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Committee on Technical Barriers to Trade

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THEMATIC SESSION ON TRANSPARENCY

17 JUNE 2014

Moderator's Report

This Report was delivered by the Chairman¹ of the WTO TBT Committee at the meeting of 18-19 June 2014.

1. At the Sixth Triennial Review, the Committee agreed to hold a thematic session on *transparency* in response to specific decisions and recommendations contained in triennial review reports.² This second thematic session on *transparency* was held on 17 June 2014.³ The following topics were addressed: (i) functioning of enquiry points; (ii) transparency in standard-setting⁴; (iii) regional experiences; and, (iv) developments in online tools.⁵ The final programme is annexed to this summary report. The full presentations are available as Room Documents on WTO Documents Online (under "Documents for meetings").

2. The thematic session started with **Ukraine** sharing its positive experience in cooperation with other governments and NGOs. Ukraine described the challenges its Enquiry Point (EP) faced, as well as the efforts it made, to engage the private sector to make use of its TBT information gathering and dissemination capabilities. A turning point in overcoming such challenges was the launching of a project (still on-going) on increasing efficiency in the cooperation between the EP and the private sector. This project - undertaken as part of the institutional cooperation between Ukraine's Ministry of Trade and the Swedish National Board of Trade (NBT) - is being conducted by the EP in cooperation with the Swedish International Development Agency (SIDA) and the Institute for Economic Research and Policy Consulting (RI), a Ukrainian NGO. Ukraine stressed the importance of learning from NBT's many years of experience with TBT implementation and dialog with the private sector. Ukraine also highlighted RI's important contribution by facilitating both the communication between EP and domestic private sector (including Chambers of Commerce and Business Associations) as well as the dissemination of information in all regions of the country. For instance, RI helped make EP messages more "business-oriented" and co-authored with EP various periodical and ad hoc free-of-charge publications providing information on new TBT/SPS notifications, TBT/SPS proposed measures, and relevant topics in TBT/SPS Committee meetings. These publications already had a significant growing number of subscribers from the Ukrainian industry and NGOs communities. Ukraine concluded by saying that these joint efforts between the EP, the NBT and RI were already producing positive results, such as fostering a better informed, more interested and more active business sector. This, in turn, was resulting in more enquiries and

¹ Mr. Filipe Ramalheira (Portugal). This Report is provided on the Chairman's own responsibility.

² The latest decisions and recommendations on transparency are contained in Section 4 of G/TBT/1/Rev.11.

³ On 18 June 2013, as foreshadowed in the Sixth Triennial Review (G/TBT/32, paragraph 26(b)), the first thematic session on transparency was organized as the "Seventh Special Meeting on Procedures for Information Exchange". The Chairman Report on this special meeting is contained in G/TBT/GEN/151.

⁴ "Transparency in standard-setting" is the only of these transparency topics that was part of a previous thematic session (Thematic Session on Standards, held on 5 March 2013), the summary report of which is contained in G/TBT/GEN/144, para. 1.7.

⁵ On this same day, the WTO Secretariat also organized a lunch-time training session on the TBT Notification Submission System (TBT NSS).

comments to the EP from stakeholders on TBT issues, including on notifications and specific trade concerns (STCs).

3. We next heard from the representative of **Kenya** about its TBT National Consultative Committee (the "National Committee"), which reviewed and coordinated views about all issues pertaining to TBT in the country. Kenya explained that the National Committee met three times a year before each WTO TBT Committee meeting in Geneva and was chaired by Ministry of Foreign Affairs and International Trade with a Secretariat housed in the Kenya Bureau of Standards. The representative of Kenya said that the National Committee had a very wide membership, being composed of representatives both from the government (various ministries, state departments, regulatory authorities and attorney general) as well as the private sector (various consumer associations, business associations, NGOs and universities), and even an UN body, UNIDO. Kenya then gave an overview of the many areas of responsibility covered by the National Committee, which included: reviewing developments in, and notifications containing, domestic and foreign TBT measures that could constitute barriers to trade; coordinating common positions on notifications by other Members as well responses to enquires on Kenya's measures; reviewing developments in the TBT Committee and coordinating common positions regarding any discussions in the WTO involving TBT issues (including inputs for the Triennial Reviews); and reviewing technical assistance needs. Kenya concluded by describing the main challenges the National Committee was facing, which included: limited feedback from the business community on foreign notifications; inadequate policies and legislation to guide regulatory authorities in the country concerning notification procedures (although a draft legislation was being developed to address this problem); and lack of synergy between various regulatory authorities in the country, in particular the autonomous ones.

