opinion between the Members involved in the discussion are insurmountable, Members may decide to bring the issue to the formal WTO dispute settlement mechanism.

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<sup>13</sup> McDaniels/Karttunen, Trade, Testing and Toasters, p. 10.

<sup>14</sup> WTO, The WTO Agreements Series. Technical Barriers to Trade, p. 18.

## Benefits for Developing Countries

Since the TBT Committee grants all Members equal access to information on new TBT measures notified by importing Members, small developing countries are given ample opportunity to identify and point to those TBT measures that have potentially trade-distortive impacts on their export industries.

The STC database which is compiled by the TBT Committee provides a clear idea about the status of STCs and Members involved therein. This is a major trade monitoring tool for small developing countries, most of which lack financial and technical resources to identify new trade-distortive TBT measures. By means of a thorough assessment of the TBT measures that are on the table, small developing countries can actively support other Members or join already existing groups of Members to raise STCs on the most trade-distorting TBT measures.

Furthermore, evaluating the STC database is vital for small developing countries to see which STCs are raised against like-minded small developing countries to be prepared for potential STCs raised against their own TBT measures.<sup>15</sup>

With regard to the general lack of financial and technical resources in small developing

<sup>15</sup> Ngobi, The Specific Trade Concern Mechanism of the TBT Committee and the WTO TBT Agreement Implementation, p. 3.

countries to identify trade-distorting TBT measures, it is important to mention that most of the STCs raised are not taken further to the formal dispute settlement.<sup>16</sup> This implies that the TBT Committee offers all Members a mechanism to express their interests and concerns, simultaneously circumventing the costly and prolonged process at the WTO Dispute Settlement.

Finally, participating actively in the TBT Committee gives small developing countries the opportunity to receive information about new TBT measures at an early stage, which provides them with a sufficient element of time to consult with their export industry and governmental bodies in order to assess whether the new TBT measures pose a threat to their export flows.

TBT measures that affect the trade of agricultural and allied goods are of particular interest to small developing countries, given that the agricultural sector contributes significantly to their export earnings.

## Recent Participation of Developing Countries in the TBT Committee

While both the TBT notifications and the formal STCs have experienced a sharp increase in numbers since 1995, bespeaking the growing

importance of TBT measures for the multilateral trading system, the number of TBT notifications has constantly been far above the number of STCs, with an average ratio of 3.17 per cent between 1995 and 2017. This indicates that Members, facing an ever-increasing number of TBT notifications, make increasing use of the STC mechanism to deal with these notifications.

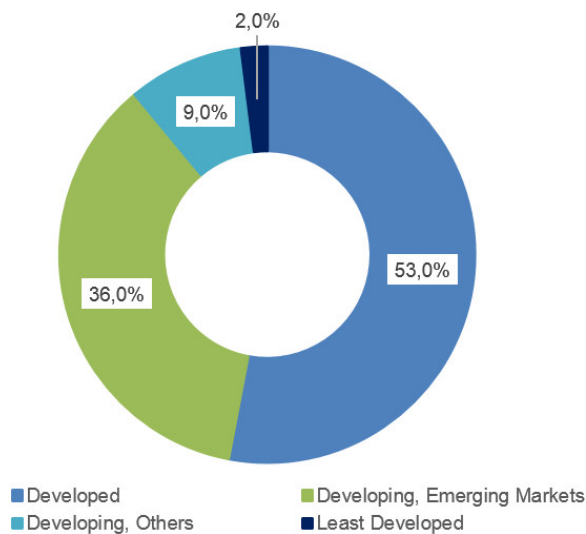
Since 2010, a total number of 1104 STCs were raised between at least two Members, either by one Member against another Member; or a group consisting of up to 30 Members against a single Member or a group of Members, respectively.<sup>17</sup> Figure 1 illustrates the distribution of STCs raised by Members according to their development level, as categorised by UNCTAD. It appears that developed (53 per cent) and emerging markets (36 per cent) denote for the majority of STCs, way ahead of the other developing countries, including small developing countries and LDCs who together only represent 11 per cent of all STCs.

<sup>16</sup> Horn/Mavroides/Wijkström, In the Shadow of the DSU, p. 30.

<sup>17</sup> In case that a STC was raised by Members A, B and C against Member D, this was denoted for as 3 STCs, namely Member A vs. Member D, Member B vs. Member

D and Member C vs. Member D. This approach of counting was chosen to get a clear picture of the distribution of raised STCs across the different categories of countries.

