

## **WTO COMMITTEE ON TECHNICAL BARRIERS TO TRADE**

At its informal meeting on 22 January 1999, the Committee requested the Secretariat to prepare a stock-taking paper of the submissions by delegations (Annex 1) on elements related to the Work Programme of the First Triennial Review of the Agreement (G/TBT/5) to facilitate discussions in the Committee. The present paper aims at highlighting the key points of those submissions without any intention to summarize nor interpret Members positions on the issues.

This addendum includes submissions made since 4 February 2000.



# WORLD TRADE ORGANIZATION

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Committee on Technical Barriers to Trade

## **SUBMISSIONS BY DELEGATIONS ON ELEMENTS RELATED TO THE WORK PROGRAMME OF THE FIRST TRIENNIAL REVIEW OF THE AGREEMENT**

Stock-taking paper by the Secretariat

### Addendum

#### **A. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT BY MEMBERS UNDER ARTICLE 15.2**

#### **I. SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/133) – Note from the European Community**

1. In view of the TBT Agreement still not being implemented to a large extent, this proposal holds that "efforts have to be made to understand the reasons and apply the findings to similarly situated countries."

2. "Technical measures to improve the functioning and transparent application of the TBT Agreement, such as ways to support developing countries' participation in international standard setting and capacity building to help these countries fulfil their TBT obligations, need to be addressed."

#### **II. BRAZILIAN PROPOSALS TO THE SECOND TRIENNIAL REVIEW OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/140) - Contribution from Brazil**

1. It is held that "some of the definitions included in Annex I of the Agreement ... differ from those stated in ISO/IEC Guide 2 – *Standardization and Related Activities – General Vocabulary* (items 3, 4 and 12). Such discrepancies ... either require the redefinition of terms in every new official document or give rise to different interpretations. Additionally, in Annex I, the definitions of some terms and concepts used in the Agreement – such as *accreditation* (Art. 6.1.1 and Annex I paragraph 3 – Explanatory note) – are missing. Finally, it is necessary to define in some way certain other correlative concepts such as those related to metrology which, although not figuring explicitly in the text of the Agreement, should be understood in a common and objective manner in the application of the Agreement by Members."

2. It is proposed that "Annex I of the Agreement be altered, incorporating the definitions set out in the ISO/IEC Guide 2 for the terms therein defined; to add to Annex I the definitions (in accordance with the ISO/IEC Guide 2) of other terms used in the Agreement text for a better understanding and in order to facilitate its application; and to modify paragraph 1.1 to explicitly mention the ISO/IEC Guide 2, the *International Vocabulary of Basic and General Terms in Metrology* and the *Vocabulary of Legal Metrology*."

**B. OPERATION AND IMPLEMENTATION OF NOTIFICATION PROCEDURES UNDER ARTICLES 2, 3, 5 AND 7**

**I. SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/133) - Note from the European Community**

1. It is stated that an increase in the number of notifications as well as the number of notifying countries needs to be encouraged. ... "It is essential for Members to notify systematically their proposals on technical regulations, conformity assessment procedures, and standards according to the provisions laid down in the Agreement, and that the rules, ... clarified in document G/TBT/1/Rev.6, be observed. ... Improvements can and should be made to the operation of the Agreement without actually amending it." The following specific measures are suggested:

(i) "An examination of the draft technical regulation, standard or conformity assessment procedure is essential to determine whether its adoption is likely to create discrimination or unnecessary obstacles to international trade. As Members are obliged to provide on request the notified proposal, it would be appropriate for the text to automatically accompany the notification sent to the WTO Secretariat. Each interested Member could then obtain these documents directly from the Secretariat. The European Community proposes that the submission of these documents be done electronically, whenever possible, in order to avoid an overload for the WTO Secretariat.

(ii) Except in urgent cases, Members are obliged to allow reasonable time for other Members to make comments in writing on the notified proposals (Articles 2.9.4 and 5.6.4). The Committee has recommended that a period of 60 days be applied in this respect. It is essential that the right of Members to make comments is not rendered meaningless, for example, due to the late transmission of a notification or due to the need for internal consultation if the provisions of the Agreement are contravened. The European Community therefore proposes that the period of 60 days should run from the date on which the notification is published by the WTO.

