Reference to standards and the WTO TBT Agreement

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The WTO TBT Agreement

Voluntary

- Standards

Mandatory

- Technical Regulations

Conformity Assessment Procedures

- avoid unnecessary barriers to international trade
- non-discrimination
- respecting the right of Members to regulate for legitimate objectives
  
  *(human health and safety, environmental protection, quality, etc.)*
What do methods of reference to standards imply for the TBT Agreement?

• Harmonization

• Avoiding unnecessary barriers to trade

• Transparency
Harmonization: requirement to follow international standards... (Article 2.4 and 5.4)

Members shall use...

"relevant" international standards

... as a basis for

technical regulations

conformity assessment procedures

(except!)

when ineffective or inappropriate for policy objectives

(for developing country Members) when not appropriate for development, financial or trade needs
Harmonization: flexibilities

• **Relevant** – Which are the relevant international standards and bodies?
  – TBT Committee Decision on Principles for International Standardization

• **Use as a basis** – different methods of reference to standards
  – May influence degree of convergence
Avoid unnecessary barriers to trade

• Reference to standards is a means of avoiding unnecessary barriers to trade, especially when international standards are referenced – safe haven under Article 2.5
Avoid unnecessary barriers to trade

- Good regulatory practices (GRP) is another means of avoiding unnecessary barriers... reference to standards comes in at various points in the regulatory lifecycle
GRP across the regulatory lifecycle

Assess (through RIA)
- Publish a notice of regulatory activity
- Establish the need for government intervention, and set policy objectives
- Identify alternatives
- Assess alternatives
- Publish the RIA (or other assessment)
- Notify regulation to the WTO
- Provide opportunity for comments (consult on need, alternatives, etc.)
- Consider comments
- Publish final regulation
- Transition period prior to entry into force
- Provide relevant guidance for compliance

Transparency and Consultation

Conduct regulatory monitoring and reviews
Importance of **domestic coordination**, including between regulatory agencies and standards bodies

Minimizing use of mandatory regulation... is there already a standard for that?

Methods of reference to standards are part of alternatives... how can different methods influence (good) implementation of TBT Agreement?

Transparency issues next...

How do different methods of reference facilitate regulatory review? **Domestic coordination**
Transparency

- Notification of draft regulations to WTO
  - Methods of reference could influence what is notified
- Ability to comment on draft regulations
  - Possibly impaired under certain methods of reference, depending on accessibility of referenced standards
Thank you, any questions?

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