WTO TECHNICAL BARRIERS TO TRADE AGREEMENT

Six principles for international standards development

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Mr. Aik Hoe Lim
Director of Trade and Environment Division

What do these questions have in common with each other?

• How much lead should be allowed in paint used in children’s toys?
• Can de-frosted poultry be labelled as “fresh”?
• Should governments mandate warning signs on “unhealthy food”?

Questions adapted from Wijkström and McDaniels (2013)
Relate to a public policy objective (eg. health, environment)

Typically enforced through product requirements (set out in a technical regulation, standard) and conformity assessment procedures (testing, certification)

Impact on trade

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Scope of WTO Technical Barriers to Trade Agreement

**Technical Regulations**
- Lay down product characteristics or their related processes and production methods.
- Compliance is mandatory.
- May deal with terminology, symbols, packaging, marking and labelling requirements.

**Standards**
- Are approved by a recognized body which is responsible for establishing rules, guidelines or characteristics for products or related processes and production methods.
- Compliance is not mandatory.
- May also deal with terminology, symbols, packaging, marking and labelling requirements.

**Conformity Assessment Procedures**
- Used to determine that relevant requirements in technical regulations or standards are fulfilled.
- They include procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; and registration, accreditation and approval.
The policy objective is not in question – but how should it be achieved, what is the relevant benchmark/measure to be used, why is it necessary?

From the perspective of the WTO Technical Barriers to Trade Agreement, the key principles are....

Non-discrimination
Avoidance of unnecessary barriers to trade
Use of international standards
Transparency
**International Standards**

Members **shall** use...

*“relevant”* international standards

... as a **basis** for

- technical regulations *(Art. 2.4)*
- conformity assessment procedures *(Art. 5.4)*

**EXCEPT**!

Presumption of not creating an unnecessary barrier to trade when requirements are in accordance with “relevant” international standards *(Art. 2.5)*

... when *ineffective* or *inappropriate* for policy objectives (e.g. fundamental climatic or geographical factors, or technological problems)

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**But what is a “relevant international standard”.....**

Strong obligation to use relevant international standards as basis for regulation

**BUT balanced by**

**Ample policy space to Members on relevance, level and appropriateness**

No definition of “international standard” in TBT Agreement, emphasis on procedures used to develop such standards
**TBT Committee Decision** on *Principles for the Development of International Standards, Guides and Recommendations* (November 2000, G/TBT/9)

“**The Six Principles**”
- transparency
- openness
- impartiality and consensus
- relevance and effectiveness
- coherence
- development dimension

... helps (regulators) determine which international standards may be relevant for the purposes of the TBT agreement (i.e. technical regulations, CAP, standards).

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**Transparency**

- **Across all stages of the standard setting process from proposal to adoption**, including open access to information or documents needed to participate in technical committees

- **Promotes opportunity to comment early in the development stage** so that they can be taken into account

- **Publication of adopted standard and work programme**
Openness

• Open on a non-discriminatory basis to participation by relevant bodies of at least all WTO Members at policy development level and at every stage of standards development

• Stages include: proposal, technical discussions, comments, reviewing existing standards, voting and adoption, and dissemination

Impartiality and Consensus

• No favour to the interests, privilege of a particular supplies/s, country/ies or region/s

• Consensus based – procedures to take into account views of all parties concerned and to reconcile any conflicting arguments

• Impartiality with respect *inter alia* to access, submission of comments, views, decision making, obtaining information, dissemination, fees, right to transpose, revision.
Effectiveness and Relevance

- Aimed at facilitating trade and prevent unnecessary barriers to trade
- Relevant and respond to regulatory and market needs as well as scientific and technological developments in various countries
- Performance based rather than design based or descriptive characteristics
- Certain requirements on international standardizing bodies to observe, such as on reviewing obsolete standards and communication with WTO

Coherence

- Coherence amongst international standardizing bodies, avoid conflicting international standards, duplication, overlap
- Encourages cooperation and coordination with other relevant international bodies
Development Dimension

- Recognizes constraints on developing countries to effectively participate in standards development

- Find tangible ways to facilitate developing countries’ participation, such as, use of technical assistance and capacity building

- Aimed at ensuring that developing countries not excluded de facto from the process

Thank you

hoe.lim@wto.org