**Figure 1: TBT STCs by Country Category since 2010**



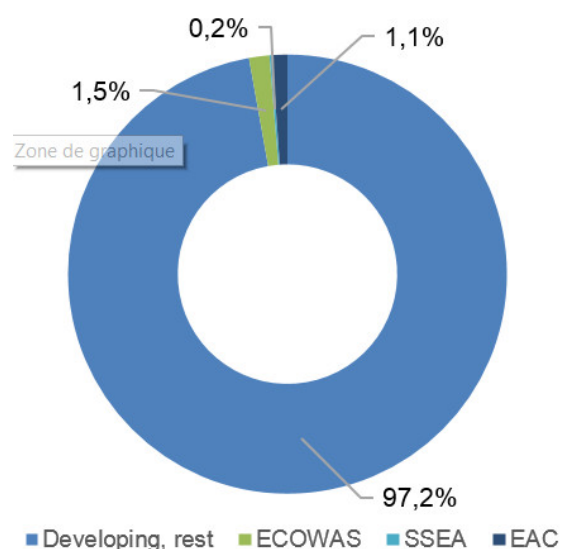
Source: Author's calculations, based on WTO TBT Information Management System

While small developing countries hardly raise any STC, they are most of the time not subject to STCs either. Table 1 shows that 444 of the 592 STCs raised by a developed country since 2010 were directed against an emerging developing country, most preferably China, India, Indonesia and the Republic of South Korea, while developing countries and LDCs were only accused in 57 cases by developed countries. The same holds true for the STCs raised by emerging developing countries which raised 209 of their overall 395 STCs against developed countries and 162 STCs against emerging developing country Members. Overall, emerging developing countries raised 24 STCs against the TBT measures of developing country Members or Least Developed Members. In combination, these figures support the assessment that the TBT measures notified by small developing countries and LDCs do not have a serious impact on the export industries in developed

and emerging developing countries.

With regard to the regional situation of the developing countries that have raised STCs since 2010, Figure 2 indicates that member states of ECOWAS and EAC only denote for a small share of the raised developing country Members' concerns: while the STCs raised by member states of ECOWAS account for 1.5 per cent of all STCs raised by developing countries in this period, EAC member states only denote for 1.1 per cent of all STCs raised by developing country Members. On the other hand, South and Southeast Asian (SSEA) countries account for 0.2 per cent of all STCs raised by developing countries since 2010. It should however be noted that the dataset has excluded emerging markets from the SSEA region.

**Figure 2: Developing Country STCs: Selected Regions**



Source: Author's calculations, based on WTO TBT Information Management System

**Table 1: Participation in TBT STCs by Country Category since 2010.**

		MEMBERS RAISING STCs			
		DEVELOPED	DEVELOPING, EMERGING MARKETS*	DEVELOPING, OTHER	LEAST DEVELOPING (LDC)
MEMBERS SUBJECT TO STCS	DEVELOPED	<p>STCs: 91</p> <p><i>Top Demanders:</i> United States, Australia</p> <p><i>Top Defendants:</i> European Union, United States of America, Canada</p>	<p>STCs: 209</p> <p><i>Top Demanders:</i> China, Brazil, Republic of Korea, Argentina, Mexico, India</p> <p><i>Top Defendant:</i> European Union</p>	<p>STCs: 71</p> <p><i>Top Demanders:</i> Guatemala, Cuba, Dominican Republic, Zimbabwe, Honduras,</p> <p><i>Top Defendant:</i> European Union</p>	<p>STCs: 14</p> <p><i>Top Demanders:</i> Malawi, Zambia, Mozambique</p> <p><i>Top Defendant:</i> European Union</p>
	DEVELOPING, EMERGING MARKETS	<p>STCs: 444</p> <p><i>Top Demanders:</i> European Union, United States of America, Canada, Australia, Japan</p> <p><i>Top Defendants:</i> China, India, Indonesia, Republic of Korea, Ecuador</p>	<p>STCs: 162</p> <p><i>Top Demanders:</i> Mexico, Republic of Korea, Ukraine</p> <p><i>Top Defendants:</i> China, India, Russian Federation</p>	<p>STCs: 26</p> <p><i>Top Demanders:</i> Guatemala, Costa Rica</p> <p><i>Top Defendants:</i> Ecuador, Russian Federation, Thailand, India, Peru</p>	<p>STCs: 4</p> <p><i>Top Demanders:</i> Malawi, Tanzania, Mozambique, Zambia</p> <p><i>Defendants:</i> Brazil</p>
	DEVELOPING, OTHER	<p>STCs: 29</p> <p><i>Top Demanders:</i> United States of America, European Union, Australia</p> <p><i>Top Defendants:</i> Vietnam, Kenya, Dominican Republic</p>	<p>STCs: 16</p> <p><i>Top Demanders:</i> Mexico</p> <p><i>Top Defendants:</i> Viet Nam, Plurinational State of Bolivia, Kenya</p>	<p>STCs: 2</p> <p><i>Top Demanders:</i> Guatemala</p> <p><i>Defendant:</i> Plurinational State of Bolivia</p>	<p>STCs: -</p>
	LEAST DEVELOPING	<p>STCs: 28</p> <p><i>Top Demanders:</i> United States of America, European Union</p> <p><i>Top Defendants:</i> Burundi, Uganda, Tanzania, Rwanda, Yemen, Kyrgyz Republic</p>	<p>STCs: 8</p> <p><i>Top Demanders:</i> Chile, South Africa</p> <p><i>Top Defendants:</i> Uganda, Burundi, Tanzania, Rwanda</p>	<p>STCs: -</p>	<p>STCs: -</p>
	SUMMARY	<p>STCs raised: 592</p> <p><i>Top Demanders:</i> Canada, United States, Australia, European Union, Japan</p>	<p>STCs raised: 395</p> <p><i>Top Demanders:</i> Mexico, Republic of Korea, Brazil, China, Chile, India</p>	<p>STCs raised: 99</p> <p><i>Top Demanders:</i> Guatemala, Cuba, Dominican Republic, Zimbabwe, Honduras</p>	<p>STCs raised: 18</p> <p><i>Top Demanders:</i> Malawi, Zambia, Mozambique</p>

