



*Manual of Model Procedures and
Guidance Notes for the Implementation
of the WTO Agreement on Technical
Barriers to Trade*

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This bulletin consists of a manual of model procedures aimed at assisting members of the World Trade Organization (WTO) on how to exercise their rights, fulfill obligations and promote trade under the WTO Agreement on Technical Barriers to Trade (TBT).

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1. Synopsis

1.1 This manual of model procedures has been developed with the objective of assisting Members of the World Trade Organization (WTO) to:

- effectively exercise their membership rights with regard to the Technical Barriers to Trade (TBT) Agreement;
- fulfill their obligations under the Agreement;
- facilitate trade by utilizing the mechanisms for the removal of unnecessary trade barriers that have become available as a consequence of the TBT Agreement.

1.2 Effective implementation of the provisions of the TBT Agreement requires Members to have a minimum institutional infrastructure that includes a national standards body, an enquiry point and a notification authority. These model procedures are directed at the latter two institutions to assist in the development and operation of management systems to support the implementation of the TBT Agreement. The national institutions have specific roles and it is most desirable that they function in a coordinated manner with each other and also with the arm of government responsible for trade. The nature of the relationship between these bodies and the government is discussed and a model national coordination mechanism is proposed as a means of achieving this coordination.

1.3 A description of the rights and obligations of WTO Members under the TBT Agreement precedes the series of model procedures contained in this manual. This description establishes the rationale for the model procedures. Each model procedure has a defined objective and consists of a description of the required processes and supporting actions to achieve the stated objective. It is supplemented by guidance notes to aid implementation by Members. It is intended that these procedures undergo customization in order to convert these into actual working documents for use by institutions within the WTO members. This is a necessary step as differing legal systems and the unique environment in each member makes it impractical to design a standard solution to serve all Members. These guidance notes are an aid to this process of customization.

2. Objectives and Scope

2.1 The manual of model procedures that are described in the following sections are based on an integrated approach. They are designed to help Members establish systems and processes that:

- help governments fulfill obligations of the TBT Agreement;
- assist the trading community within the WTO Members obtain trade-related information;

- address specific trade concerns arising from notifications and other developments in other Members;
- provide for participation in the TBT committee and for responding to new developments; and
- give guidance for the development of technical regulations in a manner consistent with the TBT Agreement.

2.2 Due to the differences in the legal systems and organizational arrangements in each Member country of the WTO, there will be differences in the manner of implementation of the obligations and effective means of exercising rights. It is thus intended that the model procedures be customized by Members in accordance with their national conditions. The guidance notes provide additional information for implementation and are intended to serve as an aid to implementation.

2.3 The enquiry point, if established with the objective of fulfilling the obligations in article 10.1 of the TBT Agreement, will be limited to enquiry functions. The model procedures are developed in accordance with the view that it would be most effective and cost efficient to combine the enquiry function and the functions of making notifications (article 1.10) and to make this combined function simultaneously provide services to domestic stakeholders and coordinate actions to realize membership rights from participation in the Agreement.

3. Background on WTO Agreement on TBT

3.1 The TBT Agreement of the WTO not only creates obligations for members but also, concurrently, enhances members' rights. One major objective of the Agreement is to achieve increased transparency in standards, technical regulations and conformity assessment for the purpose of facilitating global trade. The obligations on transparency include the obligation to establish national enquiry points. The intended role of these enquiry points is to provide information on technical regulations, standards and conformity assessment to other Members. There is a corresponding obligation for Members to make early notification of changes to any of these.

3.2 Focusing solely on fulfilling these obligations, i.e. the establishment of enquiry points and making notifications, is an insufficient response to Membership in the WTO. It is equally necessary for Members to seize the benefits that ensue from Membership of the WTO. These benefits result in opportunities for improving export trade through a range of mechanisms that the TBT Agreement provides. The benefits that arise from the provisions such as those for transparency, the access to information, technical assistance and adherence to a rules-based system are only effectively realized through actions taken by Members at national level. This requires planning and establishment of suitable national institutions and management processes.

3.3 The management of Membership of the WTO is best undertaken in a balanced and integrated manner, with both aspects i. e. rights and obligations taken into consideration. This integrated approach is key to a better appreciation of the value of the Agreement by stakeholders within each member economy that should in turn increase commitment to fulfill obligations. The improvements in implementation will have a positive effect in reducing trade barriers.

4. Standards, Technical Regulations and Conformity Assessment

4.1 Annex 3 of the TBT Agreement “Code of Good Practice for the Preparation, Adoption and Application of Standards” contains the internationally accepted guidelines for the development of national and international standards. Further guidelines are contained in ISO/IEC Guide 59 *Code of good practice for standardization*. The consensus-based approach for determining the content of standards through a structured, transparent process in accordance with these guidelines, facilitates the wide acceptance of national standards by stakeholders. National standards have a major impact on domestic and international trade and on many aspects of the economy due to the utilization of national standards to achieve a wide range of economic and social policy objectives. Standards are implemented to:

- provide the preferred means for specifying health and public safety requirements,
- provide requirements for conservation of the environment,
- provide a means for assuring quality and
- provide criteria for regulating unfair trade practices.

When standards are incorporated into technical regulations, compliance to these standards and the manner of this application¹ becomes mandatory and significantly impact industry and trade. When standards are applied incorrectly, or standards are inappropriate, the corresponding technical regulations can lead to unnecessary restrictions on industry and trade or increase costs unreasonably. For these reasons it is important that a considered approach be adopted to deal with trade aspects of standards and the interface between standards and technical regulations.

4.2 The TBT Agreement recognizes the right of Members to enforce technical regulations to provide for the well being of their citizens by, inter alia, regulating for the protection of health, safety, environmental protection, prevention of deceptive practices and promotion of quality. The requirements, restrictions and prohibitions that are prescribed in these technical regulations impact trade and industry and can result in substantial costs or introduce inefficiencies for industry and the economy. The challenge for governments is to develop a regulatory system which can effectively serve the intended purposes and that has minimum undesirable impact on the industry and national economy. The direct results of technical regulations that are over restrictive or misdirected includes unjustifiably higher costs for

¹ The manner of application of standards when prescribed by regulations is referred to as Conformity Assessment. This term is defined as – *Any procedure used, directly or indirectly, to determine that the relevant requirements in technical regulations or standards are fulfilled* - WTO/TBT Agreement.

industry, higher prices for consumers, misallocation of resources, a lack of product innovation, loss of national competitiveness and poor service quality. Governments have a range of policy options to achieve their objectives of providing for the well being of their citizens. These include the use of alternatives to regulation such as providing incentives and relying on market forces. The institutions responsible thus have a role in assuring that technical regulation, when introduced by government, is necessary, cost effective, and in the best interest of society. The model procedures that are recommended incorporate this wider perspective and a section providing some guidance on “Good Regulatory Practice” has been included for these reasons.

4.3 The WTO Members’ recognition of the importance of “Good Regulatory Practice” in furthering the objectives of reducing trade barriers is evident from the ongoing in-depth discussion in the TBT Committee during the Fourth Triennial Review² of the implementation of the TBT Agreement. There is a consensus that the manner and methods of adoption of technical regulation by Members has an important impact on the effective fulfillment of obligations of the Agreement and consequently on trade. Although it is recognized that domestic regulatory practices are not explicitly within the scope of the TBT Agreement, there is now a wider recognition by many Members of the need to address this during implementation of the Agreement.

5. Establishment of a National Coordination Mechanism

5.1 The model procedures for implementation and administration of the Agreement at national level are based on the assumption that a coordination mechanism is available. The elements of the national mechanism include the agencies in government responsible for trade and industry policy and also regulatory agencies (see Chart 1). The implementation of the mechanism depends on the unique situation in a given country. The mechanism established should have inbuilt provisions that permit the development and implementation of a consistent policy, include provisions for consultation with various arms of government and stakeholders and include linkages with implementing agencies. The usefulness of such a coordinating mechanism has now been explicitly noted in the Fourth Triennial Review of the TBT Committee.

5.2 A model coordination mechanism is illustrated in Chart no. 1 “Model Arrangement for National Coordination”. The Ministry or agency responsible for external trade and the national government would provide the policy inputs. The effect the Agreement has on stakeholders is dealt with through the establishment of a National Consultative Committee with Membership drawn from stakeholders. The National Consultative Committee³ provides a mechanism for consultation at the national level. The functions of operation of an enquiry point and managing the obligations of notifications of the TBT Agreement are best integrated into a single

² The triennial review is conducted in accordance with article 15.4 of the Agreement. Current deliberations on “Good Regulatory Practice” have built upon the results of previous triennial reviews and now include specific initiatives taken by members. Full texts of reviews are accessible at the WTO website. (see document no. G/TBT/19).

³ Model Procedure No 4 describes the role and function of the National Consultative Committee in greater detail.

administrative unit⁴, illustrated in Chart no.1 as the “Implementation & Administration Organization”. There are several options available for the placement of this unit as department in the trade ministry, as part of the national standards body or even as an independent entity. The appointment of the agency for responsible “Good Regulatory Practice” is an option that governments may adopt for ensuring that technical regulations are introduced in an optimal manner.

The functions and working arrangements of the organizations and agencies indicated in the chart below are further elaborated in greater detail in the model procedures.