(iii) The importance of designating an authority responsible for the application of notification procedures and for dealing with comments made by a Member on a proposal is worth emphasizing, particularly in cases where the information point is not empowered to exercise this responsibility. The name and address of the competent authority should be indicated either as part of the information referred to in Article 15.2 or in the notification form. If this authority is different from that responsible for drawing up the proposal, it should be indicated in the notification form.

(iv) It is also important to minimize the number of authorities responsible for the application of notification procedures by adhering strictly to the conditions laid down by Article 10.11 of the Agreement. If authorities that are well acquainted with the details of applying the Agreement deal with comments, it will contribute to the adoption of solutions that are mutually acceptable to the Members.

(v) In order to ensure a common control, and again in the interests of transparency, texts of adopted legislation should be made available in accordance with Article 2.11 of the Agreement.

(vi) Without making the notification procedure more unwieldy or time consuming, it should be possible for the Committee to make periodic reviews to assess how well the notification procedure is working."

## **II. BRAZILIAN PROPOSALS TO THE SECOND TRIENNIAL REVIEW OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/140) - Contribution from Brazil**

1. It is stated that "the dissemination of internet usage over the last three years facilitates its use by Members as a mean to access and exchange information. Accordingly, the WTO might consider the possibility of creating a portal for that purpose, organizing its databases as required to facilitate the access to information by Members, therefore strengthening the notification process."

### **C. ACCEPTANCE, IMPLEMENTATION AND OPERATION OF THE CODE OF GOOD PRACTICE FOR THE PREPARATION, ADOPTION AND APPLICATION OF STANDARDS BY STANDARDIZING BODIES**

No further submission has been made.

### **D. INTERNATIONAL STANDARDS, GUIDES AND RECOMMENDATIONS**

#### **I. SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/133) - Note from the European Community**

1. "In order to ensure an effective application of the TBT agreement, it is necessary for WTO Members to reach a consistent view of international standards. It is also necessary to clarify the principles that ought to apply to an international standardization body (ISB).

2. ... Greater emphasis should be laid on the use of international standards. However, in order to make progress in this field it is first necessary to concentrate on the understanding of international standards and to agree on the principles that should apply to international standardization bodies.

3. The TBT Agreement and the Code of Good Practice give a privilege to international standards. This means that the international standardization bodies have a more important role than they did before the existence of the TBT Agreement. In turn this implies that these bodies should be accountable to a broad range of interests. The EC believes that a set of principles should be agreed for ISBs.

4. In order to give concrete form to these principles, it might be useful to draw up a voluntary code of good practice, or a set of guidelines for international bodies, which might then privilege international standards prepared by these bodies.

5. The proliferation of competing international bodies must be avoided.

6. Concerning international standards themselves, the Agreement obliges WTO Member governments to use international standards as a basis for their legislation where appropriate. Because of the privilege that the Agreement gives to international standards, it is essential to identify what they are. ... Properties that characterize an international standard should be agreed.

7. Constraints on developing countries should be taken into consideration in the standards development process. The impartiality and openness of any international standardization process requires that developing countries are able to participate in the process. Provisions for capacity building and/or technical assistance are important in this context."

## **II. SECOND TRIENNIAL REVIEW OF THE AGREEMENT - INTERNATIONAL STANDARDS (G/TBT/W/139) - Contribution by Australia**

1. "There appears to be general agreement amongst Members on the key issues relating to the development of international standards. These are: The need to:

- (i) foster transparency of operation, including to ensuring that the views of all members of standardization organizations are taken into account;
- (ii) respond to market requirements including technological developments; and
- (iii) develop the capacity of new members of international standardization bodies to participate effectively in standard setting processes.

International standardization bodies should be invited to consider and respond to these concerns.

2. A particular issue on which Members have deliberated for some time is the question of the need for guidance or agreement on the definition of an 'international standard'. International standardization bodies could be invited to consider an appropriate means of addressing this matter.

3. Arrangements are already in place for observership and exchanges of information between the Committee and a number of international standardization bodies. ... There may be scope to consider whether the arrangements are utilized as effectively as possible so as to ensure that the development of international standards is as responsive as possible to the needs of the trading system. It may be possible, for example, to develop mechanisms by which Members' concerns on particular issues can be formally conveyed to international standardization bodies through the Committee. It would, however, be expected that Members would ensure that their particular concerns are raised directly with the relevant international standardization bodies in the first instance.

4. In addition, as well as regular contact such as through Committee meetings, it may be appropriate for either the Committee or international standardization bodies to convene special meetings to discuss particular issues. Consideration could be given to identifying an indicative list of priority issues for this purpose.