4. The **United States** made two presentations on the issue of engaging with the private sector. In the first presentation, the representative of the United States explained the mechanisms it used to monitor and provide comments on TBT notifications. The US Enquiry Point operated a customized email alert service (NotifyUS) which allowed US individuals, industries and organizations to subscribe to receive messages when new notifications were issued that corresponded to regions or products of their interest. The system had nearly 3,000 subscribers, and enabled them to obtain full text notifications, learn about deadlines for comments and to submit comments on notifications. A large portion of users of this service were trade and industry associations, law firms, and testing and calibration organizations. The US Enquiry Point's responsibilities included: providing guidance to industry on the preparation of comments; sending US comments to other Members; and accepting and circulating other Members' comments on US notifications to US government regulators and trade and export agencies. Specifically regarding the private sector, the US said that the industry frequently alerted the US government to new or changing technical regulations worldwide that were not notified, which triggered follow-up requests for information by the Enquiry Point. Moreover, industry helped determine what questions to ask of other Members regarding notifications.

5. In the second presentation, the representative of the **United States** explained how the US engages the private sector through the work of Advisory Committees. The US first gave an overview on the legal framework defining the role of, and harmonizing the approaches taken by, the roughly 1,000 Advisory Committees. The US emphasised that Advisory Committees were required to take a whole-of-government, multi-stakeholder approach, thus allowing all interested parties, including foreign stakeholders, to attend its meetings, appear before the committee and file statements. All documents produced by Advisory Committees (such as minutes and reports) were available to the public. The rationale behind this transparent and inclusive approach (not followed only in cases involving national security) was the objective to gather as much information and inputs as possible, including in particular from private stakeholders, so as to produce the best policy and regulatory outcome possible. The US considered that by allowing a meaningful engagement with the private sector this approach granted government authorities, society, and the global community key benefits such as: amassing knowledge and expertise thus driving down the information costs of developing regulations; implementing evidence-based and effective regulations; and "rooting out" unnecessary obstacles to trade before they become a topic of international concern.

6. Regarding the topic of transparency in standard-setting, the representative of **Egypt** gave an overview of the functioning, challenges and improvements of the Egyptian Organization for Standardization (EOS), which was responsible for standardization activities, products certification

for granting quality and Halal Mark, besides industrial calibration and products testing activities. EOS was both the TBT National Notification Authority and the TBT Enquiry Point, and also headed its inter-governmental, multi-stakeholder TBT National Sub-Committee. Egypt then explained the eight stages involved in the development of national standards, ranging from the collection of requests and feedback from stakeholders about the need for a new standard until its final publication and dissemination. Egypt explained that when EOS Board of Directors considered that a given standard addressing a health, safety or environmental concern could provide a solution for the problem, the Board could recommend the Ministry of Trade and Industry to enact and publish a Ministerial Decree making such standards mandatory (thus turning it into a technical regulation). Egypt also presented the following two examples of how transparency was important to improve the development of standards by taking into account concerns expressed by stakeholders: a proposed standard on chrome percentage in cement and a Ministerial Decree on the operating temperature limits in air conditioners. Finally, Egypt gave an overview on recent and future improvements in its standard-setting process. It indicated that an important recent improvement was the requirement to also publish amendments of original standards. With respect to future improvements, it indicated its intention to: publish its Standards Development Plan on the EOS website; establish a National Quality Council; and use Regulatory Impact Assessment as a technical regulation best practice.

7. With respect to regional experiences, we heard two presentations on the role of regional organizations in enhancing the implementation of the TBT Agreement's transparency provisions: one from Saudi Arabia and another from Peru.