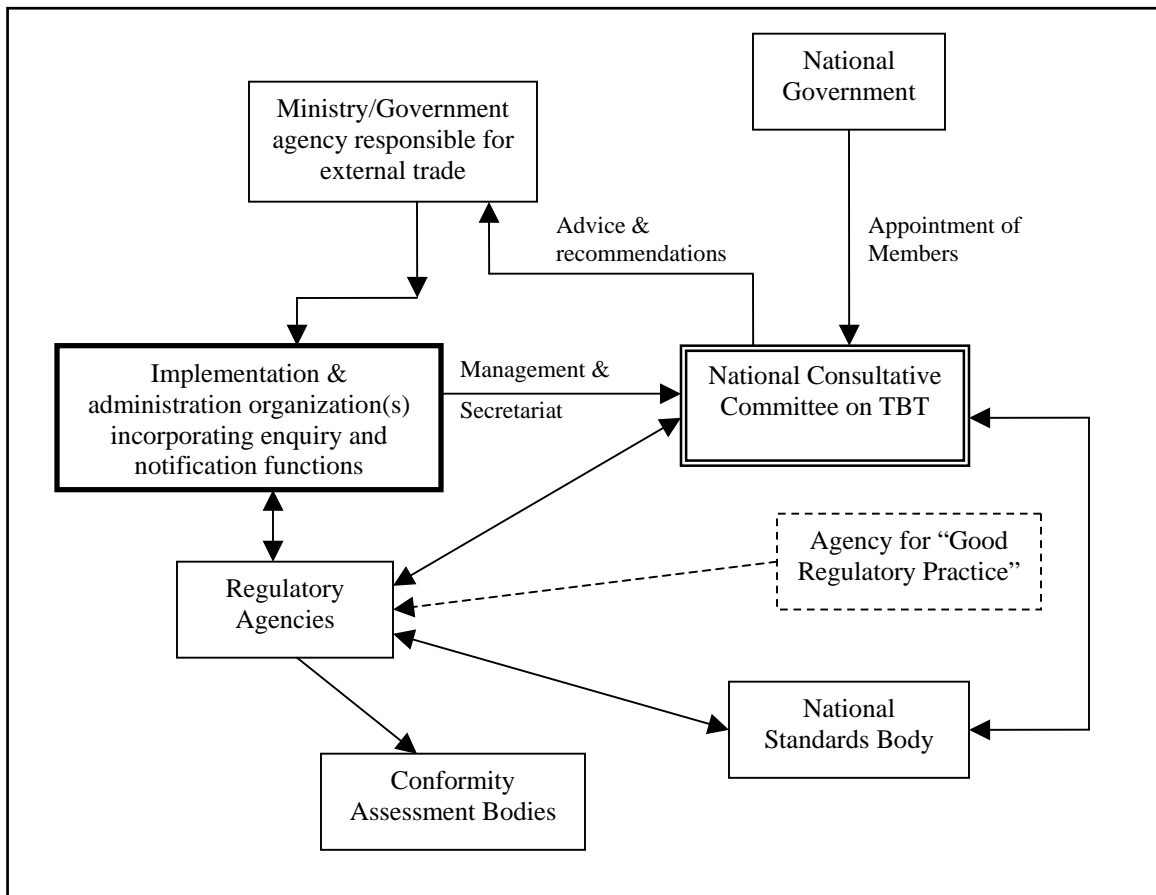


Chart 1 - Model Arrangement for National Coordination

⁴ It should be noted that the TBT Agreement does not prescribe centralization and the option to separate these functions or to maintain multiple enquiry points is always available. This is, however, not usually desirable from the perspective of cost-effectiveness and efficiency.

6. WTO Agreement on TBT:⁵ Rights and Benefits; Obligations; Implementation and Administration

6.1 The World Trade Organisation's Agreement on Technical Barriers to Trade is one of the major legal instruments that advance the organisation's objective of ensuring a rules-based global trading environment. Its scope of coverage is inclusive of all industrial and agricultural products that are traded between Members and thus has an impact on the industry, the trading community and consumers.

6.2 Being an Agreement that is concluded at government-to-government level, the rights are exercisable through official channels and obligations fall upon governments. The government of a member country is obliged to implement policies and take measures to ensure compliance with all the provisions. It is intended that the effective implementation of the agreement by all Members will create an environment for free and open trade by the elimination of unnecessary trade barriers arising from misapplication of standards and technical regulations. The business community reaps the benefits through removal of trade barriers and the opening of markets. For these reasons, effective communication and cooperation between businesses and national governments is an essential part of the implementation of the Agreement and for exercising rights and reaping benefits.

Rights and Benefits of WTO Members

6.3 The Agreement recognizes Members' rights for "taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate" and also for "taking measures necessary for the protection of its essential security interest".

6.4 Exporters from WTO Members benefit from the provision of the Agreement that requires products imported from other Members to be given the same treatment as given to products of national origin. As a result of the transparency requirements of the Agreement, exporters from a member country benefit from a assured access to information on importing Members' technical regulations, standards and conformity assessment procedures. All Members have a right to comment on and seek justification of new technical regulations prior to implementation. WTO Members may also seek remedies through the dispute settlement mechanism of the WTO in case the actions of other Members are not in compliance with the Agreement and obstruct their trade. The predictability and transparency of technical regulation that arises from the provisions of the Agreement is invaluable to industry and for businesses engaged in import and export trade.

⁵A full text of the TBT Agreement and a more elaborate explanation is available at URL: http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm

Obligations of WTO Members

6.5 The fulfillment of obligations contained in the Agreement collectively by all Members is a necessary condition for any member to be assured of its rights. The Agreement contains provisions to ensure that technical regulations and conformity assessment procedures implemented by Members do not create unnecessary barriers to trade or are more restrictive than necessary to fulfill legitimate purposes⁶. The Agreement prescribes:

- the use of international standards as a basis for technical regulations and conformity assessment procedures,
- adoption of performance-based technical regulations as a first preference rather than those limited by design or other characteristics;
- submission of notifications of the proposed technical regulations and conformity assessment systems;
- the provision of reasonable opportunity to other interested parties to comment on the proposed technical regulations and conformity assessment systems;
- consideration of comments from other Members when finalizing technical regulations;
- justification of the requirements of the technical regulations to be provided should it be requested by other Members;
- ensuring transparency in the standards development process; and
- the requirement to establish a National Enquiry Point (NEP) to respond to enquiries on technical regulations, standards and conformity assessment procedures and related issues.

6.6 The WTO Agreement on TBT further requires regulatory agencies to ensure that technical regulations and conformity assessment procedures:

- are applied so as not to discriminate among imported products by origin and do not treat imported products less favourably than domestic products; and
- are based on scientific and technical information, where relevant.

The Agreement further stipulates that:

- conformity assessment procedures are implemented as expeditiously as possible without undue delays;
- fees that are charged to foreign suppliers for their products are equitable in relation to fees charged to local suppliers for products of national origin;
- the sites of facilities and the selection of samples for testing does not cause inconvenience to importers; and

⁶ These measures include measures by a Member for: national security requirements, ensuring the quality of its exports, the protection of human, animal or plant life or health, protection of the environment and the prevention of deceptive practices, at the levels it considers appropriate.

- the conformity assessment procedures provide for a review of complaints on the operation of the procedures.

Implementation and Administration of the TBT Agreement

6.7 The Agreement does not prescribe structures and administrative arrangements for member governments for implementation and Members retain full flexibility in its choice. It is the responsibility of the central government to ensure compliance of the member with all obligations and to notify other Members of the actions it has taken towards this effect.

6.8 Governments have the responsibility of establishing infrastructure and institutional mechanisms. It is recommended that the arrangements made take into consideration the need for national coordination as elaborated in Section 5 'Establishment of a National Coordination Mechanism' and serve both the objectives of fulfilling obligations and exercising rights. The arrangements should include those for handling and evaluating notifications to and from the WTO and making policy decisions on the member's position following notifications received from WTO. Mechanisms are also required for consultation with business associations, chambers of commerce and trade associations on the issues before the TBT Committee as the decisions made have a direct impact on all these interests. These consultations are essential inputs in formulating government policy.

6.9 The Agreement requires member countries to establish an enquiry point to respond to external enquiries. It also requires Members to designate an authority to submit notifications for its arrangements for administration and implementation of the agreement and for proposed technical regulations and conformity assessment procedures as well as proposed changes to existing technical regulations and conformity assessment procedures. The enquiry point⁷ can additionally be mandated to provide services to business, consumer associations and other interested groups to obtain information on technical regulations of foreign countries. Members also require a functioning national standards body and an infrastructure for conformity assessment. Members thus need to give adequate attention to ensure that such an infrastructure is available as this is a prerequisite for effective participation in global trade.

7. Summary of Model Procedures

7.1 Procedure No 1 — Responding to Enquiries (Enquiry Point Operations) (Annex 1)

This procedure defines the responsibilities and activities undertaken by the enquiry point in responding to enquiries. These enquiries may originate from a variety of sources, such as domestic stakeholders, foreign parties and other WTO member enquiry points. The procedure additionally describes and defines the enquiry point's role in providing support to domestic

⁷ Note: These additional functions are not part of the obligations of the TBT Agreement.

industry in obtaining information on standards and technical regulations from other WTO Members.

7.2 Procedure No 2 — Responding to Notifications made by other WTO Members (Enquiry Point Operations) (Annex 2)

This procedure defines the responsibilities and actions undertaken by the enquiry point (or any other organization as designated by the government) to monitor, evaluate and respond to notifications made by WTO Members.

7.3 Procedure No 3 — Submitting Notifications to WTO Secretariat (Notification Obligations) (Annex 3)

This procedure identifies and defines the actions that are required in order to fulfill national obligations on the submission of notifications to the WTO Secretariat. The TBT Agreement obliges all Members to notify other Members through the Secretariat in the event of specified changes to technical regulations, conformity assessment procedures (articles 2.9, 2.10, 3.2, 5.6, 5.7), domestic implementation of the Agreement (article 15.2) and on mutual recognition agreements (article 10.7). This procedure is inclusive of all the above notification obligations.