5. It is particularly important for Members to contribute to the effective operation of international standardization bodies through their membership of and participation in such bodies. The detailed points which have emerged from Members' discussions provide a constructive basis on which countries may pursue their interests, either individually or collectively, through their membership of international standards setting bodies."

## **III. BRAZILIAN PROPOSALS TO THE SECOND TRIENNIAL REVIEW OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/140) - Contribution from Brazil**

1. "Brazil considers that the use of international standards is a factor of major importance for international trade due to their role as the main harmonization process in the field of standards as well as a basis for technical regulations. However, it is necessary to have an objective understanding of the meaning and characteristics of international standards." The proposal states that both entities which elaborate and adopt international standards and the processes of elaboration and adoption of the standards must be considered.

2. "In consistence with the definitions of ... ISO/IEC Guide 2 (item 3.2.1.1), an international standard is one adopted by an International Standardizing Body. ... A new definition should be explicitly adopted for International Standardizing Body, in accordance with the same Guide (to be

included in the revised Annex I): body engaged in recognized activities in the area of standardization and which is open to the participation of the relevant national bodies of at least all Member Countries (one per country). In particular, an International Standards Body is defined as an International Standardizing Body that, on account of its statutes, has as one of its main functions in the preparation, approval or adoption of standards which will be available to the public.

3. In order to be recognized, both International Standardizing and Standards Bodies should guarantee impartiality, openness and transparency in the development of their standardization activities: These three principles ... are used with the following meaning:

(i) *Impartiality*: to perform the activities without discrimination in what concerns the rights and obligations of Member Countries, so that no individual interest be put above other interests involved.

(ii) *Openness*: participation in the process must be open to at least all Member Countries through their relevant national bodies without discrimination and under equal conditions.

(iii) *Transparency*: information about the establishment of work programmes and their development should be supplied whenever requested, as well as circulated to at least all Member Countries with sufficient time to enable their participation; access to information should be without discrimination and at reasonable cost.

4. Furthermore, ... the principle of singularity of International Standardizing or Standards Bodies should be endorsed; that is, in each area of standardization no more than one of such bodies should be recognized in order that conflicting standards be avoided. Naturally, some overlapping of the activities of these organisms always may occur. ... In these areas of intersection, organisms are to act jointly or in cooperation ... so that for each object of standardization there should be only one international standard."

## **E. PREPARATION, ADOPTION AND APPLICATION OF TECHNICAL REGULATIONS**

### **I. SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/133) – Note from the European Community**

1. "Regulatory best practice should be promoted within the framework of the TBT Agreement, and the Review should be used to assess the feasibility of developing explicit guidelines on best regulatory practice. The proposal of the EC would be to limit regulation to the generic requirements, which do not become outdated, compatible with the fulfilment of legitimate public policy objectives, such as protection of human health or safety and the environment, and to allow manufacturers to use international standards to demonstrate compliance to these requirements. As a first step, the essential elements for such international regulatory best practice should be presented and discussed. Following this, sectors or product categories could be indicated where technical regulations could be limited to generic requirements."

### **II. BRAZILIAN PROPOSALS TO THE SECOND TRIENNIAL REVIEW OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/140) - Contribution from Brazil**

1. "Efforts should be made to adequate technical regulations to the principles established in Article 2 of the Agreement, specially in order to facilitate the use of equivalence between technical regulations as defined in Article 2.7. The objectives set out in Article 2 can be more easily achieved if the technical regulations are restricted to essential aspects relating to the legitimate objectives. These

essential aspects do not inherently depend on technical progress, since in most cases they merely establish performance requirements. On the other hand, it would be the goal of the standardizing activities to find an increasing rationality in the productive, commercial and consumption processes, with the necessary dynamism to accompany technical progress. Consequently, the interrelation between technical regulations and standards becomes a critical consideration."

## **F. CONFORMITY ASSESSMENT PROCEDURES**

### **I. SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/133) – Note from the European Community**

1. "The Committee has already ... emphasized that conformity assessment activities should be based on the principles and rules set out in the relevant ISO/IEC standards or guides. This recommendation should be reconfirmed and reference should where appropriate be widened to any relevant ISO guide(s) or standard(s).

2. The European Community also proposes that the Review should also examine the feasibility to promote regional co-operation on accreditation, for example by promoting the use of multilateral agreement groups (MLAs).