8. The representative of the Kingdom of **Saudi Arabia** first provided an overview of the structure, functions, standard-setting processes and achievements of the Gulf Cooperation Council (GCC) Standardization Organization (GSO). The objectives of the GSO include maintaining safety, public health and consumer protection, promoting regional harmonization and facilitating intra-regional and international trade. Its members are the United Arab Emirates (UAE), Bahrain, Saudi Arabia, Oman, Qatar, Kuwait and Yemen, all of which are also Members of the WTO. To date, GSO had developed more than 12,000 technical regulations, standards and related conformity assessment procedures for adoption by its members. He pointed out that the current procedures for the notification of technical regulations elaborated by the GSO to the WTO were unnecessarily cumbersome, duplicative and complex as each member state submitted a separate notification for the same technical regulation, based on a draft prepared by the GSO, and forwarded any comments received back to the relevant GSO technical committee. If the GSO could operate as a notification authority and submit notifications related to regional technical regulations on behalf of its member states, this would facilitate the timely submission of relevant notifications, processing of comments, and completion of draft regulations. As a first step, the GSO had requested to become an Observer in the TBT Committee.

9. The representative of **Peru** first explained that the Andean Community was a supranational and sub-regional organization with Bolivia, Colombia, Ecuador and Peru as its members and then provided information on its legal basis, structure and transparency provisions related to technical regulations developed at the national or regional level. The presidency of the Andean Community and its various bodies rotated among its members on an annual basis and Peru held currently the Presidency. The "Andean Quality System" aimed to eliminate unnecessary technical barriers to trade and improve the quality of goods produced in the sub-region through its activities in the areas of standards, technical regulations, accreditation and metrology. Expert groups with representation from the member states prepared draft technical regulations of interest to the region. These were then notified to the WTO, on behalf of all members, by the member holding the Presidency of the Andean Community, through a multi-symbol notification document. The notifying Member also received comments from other WTO Members and forwarded these to the sub-regional expert group. Once comments had been reviewed and incorporated as appropriate, the final regulation was approved and notified to the WTO. All notifications submitted under the transparency obligations of the Andean Community and the WTO were tracked through an online information system called SIRT.⁶

10. With respect to the Developments in Online Tools, the WTO Secretariat announced that, further to discussions held at the Committee meeting of March 2014, the specific trade concerns (STC) section of the TBT IMS had been modified so as to allow referenced minutes and

⁶ <http://extranet.comunidadandina.org/sirt/public/index.aspx>

notifications to be opened directly from the relevant STC pages. Concerning online notifications, currently eighteen Members were using the TBT Notification Submission System (TBT NSS) and one-third of all notifications were being submitted through the system. Delegations interested in using the TBT NSS were invited to contact the Secretariat.⁷

11. The representative of the **European Union** recalled that they had made a submission regarding transparency in 2012 during the Sixth Triennial Review of the TBT Agreement, including suggestions for an online system for submission of TBT notifications. Following its participation in the test phase launched by the WTO, the EU had submitted 94 notifications through the TBT NSS and was overall very satisfied with the positive outcomes. Thanks to the new system, the WTO Secretariat was now able to issue notifications within two days of reception whereas this had previously taken one to two weeks. It was also possible to track the status of submitted notifications through the system's dashboard and create templates to ease the preparation of same type of notifications. The one drawback of the system for the EU was the necessity to copy and paste the content of the notifications prepared into the TBT NSS. The EU proposed that the system allow for uploading pdf documents directly to the system, a practice the EU was familiar with through other internal processes. The EU encouraged the use of the system by other Members and hoped that the short turnaround could be maintained even if more Members started using the system.

12. The representative of **Kenya** introduced the new NotifyKenya TBT website, which had been developed with support from the USAID to capture and store TBT notifications submitted to the WTO. The website allowed the public to view the latest notifications for which the comment period had not expired and undertake searches according to a variety of criteria. Interested users could also register by entering their personal details and selecting countries and categories of products they were interested in. This allowed them to receive alerts based on their preferences, submit comments on notifications and request full texts of regulations. Currently the data from notifications was fed manually to the system but Kenyan officials were working with the WTO Secretariat to link the WTO and Kenyan systems through the existing XML feed from the TBT IMS. At the same time, it was suggested by delegations that the WTO develop a similar centralized alert system, which would benefit all Members. Kenya had also started using the TBT NSS, which allowed for faster processing and the WTO Secretariat had been very helpful in providing clarifications and correcting errors when necessary.