7.4 Procedure No 4 — Establishment and Operation of a National Consultative Committee (Annex 4)

The procedure describes the functions and operation of a National Consultative Committee that is established to coordinate and oversee implementation of the TBT Agreement.

7.5 Procedure No 5 — Communication and Promotion (Annex 5)

The procedure relates to the development and implementation of activities to inform and periodically update stakeholders of developments in global trade with regard to the implementation of the TBT Agreement.

8. Good Regulatory Practice

8.1 Objective

The objective of this section is to introduce the concept of 'Good Regulatory Practice' and provide guidance on its implementation. The development of technical regulations in a manner consistent with the WTO/TBT Agreement is expected to be directly facilitated as a consequence of the implementation of good regulatory practice.

Inappropriate regulations can result in substantial costs or inefficiencies being imposed upon industry and the economy. The direct results of inappropriate regulation include higher costs, higher prices, misallocation of resources, a lack of product innovation, loss of national competitiveness and poor service quality. The challenge is to develop a regulatory system which can effectively ensure that technical regulations serve the legitimate needs without imposing undue restrictions or creating inefficiencies.

8.2 *Good Regulatory Practice in the TBT Committee – Consensus achieved*

Although the TBT Agreement does not contain specific provisions on good regulatory practice, there have been several discussions that address this subject. It has, however, been recognized that good regulatory practice contributes to the effective implementation of the TBT Agreement. Discussions on good regulatory practice have in fact been a significant part of all the four triennial reviews conducted by the TBT Committee and continued in the fourth triennial review that concluded in 2006.

The discussions have resulted in a significant level of consensus that has been recorded in the fourth triennial review concluded in November 2006. The scope of discussion has included a wide range of subjects on regulatory policy choices and the efficiency and effectiveness of technical regulation. These discussions have resulted in a consensus viewpoint that recognizes the direct link between the effective achievement of the objectives of the TBT Agreement with regard to the removal of unnecessary trade barriers and Good Regulatory Practice.

The discussions that commenced during the *First Triennial Review* in 1997 and have progressed during the subsequent reviews, have led WTO Members to agree:

- on the importance of avoiding the promulgation of national technical regulations where they were not necessary;
- on the need to minimize the use of mandatory measures through an examination of choice of policy instruments, mandatory versus voluntary measures in the development of technical regulations;
- that performance-based regulation (i.e. regulation that prescribes performance requirements rather prescribing design) is the preferred option and encourages innovation;
- that regulations needed to be limited to meet specific objectives and, in accordance with the relevant provisions of the Agreement, be aligned with international standards;
- when considering the preparation of a technical regulation, it was important for Members first to identify the related problem, including its magnitude and the legitimate objective, and then consider all options available and consistency with the Agreement; and
- on the positive impact on conditions for economic growth, employment and productivity of better, smarter or more sensible regulation, based on sound science and economics.

A wide range of recommended policy initiatives and practices are proposed as good regulatory practice. These include:

- the importance of regulators considering the use of alternative approaches to fulfill legitimate objectives at the initial stages of the process including enabling the private sector to provide regulatory alternatives and reliance on market forces,
- the acceptance of other Members’ technical regulations as equivalent;
- the use of alternatives such as promotion of the use of voluntary international standards in place of technical regulations and mandatory standards; and
- the use of “*Regulatory Impact Assessments (RIAs)*”.

Regulatory Impact Assessments are useful tools to assess the efficiency and effectiveness of proposed technical regulations and to assure that the development of technical regulations:

- takes into account the possibility of using less restrictive alternative measures;
- considers impacts on consumers, trade and industry;
- assesses the costs and benefits of the proposed regulation;
- undertakes an analysis of the technical feasibility of ascertaining compliance with the regulations;
- considers the manner in which the matter was regulated in other countries;
- ensures coordination between the competent authorities.

8.3 *Implementing Good Regulatory Practice*

The implementation of Good Regulatory Practice requires specific actions by the government that are additional to the obligations of the TBT Agreement. The benefits derived provide reasonable justification. Good Regulatory Practice is in essence a combination of principles, procedures, and institutions of government working effectively to ensure that regulation is necessary, cost effective, and in the best interest of society.

The recommended actions required for implementation are tabulated below:

| | Specific Action | Purpose and Guidance |
|---|---|---|
| 1 | Define and Adopt Principles of Good Regulatory Practice | An agreed set of principles will form the basis of a common understanding of Good Regulatory Practice at national level. This is an evolving subject and a national level decision is required to establish the principles. The core principles should be inclusive of obligations contained in the TBT Agreement such as those for |

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| | | <p>transparency, need to serve a legitimate purpose. Example of such principles⁸ can be found in work done within APEC and the OECD.</p> <p>The set of principles, if adopted as policy for the development of better quality legislation will lead to regulation which are business friendly, do not impose unnecessary costs or create obstacles to adaptability and innovation.</p> |
| 2 | Provide a mandate to organization to oversee implementation | <p>The implementation of the agreed principles will be facilitated if a specific mandate is provided to an organization to ensure this. As the practices include conducting impact assessments, reviews of regulations and inter-agency cooperation, it is recommended that a coordinating body be mandated by the central government to undertake this task. Implementation may require changes to existing laws and hence requires agreement of the central government.</p> |
| 3 | Incorporate into Working Procedures of regulatory agencies | <p>The tools for enabling good regulatory practice range from:</p> <ul style="list-style-type: none"> - undertaking regulatory impact assessments (RIAs), - evaluating costs and benefits, - ensuring openness, transparency and accountability through consultation provisions, and - periodically reviewing existing regulations. <p>Specific processes and actions are required to achieve this and the methods adopted</p> |

⁸ APEC-SCSC - Guidelines for the Preparation, Adoption, and Review of Technical Regulations (1997)
Available at: http://www.med.govt.nz/templates/Page_____15218.aspx

Recommendations of the Council of the OECD on improving the quality of government regulations (1995)
Available at http://www.oecd.org/document/38/0,2340,en_2649_37421_2753254_1_1_1_37421,00.html

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| | | would depend on the existing national legal framework and laws. These actions would include the adoption of enabling legislation, publication of directives and providing training and support to regulatory agencies. |
| 4 | Monitor Implementation | The task of monitoring implementation would be facilitated if such a mandate is provided to a central supervisory authority. |

ANNEX 1

Procedure 1 – Responding to Enquiries (Enquiry Point Operations)

| No. | Model procedure details | Explanatory notes |
|-----|---|--|
| 1 | <p>Scope</p> <p>This procedure defines the responsibilities and activities undertaken by the enquiry point in responding to enquiries from domestic stakeholders and other Members. Enquiries from other Members may be channeled through respective national enquiry points or may come directly from the foreign interested party. The procedure additionally describes and defines the enquiry point's role in providing assistance to the domestic industry and the business community in obtaining information on standards, technical regulations and conformity assessment procedures from other WTO Members.</p> | <p>The TBT Agreement obliges the enquiry point to respond to queries from other Members. This procedure satisfies this obligation and includes an additional function to the enquiry point, i.e. to assist the business community, especially exporters, to obtain relevant information.</p> |
| 2 | <p>Purpose</p> <p>i. To fulfill national obligations of the enquiry point as listed in article 10.1 of the TBT Agreement.</p> <p>ii. To provide assistance to domestic exporters in obtaining information on technical regulations, standards and conformity assessment procedures in export markets</p> | <p>The second purpose is added as a means to enable the domestic industry to benefit from the global network of enquiry points that has developed as a consequence of the WTO/TBT Agreement. The enquiry point personnel will be in an advantageous position to fulfill this function as this requires similar skills and knowledge.</p> |
| 3 | <p>Procedure Essentials</p> <p>3.1 Receiving and recording enquiries The enquiry point records all enquiries in a register (Annex 1A- Sample Register)</p> <p>3.2 The enquiries are reviewed and classified: <u>Type i</u>. Enquiries from other Members on import requirements <u>Type ii</u> Enquiries from domestic industry on other WTO Members' requirements <u>Type iii</u> Enquiries on domestic requirements originating from within the country</p> | <p>The enquiries are classified into three types.</p> <p>Only <u>Type i</u> enquiries constitute an obligation of the TBT Agreement. <u>Type ii</u> enquiries are a service to assist domestic exporters to benefit from the TBT Agreement.</p> |

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| | <p><u>Type i</u> An immediate response to the query is provided directly, if the enquiry point is capable of responding to the enquiry from the knowledge and data available within the enquiry point.</p> <p>In cases when the enquiry requires information not available at the enquiry point, then the enquiry point personnel have to identify and seek assistance of the agency responsible to obtain the required information.</p> <p><u>Type ii</u> The enquiry point should assist the enquirer by immediately providing any information available within the enquiry point and also assistance in formulating the enquiry and submitting it to the enquiry point of the country concerned. The response should be forwarded to the enquirer immediately on receipt of a response.</p> <p><u>Type iii</u> For these type of enquiries, the party making the request should be referred to the regulatory authority or other organization responsible.</p> | <p>The enquiry point is expected to develop a repository of information over time to answer an increasing number of enquiries directly.</p> <p>In some cases, exporters may need guidance on formulating queries if they do not have sufficient knowledge on sources of information.</p> <p><u>Type iii</u> enquiries should not be within the scope of the enquiry point and should be redirected to the agency responsible.</p> |
| 4 | <p>Records</p> <p>4.1 The enquiry point should keep track of the progress of all enquiries. In case the enquiry is from a member of the WTO, the agency responsible is reminded of its obligation to respond. Completion of responses should be recorded in the register.</p> <p>4.2 The enquiry point should maintain records of all responses made to requests for information.</p> | <p>The tracking system could range from simple entries in a register to a more elaborate database. The choice of the method would depend on the number of enquiries.</p> <p>The collection and compilation of such information would result in the development of a ready resource of data enabling quick response to similar future enquiries. This would</p> |