\* UNCTAD definition

Source: Author's Calculations, based on Sanitary and Phytosanitary Information System



Summarising the quantitative analysis of raised STCs since 2010, four key points can be made:

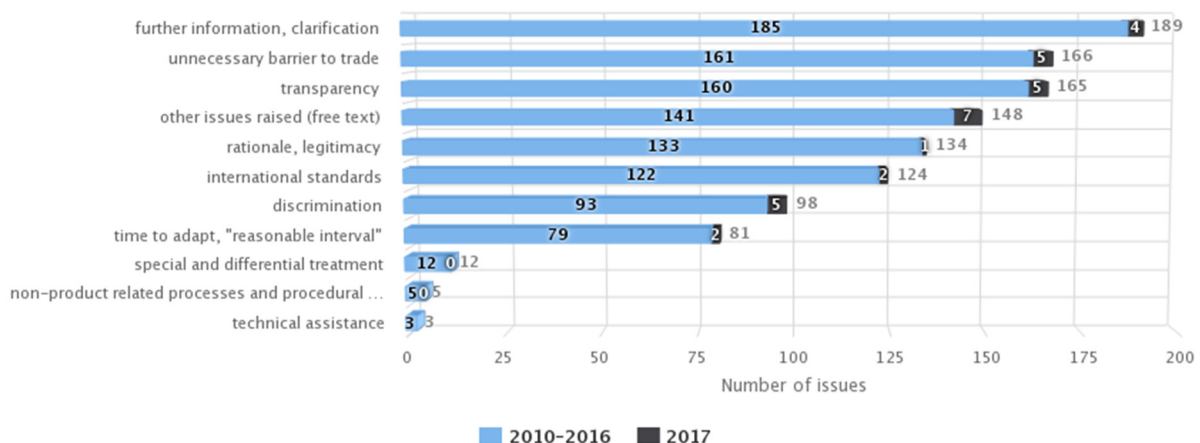
- While developed countries were the main users of the STC mechanism until the early 2000s<sup>18</sup>, emerging developing countries have become frequent users of the TBT Committee work, too, raising an increasing number of STCs against developed countries.
- However, small developing countries and LDCs hardly participate in the TBT Committee work. Most of the STCs are raised by developed and emerging developing countries and directed towards developed and emerging developing countries.
- The fact that ECOWAS and EAC members denote together for 2.3 per cent of all STCs raised by developing countries since 2010 indicates that these countries face massive obstacles when trying to make use of the STC mechanism.

- With only 81 STCs raised by developed and emerging developing countries against TBT measures notified by small developing countries and LDCs, it can be stated that the latter two are of little relevance to the former two with regard to the TBT Committee work, if that.

### Examples of recent STCs raised by developing countries

Figure 3 gives an overview of the types of concerns raised in the TBT Committee since 2010, counting each STC raised only once, irrespective of the number of Members that supported the concern. While most of the STCs raised seek further information and clarification with regard to the TBT measures notified, only very few STCs dealt with S&DT or technical assistance. This bespeaks of the fact that the TBT Committee has not yet been a platform for discussing small developing countries' interests and concerns

**Figure 1: Types of Concerns raised since 2010**



Source: Technical Barriers to Trade Information Management System, WTO

<sup>18</sup> Bao/Qiu, How Do Technical Barriers to Trade Influence Trade?, p. 693.

Across their limited number of raised STCs, members of ECOWAS and EAC have solely supported STCs about new TBT measures dealing with the packaging and ingredients of tobacco products. Since 2010, Burundi, Nigeria, Kenya and Uganda have at least contributed to one STC about such a new TBT measure notified by a developed or an emerging developing country, respectively. However, the latest STC in this regard was raised in 2016 and only found active support from Nigeria.