13. Finally, a representative of the **WTO Secretariat's** Economic Research and Statistics Division demonstrated the upgraded functions of the Integrated Trade Intelligence Portal (I-TIP), which was a powerful analytical tool aimed at bringing together in one system all non-tariff measures notified to the WTO.⁸ The Secretariat noted that more than half of the 30,000 notifications currently contained in the system were in the TBT area. While this tool allowed for searches based on a variety of criteria, one drawback for companies and traders interested in TBT and SPS notifications was that in most cases it was not clear whether the notified measure had actually entered into force. It was proposed that the Committee consider addressing this issue. Also, it was very important to identify the HS Codes/ICS Codes in the notifications to facilitate product-specific searches. A specific TBT/SPS module was being planned to tailor the system to the needs of TBT/SPS users, for example regarding comment periods and further details of STCs.

14. On a **personal note**, I found the presentations to be very informative and helpful for sharing ideas and good practices, as well as challenges, regarding transparency. The comments and questions made during the discussion helped us dig deeper on this matter and I would encourage delegations to reflect further on effective means of implementing and benefitting from the transparency obligations of the TBT Agreement. I found the discussion on regional coordination on transparency particularly interesting and it may be a topic the Committee could consider during the upcoming triennial review. Also, while not new, different forms of "Alert" systems are growing and becoming more advanced, as examples by Kenya and the United States showed. I also note a suggestion from the floor (Canada) that the WTO could look into developing a centralized alert system for TBT notifications. Finally, I encourage Members to continue making use of the on-line TBT NSS.

⁷ una.flanagan@wto.org

⁸ http://www.wto.org/english/res_e/statis_e/itip_e.htm

ANNEX

PRESENTATIONS

The following presentations were made during the Thematic Session:¹

1 FUNCTIONING OF ENQUIRY POINTS

Members' experiences in encouraging the participation of the private sector in providing comments on draft regulations, and building support among interested stakeholders in the private sector for the services of the enquiry points²

Ukraine – Ukraine's experience: cooperation of governmental and non-governmental institutions (Ms. Oleksandra Onishchuk)

Kenya – The National Consultative process in Kenya (Ms. Lucy Ikonya)

United States – How the U.S. Enquiry Point interacts with the private sector on providing information about how to monitor and provide comments on measures notified through the WTO (Ms. MaryAnn Hogan, NIST)

United States – How U.S. regulators engage the private sector in the development of U.S. proposed regulations (Mr. Bryan O'Byrne)

2 TRANSPARENCY IN STANDARD-SETTING³

Members' experiences

Egypt – Procedures of the Egyptian Organization for Standardization and Quality (Mrs. Rehab Abdel Aziz Mohamed, EOS)

3 REGIONAL EXPERIENCES

The role of regional organizations in enhancing implementation of the TBT Agreement's transparency provisions

Kingdom of Saudi Arabia – Gulf Standards Organization (GSO) and TBT notifications (Dr. Sufyan Al Irhayim, GSO)

Peru – Andean Community and TBT notifications (Ms. Rocío Barreda Santos)

4 DEVELOPMENTS IN ONLINE TOOLS⁴

Members' experiences in the use of the TBT NSS and TBT IMS

European Union – EU experience with the use of the TBT NSS (Ms. Sigrid Brettel)

Kenya – The use of the TBT NSS in Kenya (Ms. Lucy Ikonya)

Searching the WTO Integrated Trade Intelligence Portal (I-TIP)⁵ for TBT-related information (notifications and STCs) (WTO Secretariat)

¹ The full programme of this Thematic Session was circulated in JOB/TBT/104/Rev.1 (11 June 2014).

² See: G/TBT/1/Rev.11, paragraph 4.5.2.1(c.ii), page 34.

³ See: G/TBT/1/Rev.11, paragraph 3.2(c.iii), page 16.

⁴ See: G/TBT/1/Rev.11, paragraph 4.4.4, page 32.

⁵ http://www.wto.org/english/res_e/statis_e/itip_e.htm.