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| | | <p>add to the knowledge base of the enquiry point and the data could be shared with other stakeholders within the country. It is recommended that the data be maintained in structured computerized records. This will facilitate quick and easy search and retrieval.</p> |
| 5 | <p>Annexes 1A - Register of enquiries 1B - Process Flow</p> | <p>1A is a basic register that records the essential details of an enquiry and records the status of the response. This register could be in a physical log or be maintained as a computerized record. It additionally points to the records containing full details of the response made.</p> <p>1B illustrates the process flow.</p> |

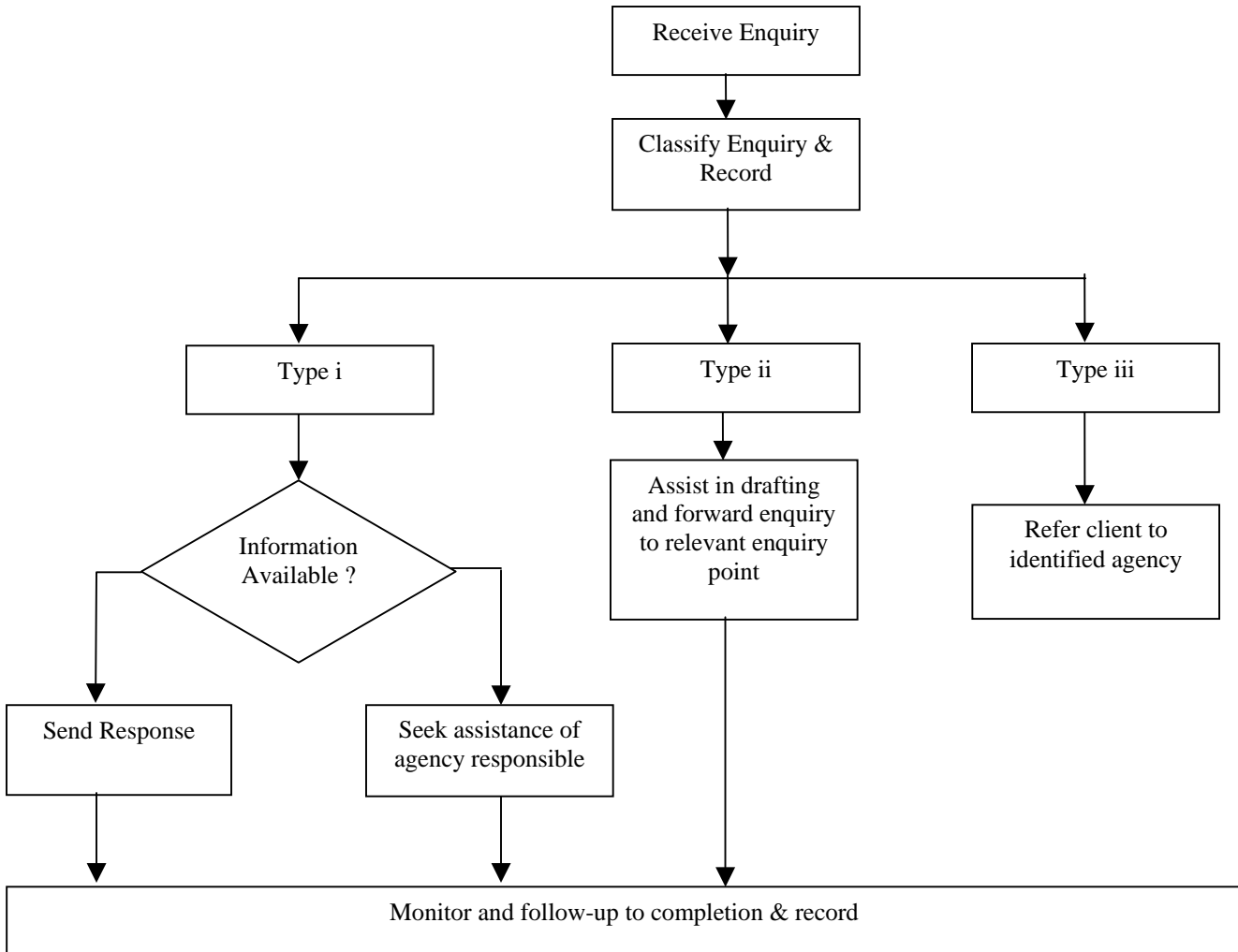
Annex 1A

Format of Enquiry Register

| No | Date Received | Client | Description | Date Closed | References & Records |
|----|---------------|--------|-------------|-------------|----------------------|
| | | | | | |

Annex 1B

Process Flow for Enquiries



ANNEX 2

Procedure 2 – Responding To Notifications Made By Other WTO Members (Enquiry Point Operations)

| No. | Model procedure details | Explanatory notes |
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| 1 | <p>Scope</p> <p>This procedure defines the responsibilities and activities that are required to effectively respond to notifications made by WTO Members, specifically when these notifications have a direct impact on their exports.</p> | <p>The TBT Agreement obliges all Members to notify other Members through the Secretariat in the event of stipulated changes to technical regulations, conformity assessment procedures (Art. 2.9, 2.10, 3.2, 5.6 5.7), domestic implementation of the Agreement (Art. 15.2) and on mutual recognition Agreements (Art. 10.7).</p> <p>Procedure No. 3 relates to the fulfillment of these obligations, whereas this procedure relates to the exercise of rights.</p> |
| 2 | <p>Purpose</p> <p>The purpose of this procedure is to assist domestic stakeholders to obtain timely information on changes affecting export trade to exercise their rights including the right to comment and seek justification on notifications made by other Members.</p> | <p>This procedure provides a means for WTO Members to effectively exercise their rights to seek justification (Article 2.5), comment (Articles 2.10.3, 5.6.4) on notifications and also seek preferential and differential treatment (Article 12 in general and specifically, Article 12.3). This procedure defines the responsibilities and activities undertaken by the organization that is mandated to coordinate responses to notifications made by WTO Members.</p> |
| 3 3.1 | <p>Procedure Essentials</p> <p>Receiving incoming notifications</p> <p>All notifications related to the operation of the TBT Agreement should be downloaded from the WTO website, examined and classified as</p> | <p>All notifications received by the WTO Secretariat are immediately dispatched by email to all Members in the original language of the</p> |

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| <p>3.2</p> | <p>follows:</p> <p><u>Type i</u> New or changes to technical regulations, conformity assessment procedures and standards</p> <p><u>Type ii</u> Notification of statements of implementation, new recognition agreements and other administrative matters</p> <p>These notifications can also be received electronically by email, by subscribing to the WTO mailing list. The Secretariat usually sends the Notification once a week and only in the original language (English, French or Spanish). The subscription to the mailing list can be done by following the instructions available on the WTO website under the section "Electronic circulation of TBT Notifications".⁹</p> <p>Disseminating notifications (all types) Compile and disseminate a summary of notifications to all on the distribution list established in accordance with para 3.3. The recommended format of the summary is in Annex 2A. Distribution could be by hard copy, email and posting on the website. The recipients should be reminded that they could seek assistance in obtaining full texts of proposed regulations and procedures and of the rights to send comments or seek justification. The contact particulars of the enquiry point should be included on all communication.</p> <p>The frequency of distribution should be at least once in two weeks.</p> | <p>notification, i.e. in either English, Spanish or French. Translations in the three official languages¹⁰ are subsequently published on the WTO website. Retrieval of the translated documents by downloading from the website should be on a daily basis so as to effectively utilize the limited comment period of 60 days that is permitted by the Agreement.</p> <p>The classification of the notifications assists in the subsequent disposition and is best undertaken by an official with an appreciation of the TBT Agreement.</p> <p>There are several means to disseminate notifications received. Choice of methods i.e. circulating printed hard copy, email, posting on a website, should be made in order to maximize reach to intended recipients. In this context, the enquiry point should consider using the automated alert systems¹¹ developed by Brazil and Canada; however, this would only be suitable if access to the internet is widespread.</p> |
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⁹ http://www.wto.org/english/tratop_e/tbt_e/tbt_mailing_list_e.htm

¹⁰ The official languages are English, French and Spanish. All official documents are published in all three languages.

¹¹ Canada's Export Alert, Brazil's Alerta Exportador – information available from: <http://www.scc.ca/> and, in particular, http://www.scc.ca/en/news_events/subscriptions/export_alert.shtml; <http://www.inmetro.gov.br/barreirastecnicas> and, in particular, <http://200.20.212.34/english/international/focalPoint.asp>.

