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3.10 Technical Barriers to Trade



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NOTE

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WHAT YOU WILL LEARN

The WTO *Agreement on Technical Barriers to Trade* (“*TBT Agreement*”), which entered into force in 1995, is the multilateral successor to the *Standards Code*, signed by 32 GATT contracting parties at the conclusion of the 1979 Tokyo Round of Trade Negotiations. The purposes of the *TBT Agreement* can be broadly described as: (1) assuring that technical regulations, standards and conformity assessment procedures, do not create unnecessary obstacles to international trade, while (2) leaving Members adequate regulatory discretion to protect human, animal and plant life and health, national security, the environment, consumers, and other policy interests.

This Module provides a detailed examination of the *TBT Agreement*, one of the more technical agreements negotiated during the Uruguay Round. Without compromising the details necessary to understand this Agreement, a serious effort has been made to explain the Agreement in terms that someone with only a minimal familiarity with the WTO will understand.

The legal analysis of the Agreement is divided into six sections. In the first Section, the reasons for the adoption of the *TBT Agreement* are set forth and the treatment of regulations and standards under the *General Agreement on Tariffs and Trade* (“GATT”) is examined. The second Section examines the general scope of the *TBT Agreement*. The definitions of the key concepts of “technical regulations”, “standards,” and “conformity assessment procedures” are provided. Certain important issues are analysed, in particular the relationship between the *TBT Agreement*, the GATT 1994, the *Agreement on the Application of Sanitary and Phytosanitary Measures* (“SPS Agreement”), and the *Agreement on Government Procurement* (“AGP”). In addition, the treatment pursuant to the *TBT Agreement* of import prohibitions and processes and production methods (“PPMs”) is discussed. The third Section deals with the structure of the *TBT Agreement* and the applicability of the Agreement on other than central government bodies. The fourth provides a nuts and bolts examination of the principles and rules of the *TBT Agreement*, such as the principle of non-discrimination, the obligation to prevent unnecessary obstacles to international trade and the obligation to use international standards as a basis for technical regulations. The fifth Section deals with technical assistance and special and differential treatment for developing country Members provided for in the *TBT Agreement*. Finally, the sixth Section deals with dispute settlement and institutional matters under the *TBT Agreement*.

1. WHY AN AGREEMENT ON TECHNICAL BARRIERS TO TRADE? OBJECTIVES

Objectives

On completion of this section, the reader will be able:

- to assess why the *WTO Agreement* incorporates the *TBT Agreement*, an agreement on technical barriers to trade.
- to appreciate the competing policy goals present in the *TBT Agreement*.
- to discuss the history of the Agreement.

1.1 Introduction

The phrase “technical barriers to trade” refers to the use of the domestic regulatory process as a means of protecting domestic producers.

The *TBT Agreement* seeks to assure that:

- (1) mandatory product regulations,
- (2) voluntary product standards, and
- (3) conformity assessment procedures (procedures designed to test a product’s conformity with mandatory regulations or voluntary standards)

do not become unnecessary obstacles to international trade and are not employed to obstruct trade.

The *TBT Agreement* seeks to balance two competing policy objectives:

- (1) The prevention of protectionism, with
- (2) the right of a Member to enact product regulations for approved (legitimate) public policy purposes (i.e., allowing Members sufficient regulatory autonomy to pursue necessary domestic policy objectives).

These goals are described in more detail below.

1.1.1 The Prevention of Protectionism

The progressive tariff reductions that have taken place in the GATT/WTO framework have left certain industrial and political leaders looking for other means of protecting their industries. These means of protection frequently take the form of non-tariff barriers (i.e., means other than tariffs for protecting business sectors).

Technical regulations, standards and conformity assessment procedures are all potential non-tariff measures that are sometimes used for protectionist purposes. As such, they can be potential barriers to international trade.

The TBT Agreement establishes rules and disciplines designed to prevent mandatory technical regulations, voluntary standards, and conformity assessment procedures from becoming unnecessary barriers to international trade. However the TBT Agreement seeks to leave Members with sufficient domestic policy autonomy to pursue legitimate regulatory objectives.

1.1.2 *The legitimate regulation of products for public policy purposes*

Juxtaposed with the desire to prevent protectionism, is the need to assure that Members retain sufficient regulatory autonomy to accomplish domestic policy goals. Domestic regulations can accomplish several objectives unrelated to protectionism. For example, domestic regulations can serve as a means of protecting consumer health and safety, the environment and national security. Domestic regulations can also further economies of scale, and increase consumer confidence, by assuring uniform technical and production standards. Economic development, and the improved education that should result, can lead to demands from consumers and sometimes the business community for an increase in regulations or standards.

Article 2.2 TBT

Both the preamble of the *TBT Agreement* and Article 2.2 of the *TBT Agreement* identify certain regulatory goals that are deemed “legitimate” for regulatory purposes. Article 2.2 sets forth a list of legitimate TBT objectives which includes:

- protection of life/health (human, animal and plant)
- safety (human),
- protection of national security,
- protection of the environment, and
- prevention of deceptive marketing practices.

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