3. ... Conformity assessment procedures should not be more onerous or applied more strictly than is necessary to provide to the importing authorities assurance of compliance of the products to the applicable technical regulations and/or standards.

4. Members should commit themselves to carrying out an evaluation of the different conformity assessment procedures available, which most appropriately match the regulatory objectives of the relevant technical regulation. The aim of this evaluation is to help choose the least trade-restrictive procedures for international trade, compatible with the fulfilment of legitimate public policy objectives, such as the protection of human health or safety and the environment. In this context, preference should be given to the use of supplier's declaration of conformity, taking into consideration the particularity of the sector, the relevant product risks, as well as health, consumer safety and environment issues. An appropriate legislative framework, including safeguards against non-compliant or dangerous products must also be put in place. Market surveillance and product liability issues should also be considered. ... As a first step, Members of the Committee should indicate the sectors, or product categories, where supplier's declaration of conformity is used nationally.

5. The Committee should assess the feasibility of producing a Code of Good Practice on Conformity Assessment. This can also assist in the objective of ensuring the technical competence of conformity assessment bodies through procedures such as accreditation.

6. Technical assistance in the area of conformity assessment should be taken into account as a tool to support the objective of increased international co-operation in this field."

### **II. GOOD PRACTICE FOR THE ACCEPTANCE OF RESULTS OF CONFORMITY ASSESSMENT - SECOND TRIENNIAL REVIEW OF THE AGREEMENT (G/TBT/W/138) - Contribution from Australia**

1. "Draft principles are proposed ... to ensure good practice for the acceptance of the results of conformity assessment, which do not impose any additional obligations on Members beyond those already required by the TBT Agreement. Rather ... they would assist Member governments to ensure



that acceptance of the results of conformity assessment operates consistently with the objectives and requirements of the TBT Agreement.

2. Member governments should encourage all bodies engaged in acceptance of the results of conformity assessment to:

- (i) Ensure their procedures for the acceptance of the results of conformity assessment are transparent and non-discriminatory;
- (ii) Ensure that procedures for the acceptance of the results of conformity assessment are applied no less favourably to imported goods than to domestic goods;
- (iii) Take account of the specific characteristics of particular sectors in selecting mechanisms for the acceptance of the results of conformity assessment;
- (iv) Ensure greater cooperation to address different mechanisms for acceptance of the results of conformity assessment which may apply in importing and exporting markets through:
  - the provision of arrangements for consultations aimed at reaching mutually acceptable arrangements;
  - recognition that different standards, regulations and administrative procedures in different markets can achieve the same outcomes (i.e. equivalence); and
  - assessment by accreditation bodies of foreign conformity assessment bodies against the requirements in the foreign markets (i.e. cross border accreditation of conformity assessment bodies where accreditation does not exist).
- (v) Work towards harmonizing practices and criteria on as wide a basis as possible through:
  - playing a full part, within the limits of their resources, in the preparation of international standards for testing and certification procedures and criteria; and
  - participating in confidence building programmes and proficiency testing programmes in order to build confidence within all regimes."

3. Attached to the proposal is an indicative (non-exhaustive) list of mechanisms for acceptance of the results of conformity assessment currently applied in Member countries and explanations of commonly used terms (conformity assessment, accreditation, laboratory accreditation, accreditation body).

4. "Member governments and non-government bodies may choose to apply different mechanisms for acceptance of the results of conformity assessment across different sectors, and may also choose to apply more than one mechanism within individual sectors. In applying these approaches it may be necessary to take account of variations in standards in different countries and perceived levels of risk in the acceptance of results."

- (i) "Co-operative (voluntary) arrangements between domestic and foreign conformity assessment bodies;
- (ii) Mutual recognition agreements for conformity assessment to specific regulations;

- (iii) Government designation;
- (iv) Manufacturer's / Supplier's declarations; and
- (v) Accreditation of bodies carrying out various types of conformity assessment."

**III. BRAZILIAN PROPOSALS TO THE SECOND TRIENNIAL REVIEW OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/140) - Contribution from Brazil**

1. "The Agreement should reflect the principle that Members should seek to create conditions that facilitate mutual recognition agreements or protocols, based on the principle of reciprocity, in the sense of Article 6 of the Agreement. Such agreements and protocols could be bilateral or plurilateral (involving more than two countries and/or regional blocks) and could envisage several levels or systems related to conformity assessment. They should have as one of their main objectives the mutual acceptance of the results of conformity assessment procedure adopted by each party. In this sense, the adoption of common rules is an extremely important factor in order to make more concrete progress in the direction of mutual recognition. However, international standards and guidelines already exist to guide procedures on conformity assessment in its different levels. Thus, all efforts should be concentrated on the adoption of these international standards and guides."