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| | <p>In case the notifications are of critical importance in the opinion of the enquiry point manager, the full notification should be circulated to the identified interested parties and the full text of the proposed changes obtained.</p> | <p>The purpose of the circulation of the summary is to enable evaluation to determine if the notification will have an impact on their trade interests.</p> |
| 3.3 | <p>Establishment and maintenance of a distribution list</p> <p>The enquiry point should establish and maintain an updated list of parties that would require information provided in WTO/TBT notifications. Interested parties indicating an interest in receiving such information should be automatically included.</p> | <p>The enquiry point can establish an initial list from the following: trade associations, major trading companies, government agencies engaged in trade and regulatory bodies, trade policy organizations, research organizations. A general invitation could be publicly announced periodically to invite interested parties to register for inclusion on the list.</p> <p>The enquiry point should maintain an updated distribution list of all stakeholders. This should include all trade organizations in export trade, government regulators and agencies and other parties expressing an interest to receive such information.</p> |
| 3.4 | <p>Responding to requests for further information on notifications</p> <p>In the event that any stakeholder requests the full text of the notification or makes a request for draft regulations and conformity assessment procedures, the enquiry point should provide assistance by locating and contacting the source of the documents or the relevant national enquiry point.</p> | <p>Notifications only contain a short summary of details of the new changes. Interested parties will require more complete information to respond adequately. Timely service is essential. Often such documents are available for download and the enquiry point could assist in this. The obligation to provide translations in one of the official languages is limited to providing summaries in the notification format. Some documents</p> |

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| <p>3.5</p> <p>3.6</p> <p>3.7</p> | <p>Submitting comments or seeking justification on notifications</p> <p>In case interested parties within the country raise concerns on the notifications, the enquiry point should coordinate the follow-up actions. This would include the submission of comments and seeking justification for the measure introduced. The enquiry point could take the following actions to assist:</p> <ul style="list-style-type: none"> • hold discussions with stakeholders or the national coordinating committee, • assist in formulating submissions and forward these to the relevant WTO member nation, and • provide advice on the obligations and rights under the Agreement. <p>The submissions made are national decisions, arrived at by the government after consultation with stakeholders.</p> <p>Follow up to an unsatisfactory response to comments</p> <p>The enquiry point should keep track of the submission and forward responses received to stakeholders. In the event that there is no response or the response is unsatisfactory, the enquiry point should coordinate the follow-up.</p> <p><u>Type ii</u></p> <p>These notifications should be brought to the attention of the national policy and advisory-making body for study and evaluation.</p> | <p>may require translation. The party requesting the documents should be informed of this issue and urged to seek its own resources for translation. As participation in the WTO process is through the government, any action should be supported and sanctioned by the government.</p> <p>In some cases there will be differing opinions within the country and the notification should coordinate efforts to reach a consensus. The final decision in any case is always with the government.</p> <p>The officials from the enquiry point could utilize their knowledge of the TBT Agreement to offer useful assistance in researching, providing background information and formulating the submissions.</p> <p>The follow-up includes the options of making further comments, requesting bilateral consultations and raising the matter at the TBT Committee. The decision would depend on the severity of the concern. In critical cases, it could be treated as a dispute (Art. 14).</p> <p>It is proposed that a National Consultative Committee be established for overseeing the implementation of the TBT Agreement. This would be an appropriate body to review such notifications.</p> |
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| 4 | <p>Records</p> <p>The following records should be maintained:</p> <ul style="list-style-type: none"> • records and decisions of domestic consultations • comments on notifications submitted, responses to any submissions to other WTO Members and other communications • copies of foreign regulations, conformity assessment procedures and other material obtained as a result of enquiries | <p>This information would provide a data source for future enquiries. A computer database would be recommended to facilitate the storage of data.</p> |
| 5 | <p>Annexes</p> <p>2A Contents of Summary of Notifications</p> <p>2B Process flow</p> | |

Annex 2A

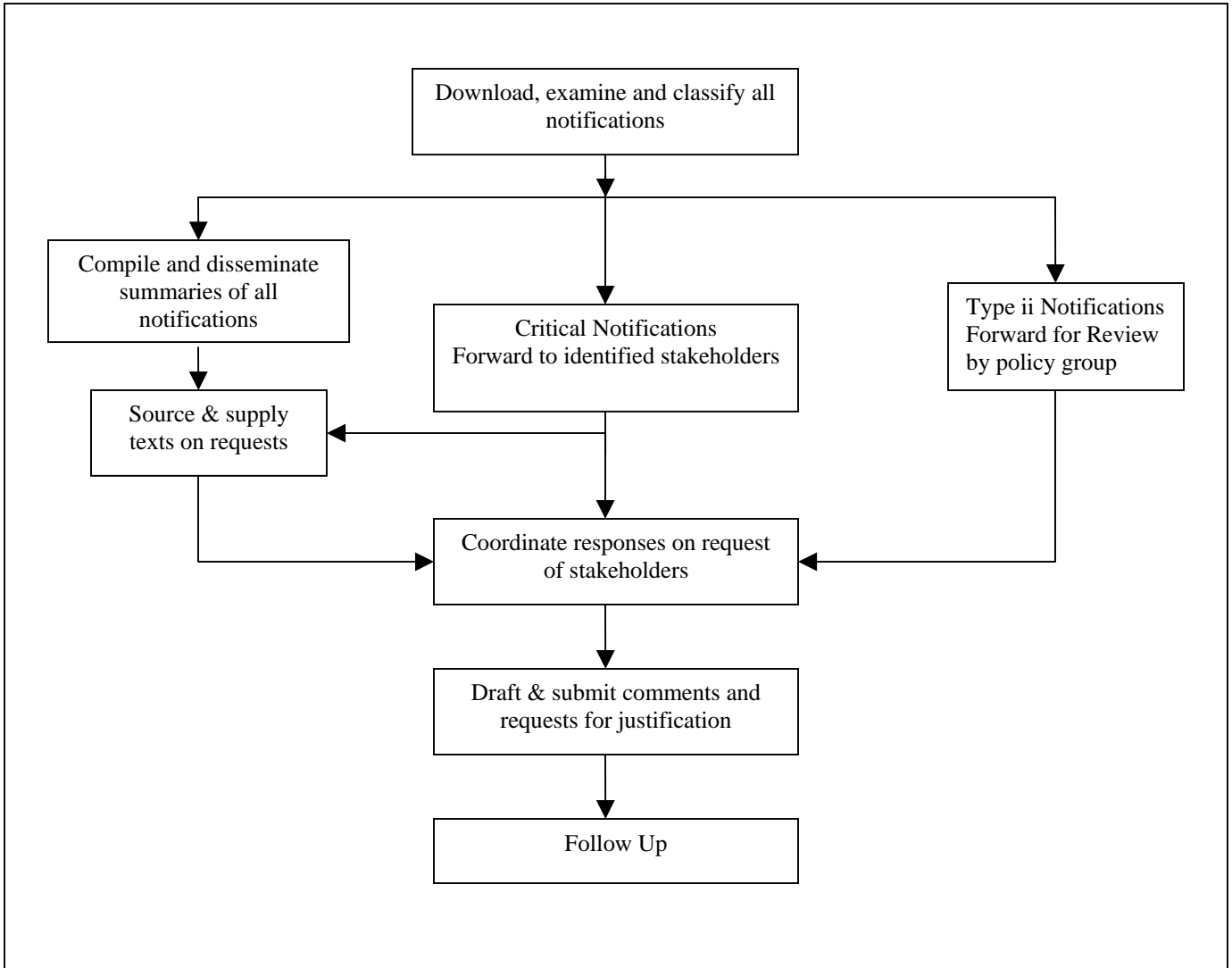
Contents of Summary of Notifications

The Summary should contain the following information extracted from the official notification form:

- i. The reference no. and country making the notification (Part 1 of the notification)
- ii. Products covered and description of contents (Part 4 and Parts 6, 7, 8 of the notification)
- iii. Period for comments (Parts 9, 10)

Annex 2B

Process flow for responding to notifications



ANNEX 3

Procedure 3 – Submitting Notifications to the WTO Secretariat (Notification Obligations)

| No. | Model Procedure Details | Explanatory Notes |
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| 1 | <p>Scope</p> <p>The TBT Agreement obliges all Members to notify other Members through the Secretariat in the event of stipulated changes to technical regulations, conformity assessment procedures (Art. 2.9, 2.10, 3.2, 5.6, 5.7), domestic implementation of the Agreement (Art. 15.2) and on mutual recognition agreements (Art. 10.7).</p> <p>This procedure defines the actions that are required in order that national obligations for the submission of notifications to the WTO be fulfilled. The procedure is inclusive of all the types of notifications stipulated in the TBT Agreement.</p> | <p>Article 10.10 of the TBT Agreement requires that a single authority be designated to be responsible for the function of notification. There are advantages if this authority is the same organization that undertakes the functions of the national enquiry point. The similarity in the resources, knowledge and skills required promotes efficiency and effective coordination. The need to notify arises out of actions undertaken by many domestic regulatory agencies; coordination is an important aspect of this procedure.</p> <p>The combination of the enquiry and notification functions into a single organization is a recommended option.</p> |
| 2 | <p>Purpose</p> <p>This procedure is to ensure that all national notification obligations be fulfilled. this includes the need for all concerned parties to be made aware of the need to notify and of national interagency coordination. the procedure is inclusive of the requirements with regard to timing, content and follow-up.</p> | <p>It is desirable that the parties responsible be aware of the obligations and there be effective coordination. The procedure addresses these two elements in addition to defining the process, and responsibilities.</p> |

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| <p>3</p> <p>3.1</p> <p>3.2</p> | <p>Procedure Essentials</p> <p>Ensuring awareness of the obligations</p> <p>The regulatory agencies and ministries of the government responsible for technical regulation, conformity assessment and standards should be made aware of notification requirements through appropriate means. Regular communications between all agencies responsible should be maintained. All agencies should be required to inform the notification authority of any new or changed technical regulations.</p> <p>Compiling information on new developments</p> <p>The notification authority should monitor all domestic developments on technical regulations, conformity assessment procedures, mutual recognition agreements, changes in the administration and implementation of the Agreement.</p> | <p>The management of the notification authority should ensure awareness by means such as circulating reminders, conducting briefings and acting upon information that indicates that a notification is required.</p> <p>The channels of information available would depend on the national infrastructure and the regulatory process adopted. The existence of a central authority that coordinates national technical regulation considerably simplifies this task.¹¹ Absence of a central authority requires the notification authority to identify and establish communication with all relevant domestic organizations. It is important that information be obtained at a stage that is early enough to meet the requirements for notification to be made at a stage where comments can be incorporated and at least six months before implementation.¹²</p> |
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¹¹ An example of such an authority is Costa Rica's Technical Regulation Body, described in G/TBT/2/Add.51/Supp.1 on the WTO website.

