

PREPARATIONS FOR THE 1999 MINISTERIAL CONFERENCE

EC Approach to the TBT Agreement

Communication from the European Communities

The following communication, dated 21 July 1999, has been received from the Permanent Delegation of the European Commission.

1. Experience shows that enterprises are confronted with a wide range of barriers in terms of technical regulations, standards and conformity assessment procedures, when supplying products to overseas markets. These barriers are of growing concern. Some of the most obvious problems result from the non-alignment of domestic standards and technical regulations with relevant international standards and the non-harmonization of conformity assessment procedures. The discriminatory and non-transparent formulation and implementation of technical regulations, the scope of products subject to mandatory certification, as well as labelling issues, are also significant.

2. In 1997, the WTO TBT Committee, in the triennial review of the Agreement, identified a number of problems which are far from being resolved. There are interests for many WTO Members in making real further improvements. The new round can provide the strong political commitment needed to make such substantive progress. It is an ideal opportunity to strengthen existing provisions, clarify a number of outstanding issues and expand the scope of certain provisions in the TBT Agreement.

Strengthening existing provisions

3. The TBT Agreement has only had a limited role in addressing the underlying cause of trade disputes. To date, regulatory issues have mainly been addressed from the view point of their potential to constitute disguised trade restrictions. Little has been done to tackle the negative trade effects of legitimate regulation, particularly at a multilateral level. The new round provides an opportunity to promote regulatory cooperation to a greater extent within the TBT Agreement and to include more explicit guidance on good regulatory practice, taking into account ongoing work in other fora. This guidance should promote deregulation, while encouraging manufacturers to use international standards as a means to demonstrate compliance with requirements. A more widespread exchange of information among regulators should also be promoted.

4. The standardization bodies of some Members have not accepted or complied with the Agreement's Code of Good Practice. More effective incentives are needed to promote the uptake of the Code.

5. WTO Members, especially developed ones, in conjunction with relevant international bodies, should provide greater technical assistance for capacity building to strengthen the ability of developing countries to upgrade their infrastructure so that they are better able to fulfil their obligations under the TBT Agreement and participate in the preparation of international standards.

Clarification of existing definitions and provisions

6. The promotion of international standards is a key issue in the TBT Agreement. WTO Members, as signatories to the Agreement, have made a commitment to use international standards in their technical regulations. However, there is a difference of understanding on this issue. To ensure consistency in the application of the Agreement, a number of provisions and definitions should be clarified. First of all, the status of international standards, and the linkage between the Agreement and international guides for conformity assessment, need to be strengthened. It is important to make a clear distinction between international and other standards. Incentives to take up international standards should be reinforced.

7. The role of international standardization bodies is crucial in facilitating trade. However, the TBT Agreement's Code of Good Practice relating to standards does not apply to international standardization bodies. Some form of principles, covering issues such as transparency, balance of interest, impartiality and accountability, could be drawn up for guidance to international standardization bodies. The respective roles of standardization bodies at different levels (regional, national, local, etc.) should be defined.

8. To ensure consistency in the application of the Agreement, a number of issues and terms should be clarified, including proportionality of measures and "less-trade-restrictive measures".

9. Health, consumer safety, and environmental issues also need to be addressed, in a manner that ensures an appropriate balance between the right to take action to achieve those objectives, and the obligation to avoid disproportionate restrictions.

Expansion of the scope of certain provisions of the Agreement

10. The number of players involved in conformity assessment procedures, be it at a global, regional or national level, is very large. There appears considerable potential for duplication of efforts, a failure to share information and the establishment of excessively complicated procedures. Greater coordination and cooperation appears a priority. In addition, there are significant differences in conformity assessment procedures among WTO Members. The international harmonization of conformity assessment procedures should be further promoted, including the harmonization of criteria for third party certification. Self-certification should be actively promoted as, in principle, the least trade restrictive conformity assessment procedure, provided that: (1) it takes sufficient account of health, consumer safety, and environmental issues; and (2) consideration is given to market surveillance and product liability issues. Accreditation procedures should also be harmonised where appropriate.

11. Labelling has become a trade policy issue in a number of different fields, such as textiles and food. The appreciation of the level of information, necessary for the consumer and imparted by the labelling for the product varies considerably from country to country. As a possible means to reduce suspicions and the risk of trade restrictive or subjective regulation, further consideration should be given to the development of multilateral guidelines on labelling.

12. As part of this undertaking and as referred to in the document "EC approach to trade and environment", consideration should be given to the establishment of clear and non-discriminatory

rules for the creation and administration of eco-labelling schemes based on a life-cycle approach, whilst safeguarding the integrity of this approach. This should enable environmental objectives to be met using market based, non-discriminatory and non-protectionist instruments.

13. Finally, the TBT Agreement should be further developed to include provisions on trade facilitation, as detailed in the document "EC Approach to Trade Facilitation".