**G. TECHNICAL ASSISTANCE UNDER ARTICLE 11**

**I. SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/133) – Note from the European Community**

1. It is held that there is "considerable scope to enhance the effectiveness of technical assistance for developing countries in relation to the TBT Agreement. The proposal emphasises the importance of (1) enhancing co-operation between donors, (2) ensuring the full participation of donors in technical assistance programmes, (3) identifying the specific needs of developing and least developed countries in this field, and (4) establishing an overall framework for technical assistance. In addition, the Community would like to promote the transparency of technical assistance. The TBT Agreement does not require the communication by Members of information on their technical assistance programmes. Nevertheless, the European Community believes that it would be useful for Members to make public such information in the application of the TBT Agreement."

**II. BRAZILIAN PROPOSALS TO THE SECOND TRIENNIAL REVIEW OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/140) - Contribution from Brazil**

1. It is stated that "a certain confusion persists as to the meanings of technical cooperation and technical assistance. Technical assistance is particularly important for countries with lower levels of development, but not only for these. However, technical cooperation, as herein considered, refers to the growing need for mutual knowledge and cooperation among the different technical agents involved in the fields of standardization, metrology and conformity assessment, as a basis for the establishment and strengthening of mutual understanding and technical confidence necessary to mutual recognition.

2. Brazil proposes the establishment of a Triennial Cooperation Programme. This programme should foresee financial support to be asked from several international sources ready to act in this field. It will then be the duty of the Technical Barriers Committee to follow up and evaluate annually the implementation and results of this programme. Such a programme may be open to the

participation of several technical organisms, international and otherwise, which eventually may also participate in its management."

**III. RESULTS OF THE WORKSHOP ON TRADE FACILITATION, REGULATIONS AND STANDARDS: THE DEVELOPMENT CHALLENGE IN CENTRAL AMERICA<sup>1</sup> (G/TBT/W/142) - Communication from Panama**

The communication identifies the following priority issues to be covered by technical assistance programmes:

- (i) "Technical assistance for institutional capacity-building for standardizing bodies in the areas of regulation and implementation and standards;
- (ii) Technical assistance for the operation of an information system on standardization and technical regulation for the private and public sector;
- (iii) National and regional training on the implementation of the Code of Good Practice;
- (iv) Training for institutional and human resource capacity-building relating to conformity assessment and its relationship with product and service quality and technical regulations; and
- (v) Financing for the participation of developing-country experts in specialized meetings on the development, preparation and approval of standards in regional and international standardizing forums.

**H. SPECIAL AND DIFFERENTIAL TREATMENT UNDER ARTICLE 12**

No submission has been made.

**I. OTHER ELEMENTS**

**I. SECOND TRIENNIAL REVIEW OF THE OPERATION AND IMPLEMENTATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (G/TBT/W/133) - Note from the European Community**

1. This proposal holds that "the provisions on labelling in the TBT Agreement are limited. At the same time, labelling has become a trade policy issue in the application of the TBT Agreement. It would be useful to have clearer guidance on the level of product information necessary for the consumer, since this varies considerably from country to country. As a possible means to reduce suspicions and lower the risk of trade restrictive regulation, the Triennial Review should consider the development of multilateral guidelines on labelling."

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**ANNEX 1**

<b>Document symbol</b>	<b>Date issued</b>	<b>Document Title</b>
G/TBT/W/133	11 April 2000	Second Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade – <i>Note from the European Community</i>
G/TBT/W/138	28 July 2000	Good Practice for the Acceptance of Results of Conformity Assessment - Second Triennial Review of the Agreement - <i>Contribution from Australia</i>
G/TBT/W/139	28 July 2000	Second Triennial Review of the Agreement - International Standards - <i>Contribution by Australia</i>
G/TBT/W/140	28 July 2000	Brazilian Proposals to the Second Triennial Review of the Agreement on Technical Barriers to Trade - <i>Contribution from Brazil</i>
G/TBT/W/142	4 August 2000	Results of the Workshop on Trade Facilitation, Regulations and Standards: The Development Challenge in Central America - <i>Communication from Panama</i>

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