¹² G/TBT/1 Rev 8- Understanding of "reasonable interval" under article 2.12.

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| 3.3 | <p>Drafting and submitting notifications</p> <p>The notifications should be made in the specified format. The form¹³ adopted by the TBT Committee for implementation of Articles 2.9, 2.10, 3.2, 5.6 5.7, is shown in Annex 3A, and the form for notification to Article 10.7 is in Annex 3B.¹⁴ The management of the notification authority should cooperate with the regulatory authority to draft the notification. It should obtain and maintain copies of the full text of the proposed changes and other information in anticipation of requests by other WTO Members. The notification should contain particulars of the source (preferably a website) containing full texts and other information. Upon approval the notification should be transmitted to the WTO Secretariat in electronic form in one of the three official languages.</p> | <p>A process for assigning responsibility for formal approval of the text of notifications before submission should be in place. The notification is an official communication of the government to other WTO Members and this process should include a review to confirm the accuracy and appropriateness of the notification. (Translation into one of the three official languages of the WTO will be required in the event that the national or working language is not one of the three official languages.)</p> |
| 3.4 | <p>Responding to requests for texts</p> <p>The number of requests for texts would be minimized in case the website has been made available in the notification. In case the request is for information not available at the notification authority, the request should be forwarded to the agency responsible for the technical regulation or conformity assessment procedure.</p> | <p>The availability of information at the notification authority would simplify this work.</p> |
| 3.5 | <p>Responding to comments on notifications and requests for justification</p> <p>The notification authority should coordinate responses to comments on notifications. This should include:</p> <ul style="list-style-type: none"> - communicating with the agency(ies) responsible for the subject of notification. - assisting to formulate replies in consultation with responsible parties. | <p>The responses provided will be matters of national policy and impact trade relations with other WTO Members, consultation with relevant agencies is required.</p> |

¹³ The form is defined G/TBT/1 Rev 8 Decisions and Recommendations adopted by the Committee since 1 January 1995 - III. Notification procedures for draft technical regulations and conformity assessment procedure.

¹⁴ The decisions of the TBT Committee in G/TBT/1Rev 8 Notification format under Article 10.7. contains a copy of the format to be used.

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| 4 | <p>Records</p> <p>The authority should maintain records on</p> <ul style="list-style-type: none"> • Notifications issued • Communications with other Members of the WTO in connection with notifications • Texts of regulations and conformity assessment procedures subject to notification | <p>These records constitute formal government documents and it is essential that a secure records management system be in place. A database to maintain such records would facilitate this.</p> |
| 5 | <p>Annexes</p> <p>3A - Extract from G/TBT/1 Rev 8 on statements on implementation and administration of the Agreement</p> <p>3B - Extract from G/TBT/1 Rev 8 on notifications for draft technical regulations and conformity assessment procedures</p> <p>3C - Extract from G/TBT/1 Rev 8 on notifications for recognition agreements</p> <p>3D - Extract from G/TBT/1 Rev 8 on understanding of “reasonable interval” under Article 2.12</p> | <p>The four Annexes represent agreed decisions of the TBT Committee and are official documents issued by the TBT Committee. These contain agreed arrangements for the implementation of the TBT Agreement that are hence obligatory for all Members. Reference to these is advised in the drafting and submission of notifications.</p> |

Annex 3A

Extract from G/TBT/1 Rev 8 on: "Statements on implementation and administration of the Agreement"

Background and purpose

Article 15.2 of the Agreement provides that each Member shall inform the Committee of measures in existence or taken to ensure the implementation and administration of the Agreement. In response to this provision of the Agreement Members shall submit the relevant information in the form of written statements. The Committee agreed on the following decision concerning the contents of these statements.

Decisions

1. The statement should cover the legislative, regulatory and administrative action taken as a result of the negotiation of the Agreement or currently in existence to ensure that the provisions of the Agreement are applied. If the Agreement itself has been incorporated into domestic law, the statement should indicate how this has been done. In other cases, the statement should describe the content of the relevant laws, regulations, administrative orders, etc. All necessary references should also be provided.

2. In addition, the statement should specify

- (a) The names of the publications used to announce that work is proceeding on draft technical regulations or standards and procedures for assessment of conformity and those in which the texts of technical regulations and standards or procedures for assessment of conformity are published under Articles 2.9.1, 2.11; 3.1 (in relation to 2.9.1 and 2.11); 5.6.1, 5.8; 7.1, 8.1 and 9.2 (in relation to 5.6.1 and 5.8); and paragraphs J, L and O of Annex 3 of the Agreement;
- (b) the expected length of time allowed for presentation of comments in writing on technical regulations, standards or procedures for assessment of conformity under Articles 2.9.4 and 2.10.3; 3.1 (in relation to 2.9.4 and 2.10.3); 5.6.4 and 5.7.3; 7.1, 8.1 and 9.2 (in relation to 5.6.4 and 5.7.3); and paragraph L of Annex 3 of the Agreement;
- (c) the name and address of the enquiry point(s) foreseen in Articles 10.1 and 10.3 of the Agreement with an indication as to whether it is/they are fully operational; if for legal or administrative reasons more than one enquiry point is established, complete and unambiguous information on the scope of responsibilities of each of them;
- (d) the name and address of any other agencies that have specific functions under the Agreement, including those foreseen in Articles 10.10 and 10.11 of the Agreement; and
- (e) measures and arrangements to ensure that national and sub-national authorities preparing new technical regulations or procedures for assessment of conformity, or substantial amendments to existing ones, provide early information on their proposals in order to enable the Member in question to fulfil its obligations on notifications under Articles 2.9, 2.10, 3.2, 5.6, 5.7 and 7.2 of the Agreement.

Annex 3B

Extract from G/TBT/1 Rev 8 on: "Notification procedures for draft technical regulations and conformity assessment procedures"

1. Format and Guidelines

Background and purpose

The procedures for notification under the Agreement have been kept under constant review by the Committee. In order to ensure a uniform and efficient operation of these procedures the Committee agreed on the following format and guidelines.¹⁵

Recommendation

- (a) Information contained in the notification form should be as complete as possible and no section should be left blank. Where necessary, "not known" or "not stated" should be indicated.
- (b) Notifications may be transmitted by electronic mail to the WTO Central Registry of Notifications (CRN): crn@wto.org

Decisions

| Item | Description |
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| 1. Member to Agreement notifying | Government, including the competent authorities of the European Communities, which has acceded to the Agreement and which is making the notification; if applicable, name of local government involved Articles 3.2 and 7.2). |
| 2. Agency responsible | Body elaborating a proposal for or promulgating a technical regulation or procedures for assessment of conformity. The authority or agency designated to handle comments regarding the specific notification shall be indicated if different from above. |

¹⁵ Where boxes appear under items 3 and 11 of the format, notifiers are requested to check the relevant box or to indicate information under "other".

| Item | Description |
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| 3. Notified under | <p>Relevant provision of the Agreement: Article 2.9.2: proposed technical regulation by central government body, Article 2.10.1: technical regulation adopted for urgent problems by central government body, Article 3.2: proposed technical regulation or technical regulation adopted for urgent problems by local government (on the level directly below that of the central government), Article 5.6.2: proposed procedures for assessment of conformity by central government body, Article 5.7.1: conformity assessment procedure adopted for urgent problems by central government body,</p> |
| 3. Notified under (cont'd) | <p>Article 7.2: proposed procedure for assessment of conformity or conformity assessment procedure adopted for urgent problems by local government (on the level directly below that of the central government). Other Articles under which notification can arise in cases of urgency set out in those Articles are: Article 8.1: adopted procedures for assessment of conformity by non-governmental body, Article 9.2: adopted procedures for assessment of conformity by international or regional organization.</p> |
| 4. Products covered | <p>HS or CCCN (chapter or heading and number) where applicable. National tariff heading if different from HS or CCCN. ICS numbers may be provided in addition, where applicable. A clear description is important for an understanding of the notification by delegations and translators. Abbreviations should be avoided.</p> |
| 5. Title and number of pages | <p>Title of the proposed or adopted technical regulation or procedure for the assessment of conformity that is notified. Number of pages in the notified document. The language(s) in which notified documents are available. If a translation of the document is planned, this should be indicated. If a translated summary is available, this too should be indicated.</p> |
| 6. Description of content | <p>An abstract of the proposed or adopted technical regulation or procedures for assessment of conformity clearly indicating its content. A clear comprehensible description stating the main features of the proposed or adopted technical regulation or procedures for assessment of conformity is important for an understanding of the notification by delegations and translators. Abbreviations should be avoided.</p> |
| 7. Objective and rationale, including the nature of urgent problems where applicable | <p>For instance: health, safety, national security, ... etc.</p> |

| Item | Description |
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| 8. Relevant documents | (1) Publication where notice appears, including date and reference number; (2) Proposal and basic document (with specific reference number or other identification) to which proposal refers; (3) Publication in which proposal will appear when adopted; (4) Whenever practicable, give reference to relevant international standard. If it is necessary to charge for documents supplied, this fact should be indicated. |
| 9. Proposed dates of adoption and entry into force | The date when the technical regulation or procedures for assessment of conformity is expected to be adopted, and the date from which the requirements in the technical regulation or procedures for assessment of conformity are proposed or decided to enter into force, taking into consideration the provisions of Article 2.12. |
| 10. Final date for comments | The date by which Members may submit comments in accordance with Articles 2.9.4, 2.10.3, 3.1 (in relation to 2.9.4 and 2.10.3), 5.6.4, 5.7.3 and 7.1 (in relation to 5.6.4 and 5.7.3) of the Agreement. A specific date should be indicated. The Committee has recommended a normal time limit for comments on notifications of 60 days. Any Member which is able to provide a time limit beyond 60 days is encouraged to do so. Members are encouraged to advise of any extension to the final date for comments. |
| 11. Texts available from | If available from national enquiry point, put a cross in the box provided. If available from another body, give its address, e-mail, telex and telefax number. If available in a web-site, provide the web-site address. Such indications should not in any way discharge the relevant enquiry point of its responsibilities under the provisions of Article 10 of the Agreement. |