Finally, it is important to mention that while member states of ECOWAS and EAC have not been raising further STCs on other agricultural or allied products, other Members have done so. During the last session of the TBT Committee in June 2017, several STCs on food safety and standards were raised, for instance, by a group of Members consisting of, inter alia, the European Union, Switzerland and the United States of America, but also Guatemala, South Africa and Chile about India's Draft Food Safety and Standards (Alcoholic Beverages Standards). Another STC, raised by the United States of America and Uruguay, focused on Quality Schemes for Agricultural Products and Foodstuffs, intended to be introduced by the European Union. Those two cases are only representative of several other STCs which deal with TBT measures on agricultural and food products, however most of them being raised by developed and emerging developing countries with small developing countries remaining passive.

## Taking better advantage of the TBT Committee

### Challenges to effective participation

Trying to explain their extreme level of passivity, two challenges small developing countries face in their TBT Committee participation are striking:

Firstly, given the steadily increasing number of STCs being raised, it can be stated that the TBT Committee is lacking the capacities to deal properly with all raised STCs. This has severe consequences for small developing countries whose raised STCs get lost in the masses of STCs raised by developed and emerging developing countries.

Secondly, small developing countries suffer from a lack of domestic capacities in form of knowledge and resources to make a fair assessment of the obstacles which negatively affect their export industry. Without linkages from the countries delegates to the WTO and the local export industry, it is impossible for the former to know about the needs of the latter, which in the end prevents a more active participation of small developing countries in the TBT Committee.

### Taking better advantage of the TBT Committee

The most pragmatic approach for small developing countries to make better use of the TBT Committee is to establish permanent

collaboration with each other to give their concerns and interests a louder voice. While the lack of resources and knowledge avoids that small developing countries can stand up for their interests on their own, in conjunction with other, like-minded developing countries, it is possible for them to raise the necessary resources in order to actively participate in the TBT Committee, thereby avoiding that the TBT Committee is abused as a sole platform for the repeated STCs raised by developed countries.

Moreover, the increasing number of STCs raised by emerging developing countries indicates that these countries have the financial and technical resources to actively engage in the TBT Committee. Hence, small developing countries should seek their advice and support to become more active in the TBT Committee, for instance, in case of the S&SEA countries, it would be useful for them to consult with South Korea who has participated actively in the TBT Committee over the recent years and gained much experience with regard to the raise of STCs.

Along these lines, it would also be helpful to study old and frequent cases of STCs dealt with in front of the TBT Committee as they might indicate how to deal with the issues currently on the table. This would both save resources and serve as a guide for concerned small developing countries when raising a similar issue in front of the TBT Committee.

## Way forward

As already indicated above, the private sector is of paramount importance to the development of small developing countries as it offers the required ingredients for sustainable growth: financial resources, knowledge, creativity and manpower. Most importantly, those actors engaged in the export sector have a sound knowledge on the standards they are technically and financially capable to meet, the obstacles they face when exporting to foreign markets and the potential impact of new STC measures intended by importing countries.

It follows that it is crucial for small developing countries to strengthen their engagement with their domestic private sector to acquire the necessary background knowledge to identify the most burdensome TBT measures and to raise STCs accordingly if necessary.

To improve the collaboration with its domestic private export sector, governments could establish information points for private actors who are engaged in the export sector in order to inform them about new TBT measures notified. The private sector then could be given a certain period of time to evaluate the new TBT measures in order to join a monthly meeting with the government and TBT Committee representatives of the respective country to discuss the impact of the new TBT measures on the domestic export industry and whether a STC should be raised.

It is important to mention, that representatives of Micro- and Medium Size Enterprises (MSMEs) should be part of the consultations between government representatives and private sector actors. Since global trade is nowadays almost entirely structured around global and fragmented value chains, MSMEs have the capability to contribute to a small developing country's export volume, if technical standards and regulations, as well as the CAPs prevailing on the global market are not more burdensome than necessary. While facilitated access to credits and training must serve as complementarities to tap their full economic potential, it would therefore be crucial to take notice of their needs and concerns with regard to burdensome TBTs.

## Conclusion

The low share of STCs which are not successfully resolved within the TBT Committee indicate that the STC mechanism is extremely effective in settling quarrels over new TBT measures through transparency measurements and dialogue.

However, the latest compilation of all STCs raised since 2010, presented in this briefing note, indicates that small developing countries only denote for a vanishingly small share of those STCs which were raised in that period, simultaneously hardly being subject to STCs raised. To become more active in the TBT

Committee, small developing countries should study old STC cases to learn from earlier STCs, strengthen the relations with its domestic export sector to identify potentially burdensome new TBT measures notified to the WTO and collaborate with other like-minded countries in order to both give their concerns a voice in the TBT Committee and share valuable resources.

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