WORLD TRADE ORGANIZATION

G/TBT/N/

(00-0000)

Committee on Technical Barriers to Trade

NOTIFICATION

The following notification is being circulated in accordance with Article 10.6.

| | |
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| 1. | Member to Agreement notifying: If applicable, name of local government involved (Articles 3.2 and 7.2): |
| 2. | Agency responsible: Name and address (including telephone and fax numbers, e-mail and web-site addresses, if available) of agency or authority designated to handle comments regarding the notification shall be indicated if different from above: |
| 3. | Notified under Article 2.9.2 [], 2.10.1 [], 5.6.2 [], 5.7.1 [], other: |
| 4. | Products covered (HS or CCCN where applicable, otherwise national tariff heading. ICS numbers may be provided in addition, where applicable): |
| 5. | Title, number of pages and language(s) of the notified document: |
| 6. | Description of content: |
| 7. | Objective and rationale, including the nature of urgent problems where applicable: |
| 8. | Relevant documents: |
| 9. | Proposed date of adoption: Proposed date of entry into force: |
| 10. | Final date for comments: |
| 11. | Texts available from: National enquiry point [] or address, telephone and fax numbers, e-mail and web-site addresses, if available of the other body: |

2. Timing of notifications

Background

The Committee dealt with this aspect of notification procedures in the following way:

Recommendation

When implementing the provisions of Articles 2.9.2, 3.2 (in relation to Article 2.9.2), 5.6.2 and 7.2 (in relation to Article 5.6.2), a notification should be made when a draft with the complete text of a proposed technical regulation or procedures for assessment of conformity is available and when amendments can still be introduced and taken into account.

3. Application of articles 2.9 And 5.6 (Preambular part)

Background and purpose

With a view to ensuring a consistent approach to the selection of proposed technical regulations and procedures for assessment of conformity to be notified, the Committee established the following criteria.

Recommendation

For the purposes of Articles 2.9 and 5.6, the concept of "significant effect on trade of other Members" may refer to the effect on trade:

- (a) Of one technical regulation or procedure for assessment of conformity only, or of various technical regulations or procedures for assessment of conformity in combination;
- (b) in a specific product, group of products or products in general; and
- (c) between two or more Members.

When assessing the significance of the effect on trade of technical regulations, the Member concerned should take into consideration such elements as the value or other importance of imports in respect of the importing and/or exporting Members concerned, whether from other Members individually or collectively, the potential growth of such imports, and difficulties for producers in other Members to comply with the proposed technical regulations. The concept of a significant effect on trade of other Members should include both import-enhancing and import-reducing effects on the trade of other Members, as long as such effects are significant.

4. Translation of documents relating to notifications and address of body supplying the documents

Background and purpose

In order to avoid difficulties that can arise from the fact that the documentation relevant to technical regulations, standards and procedures for assessment of conformity is not available in one of the WTO working languages and that a body other than the enquiry point may be responsible for such documentation, the Committee agreed on the following procedures:

Recommendation

When a Member seeks a copy of a document relating to a notification which does not exist in that Member's WTO working language, it will be advised, on request, by the notifying Member of other Members that have requested, as of that date, a copy of the document. The Member seeking a copy of a document relating to a notification may then contact such other Members in order to determine whether the

latter are prepared to share, on mutually agreed terms, any translation that they have or will be making into relevant WTO working language(s).

Decisions:

- (a) When a translation of a relevant document exists or is planned, this fact shall be indicated on the WTO TBT notification form next to the title of the document. If only a translated summary exists, the fact that such a summary is available shall be similarly indicated;
- (b) upon receipt of a request for documents, any translated summaries that exist in the language of the requester or, as the case may be, in a WTO working language, shall be automatically sent with the original of the documents requested; and
- (c) Members shall indicate under point 11 of the WTO TBT notification form the exact address, where available, e-mail address, telephone and fax numbers of the body responsible for supplying the relevant documents if that body is not the enquiry point.

5. Processing of requests for documentation

Background

The Committee addressed the problems of supplying and obtaining requested documentation on notified technical regulations and procedures for assessment of conformity as follows:

Recommendations:

- (a) Requests for documentation should contain all the elements permitting the identification of the documents and in particular, the WTO TBT notification number (G/TBT/Notif. ...) to which the requests refer. The same information should appear on the documents supplied in response to such requests; and
- (b) any request for documentation should be processed if possible within five working days. If a delay in supplying the documentation requested is foreseen, this should be acknowledged to the requester, along with an estimate of when the documents can be provided; and
- (c) E-mail requests for documentation should include name, organization, address, telephone and fax numbers, and e-mail address in the request; and
- (d) Electronic delivery of documentation is encouraged and requests should indicate whether an electronic version or hard copy is desired.

6. Length of time allowed for comments

Background

The Committee set the following time limits for presentation of comments on notified technical regulations and procedures for assessment of conformity.

Recommendation

The normal time limit for comments on notifications should be 60 days. Any Member which is able to provide a time limit beyond 60 days, such as 90 days, is encouraged to do so and should indicate this in the notification.

7. Handling of comments on notifications

Background and Purpose

In order to improve the handling of comments on proposed technical regulations and procedures for assessment of conformity submitted under Articles 2.9.4, 2.10.3, 3.1 (in relation to 2.9.4 and 2.10.3), 5.6.4, 5.7.3 and 7.1 (in relation to 5.6.4 and 5.7.3) of the Agreement, the Committee agreed on the following procedures.

Recommendations:

- (a) Each Member should notify the WTO secretariat of the authority or agency (e.g. its enquiry point) which it has designated to be in charge for handling of comments received; and
- (b) a Member receiving comments through the designated body should without further request
 - (i) acknowledge the receipt of such comments,
 - (ii) explain within a reasonable time to any Member from which it has received comments, how it will proceed in order to take these comments into account and, where appropriate, provide additional relevant information on the proposed technical regulations or procedures for assessment of conformity concerned, and
 - (iii) provide to any Member from which it has received comments, a copy of the corresponding technical regulations or procedures for assessment of conformity as adopted or information that no corresponding technical regulations or procedures for assessment of conformity will be adopted for the time being.

8. Monthly Listing of Notifications Issued

Background and purpose

With a view to provide a brief indication of the notifications issued, the Committee agreed on the following procedure.

Decision

The Secretariat is requested to prepare a monthly table of notifications issued, indicating the notification numbers, notifying Members, Articles notified under, products covered, objectives and final dates for comments.

9. Enhancement of Electronic Transmission of Information

Background and purpose

Enhancement of Internet usage can facilitate access to and exchange of information by Members. This would also facilitate and provide the maximum time possible for receiving notifications, obtaining and translating of relevant documents, and the presentation of comments. With a view to facilitate the access to information by Members, as well as to strengthen the notification process, including the time needed for the publication and circulation of notification by the Secretariat, the Committee agreed on the following action.

Decision

Whenever possible Members should file notifications by downloading, filling out and returning the complete form by e-mail to the Secretariat. The Committee will continue to explore ways to shorten the time for the submission, publication and circulation of notifications, as well as to examine the steps that would be needed to facilitate the electronic transmission of information among Members to complement the hard copy information exchange.

10. Decision Relating to Notifications

Labelling Requirements

Background and purpose

With the purpose of clarifying the coverage of the Agreement with respect to labelling requirements, the Committee on Technical Barriers to Trade took the following decision.

Decision

In conformity with Article 2.9 of the Agreement, Members are obliged to notify all mandatory labelling requirements that are not based substantially on a relevant international standard and that may have a significant effect on the trade of other Members. That obligation is not dependent upon the kind of information which is provided on the label, whether it is in the nature of a technical specification or not.

Annex 3C

Extract from G/TBT/1 Rev 8 on:

"Notification format under Article 10.7 - Agreements reached by a member with another country or countries on issues related to technical regulations, standards or conformity assessment procedures"

Under Article 10.7 of the Agreement "Whenever a Member has reached an agreement with any other country or countries on issues related to technical regulations, standards or conformity assessment procedures which may have a significant effect on trade, at least one Member party to the agreement shall notify other Members through the Secretariat of the products to be covered by the agreement and include a brief description of the agreement." The following notification under Article 10.7 has been received.

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| 1. Member notifying: |
| 2. Title of the bilateral or plurilateral Agreement: |
| 3. Parties to the Agreement: |
| 4. Date of entry into force of the Agreement: |
| 5. Products covered (HS or CCCN where applicable, otherwise national tariff heading): |
| 6. Subject matter covered by the Agreement (technical regulations, standards or conformity assessment procedures): |
| 7. Brief description of the Agreement: |
| 8. Further information available from: |

Annex 3D

Extract from G/TBT/1 Rev 8 on: Understanding of "reasonable interval" under article 2.12

Background

At its meeting of 15 March 2002, the Committee took note of the Ministerial Decision (made at the Ministerial Conference of 14 November 2001) regarding the implementation of Article 2.12 of the Agreement.

Decision

Subject to the conditions specified in paragraph 12 of Article 2 of the Agreement on Technical Barriers to Trade, the phrase "reasonable interval" shall be understood to mean normally a period of not less than 6 months, except when this would be ineffective in fulfilling the legitimate objectives pursued.

ANNEX 4

Procedure 4 – Establishment and Operation of a National Consultative Committee to Coordinate and Oversee Implementation of the TBT Agreement

| No. | Model procedure details | Explanatory notes |
|-----|--|--|
| 1 | <p>Scope</p> <p>The procedure describes the functions and operation of a National Consultative Committee that is established to coordinate and oversee implementation of the TBT Agreement.</p> | <p>This model procedure is based on the assumption that the government establishes such a committee and appoints representatives of national stakeholder organizations to be members of such a National Consultative Committee.</p> <p>This Committee has a central role in guiding the national government to meet the obligations of the WTO/TBT Agreement and to exercise its rights effectively. The committee provides a link to the business sector to facilitate consultation. The recommended overall national system is described in section 5 and the communication lines between the organizations involved are indicated in Chart 1.</p> |
| 2 | <p>Purpose</p> <p>The purpose of this procedure is to:</p> <ol style="list-style-type: none"> i. define the objectives for the establishment and operation of a National Consultative Committee, ii. ensure that the operations and functions of the committee are conducted and implemented to meet objectives, iii. facilitate good communication between the relevant government agencies and business interests, iv. ensure that this committee fulfils its responsibility for reviewing the overall implementation of the TBT Agreement satisfactorily and v. coordinate national participation in the TBT Committee. | <p>The objective of this committee is to provide a national level consultation between all stakeholders on matters arising from the obligations and rights of the TBT Agreement. These consultations will serve the purpose of developing recommendations for policy development. The inputs from this committee would assist the government in policy development and decision making.</p> <p>The TBT Committee has the role of implementation of the Agreement and is a channel for ongoing deliberations on current concerns both of a bilateral and multilateral nature. Policy and</p> |

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| | | <p>direction is often set by decisions taken during the triennial reviews¹⁶ conducted by the committee.</p> <p>Participation in the committee by members is a right and provides an opportunity to influence decisions and monitor developments. The direction on national policy with regard to the TBT Agreement could be effectively developed through consultation within the national committee.</p> |
| 3 | <p>Procedure Essentials</p> | |
| 3.1 | <p>Establishment and maintenance of the National Consultative Committee</p> <p>The membership is appointed by government and comprises of stakeholders in the implementation of the TBT Agreement. The terms of reference of the committee are given in Annex 4A.</p> | <p>The National Consultative Committee chairperson and members who are appointed by the government should represent all significant stakeholders; i.e. trade, industry, regulatory agencies and policy makers. The chairperson should preferably be a senior official with knowledge of matters under the purview of the TBT Agreement.</p> |
| 3.2 | <p>The Secretariat and management support should be provided by the management of the organization responsible for the enquiry and notification functions.</p> | <p>The enquiry point and notification authority would be the most appropriate mechanism to serve as Secretariat to support this committee due to the knowledge and skills that would be available with the staff.</p> |
| 3.3 | <p>Meetings of the Committee</p> <p>The Committee should meet on a regular basis and additionally whenever there is a critical development affecting national trade interests. The Secretariat of the Committee should keep the members updated of all significant developments within the TBT Committee without delay. The proposed agenda of meetings of the committee should address the issues listed in Annex 4B.</p> | <p>It is recommended that the Committee meet three times per year, prior to the three TBT Committee meetings. The secretariat should keep the Committee members updated on urgent matters constantly by circulation of information. The secretariat should facilitate discussion through tabling of a report and preparation for the committee meetings.</p> |

¹⁶ Article 15.4 provides that a review of the operation and implementation of the TBT Agreement is conducted every three years. The reviews conducted have resulted in significant decisions. The text of the reports are available on the WTO website.

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| 3.4 | The Committee meetings should be a forum to deliberate on matters related to the national implementation and administration of the Agreement and the agenda of the meetings should reflect this. | The national implementation of the Agreement is notified to the WTO Secretariat in accordance with Article 15.2. In event changes are made, a subsequent notification should be made. |
| 4 | <p>Records</p> <p>The Secretariat should maintain the following records:</p> <ul style="list-style-type: none"> • reports submitted to the committee • minutes and decisions of meetings | |
| 5 | <p>Annexes</p> <p>4A Terms of reference and membership</p> <p>4B Agenda for meetings of the National Consultative Committee</p> | The two annexes provide guidance to enable the establishment of the National Consultative Committee. |

Annex 4A

National Consultative Committee (NCC) on the Technical Barriers to Trade Agreement (TBT)

Terms of reference

This Committee has a consultative and advisory role. It is established to advise government policy makers and implementation agencies on issues related to the implementation and administration of the TBT Agreement.

(Note: As the TBT Agreement is binding on governments, the government agencies responsible will retain final decision-making authority. Some national governments may, however, consider granting of some decision-making powers to the Committee)

Objectives and Functions

1. To review the operation and administration of the TBT Agreement with regard to enquiry and notification point obligations;
2. To consider developments about technical regulations, standards, conformity assessment procedures in trading partners that are barriers to trade;
3. To exchange information and assist in the coordination among ministries and agencies on responses to WTO notifications;
4. To review national developments in technical regulations, standards and conformity assessment procedures;
5. To review developments in the TBT Committee;
6. To review responses to the country's notifications to the WTO;
7. To provide views and other inputs for the Triennial Reviews of the TBT Committee;
8. To make recommendations on: all matters reviewed by the Committee, on complaints of non-compliance by trade partners and related matters.

Committee Procedures

9. The Committee reports to government through the ministry responsible for external trade
10. Meetings are convened by the secretary with the consent of the chair
11. Decisions of the Committee are arrived at by consensus.

Membership

The Committee members are appointed to represent:

- Trade Ministry Officials responsible for external trade
- Representatives of all major technical regulatory agencies
- Officials responsible for economic policy
- Representatives of major industry groups
- Officials of major trade associations
- Officials of relevant ministries
- Representatives of national standardization and conformity assessment organizations

Annex 4B

Proposed List of Items to be included in the Agenda of the National Consultative Committee

The Typical Agenda for meetings of the committee should include the following items

- Review of Report of Operations, notifications made, enquiries received
- Review of notifications made by other members and comments submitted
- Developments in the TBT Committee, including triennial reviews, decisions taken
- Developments on technical regulations, standards and conformity assessment at national level
- Domestic developments in trade and regulatory policy

ANNEX 5

Procedure 5 – Communication and Promotion

| No. | Model procedure details | Explanatory notes |
|-----|---|--|
| 1 | <p>Scope The procedure is to establish and implement activities:</p> <ul style="list-style-type: none"> - for communicating information on developments in global trade and developments in the TBT Committee to stakeholders, - promoting services of the TBT enquiry point/notification authority and, - educating stakeholders on the TBT Agreement. | <p>Knowledge of the TBT Agreement among stakeholders is a necessary precondition to ensure that obligations are fulfilled and for members to derive benefits from the rights that they are entitled to. Management personnel from regulatory and trade policy development agencies need to be aware of obligations in order to ensure that measures taken by government are consistent with the provisions of the Agreement. Knowledge of the Agreement will enable members to exercise their rights effectively. For example, a good working knowledge will aid members to respond appropriately when other members engage in practices that have a negative impact on their ability to export. Awareness by the business community will promote the utilization of information sources made available through the enquiry and notification systems and provide an avenue to seek remedies when confronted by unnecessary trade barriers in export markets.</p> |
| 2 | <p>Purpose This procedure is to implement a program for regular communication and education of stakeholders on the TBT Agreement</p> | <p>A regular program is recommended to provide for changes in personnel and to provide updates of changes.</p> |

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| <p>3</p> | <p>Procedure Essentials</p> <p>An annual awareness program should be developed with a program that identifies objectives, target groups, methods of information dissemination and schedules.</p> <p>The program for government agencies should include an explanation of the TBT Agreement and their role in fulfilling obligations and exercising rights.</p> <p>The program for the business sector should include the advantages and benefits that can be derived from the agreement.</p> | <p>The most effective method of delivery would be direct presentations and discussions with the target recipients. The program should be supported by the availability of persons capable of delivering such presentations and the notification/enquiry authority should include personnel who can undertake such tasks.</p> <p>A significant amount of material is available on the TBT Agreement on the ITC and WTO websites. Annex 5A provides a brief list of such references.</p> <p>If resources are available, a series of articles and bulletins could be developed for circulation to interested parties.</p> |
| <p>4</p> | <p>Records</p> <p>The records of briefing sessions conducted, participants, and organizations should be maintained. A selection of relevant material for presentations should be built up.</p> | |
| <p>5</p> | <p>Annex</p> <p>5A Reference material for awareness program</p> | <p>The selection provided is a small sample of the material available. Contents of presentations made at TBT Committee sponsored events are generally made available at the WTO website and provide a useful reference.</p> |

Annex 5A

Reference material for awareness programme

Available from WTO

1. Technical Barriers to Trade: Technical Explanation:

Technical Information on Technical barriers to trade

(http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm)

This is an explanation of the Agreement in plain language and is hence more readable than the legal text of the Agreement.

Available from ITC

1. The WTO Agreement on TBT: A Business Perspective (Training pack)
2. Information Retrieval on Standards, Technical Regulations and Conformity Assessment Procedures (EQM Bulletin No. 72)
3. Improving and Maintaining Market Access using the WTO Agreements on TBT and SPS (EQM Bulletin No. 75)

These reference materials are available from ITC at <http://www.intracen.org/eqm/>

ITC: Making partnerships happen

About ITC

The International Trade Centre (ITC) is the joint technical cooperation agency of the United Nations Conference on Trade and Development (UNCTAD) and the World Trade Organization (WTO) for business aspects of trade development.

ITC's mission

Contribute to sustainable development through technical assistance in export promotion and international business development.

ITC's strategic objectives

- ▶ **Enterprises** Strengthen the international competitiveness of enterprises.
- ▶ **Trade support institutions** Develop the capacity of trade service providers to support businesses.
- ▶ **Policymakers** Support policymakers in integrating the business sector into the global economy.



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