



24 October 2017

(17-5774)

Page: 1/5

Committee on Technical Barriers to Trade

Original: English

OPERATION OF THE COMMITTEE – GOOD REGULATORY PRACTICE – TRANSPARENCY

EIGHTH TRIENNIAL REVIEW

Submission from South Africa

The following submission, dated 23 October 2017, is being circulated at the request of the delegation of South Africa.

On the occasion of the Eighth Triennial Review of the Operation and Implementation of the TBT Agreement in terms of Article 15.4 of the Agreement on Technical Barriers to Trade (TBT), South Africa has the honour to share with the Committee on Technical Barriers to Trade the following matters for its consideration, recommendation and possible decision.

1 OPERATION OF THE COMMITTEE

The Implementation and Administration of the TBT Agreement is one of the most important agenda items of regular TBT Committee meetings. The sub-agenda items *Specific Trade Concerns* (STCs) and *Exchange of Experiences*, respectively, remain a crucial part of the substantive work of the Committee. These two sub-agenda items provide to Members the opportunity to fully adhere to the provision in Article 13.1 of the Agreement, namely, to consult on any matters relating to the operation of the Agreement or the furtherance of its objectives, and to carry out the responsibilities that Members have assigned to it under the Agreement.

1.1 Specific Trade Concerns

1.1. South Africa fully recognizes, endorses and fully supports the function of the TBT Committee as provided for in Article 13.1 of the TBT Agreement.

1.2. Since the TBT Committee's first meeting, a substantial number of Members have used the Committee as a forum to discuss STCs. related to draft or already adopted technical regulations, standards or conformity assessment procedures of other Members that are deemed to be creating a technical barrier to trade.

1.3. The raising of STCs is an essential part of the regular TBT Committee work to which substantial time is allocated at each formal TBT Committee meeting. The 528 STCs¹ already raised in the TBT Committee meetings provided Members not only with information about the measures and justification thereof, but also serve as an important educational function, particularly in terms of i) providing information regarding the provisions contained in measures which may cause STCs and, ii) thereby contributing to the removal of possible TBTs, which may otherwise have been duplicated in similar measures of other Members.

¹ <http://tbttims.wto.org/>

1.4. Therefore, the importance of the STC agenda item of the TBT Committee meetings is evident in the only 53 formal requests for dispute settlement consultations² that had cited TBT Agreement provisions, out of the 529 requests for consultation in terms of Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes since 1995.

1.5. However, some STCs have remained on the annotated agenda of several TBT Committee meetings and have been repeatedly raised at subsequent meetings. Although every Member has a right to use the Committee meetings to raise STCs, these repeated STCs are sometimes time consuming and to a certain extent, limit the efficiency of Committee meetings.

1.6. Noting that the Committee, during the fifth triennial review, emphasized "the importance of making the discussion more efficient in order to secure a prompter response to concerns raised; there is a need to streamline the organization of the Committee's discussion"³. Therefore, South Africa would like to propose the following:

1.1.1 Proposal

1.7. Without prejudice to the rights and obligations of Members in terms of the TBT Agreement, or any other WTO Agreement, Members should be encouraged to only repeat the same STC a maximum of two [2] times in the following TBT Committee meetings after it has been raised for the first time. Thereafter, the Member raising the STC raised in the previous TBT Committee meetings, should only bring to the TBT Committee's attention any new information pertaining the same STC or where there were no new developments, only indicate to the Committee that the same issues and concerns raised still pertain by referring to the minutes of the previous Committee meetings where the specific STC has been raised.

1.8. In the cases, where other Members share the STC, they could bring to the Committee's attention any new information not previously mentioned, or only indicate to the Committee that they are still sharing the STC brought to the Committee's attention, without repeating again in detail the same information the Committee was already informed of.

1.2 Time to prepare ahead of Committee meetings

1.9. The TBT Committee agreed at its fifth triennial review that Members wishing to include an STC in the annotated draft agenda of the TBT Committee meeting, should directly inform both the Secretariat and the Member(s) involved of their intention to do so no less than fourteen calendar days prior to the convening of the TBT Committee meeting and that the Secretariat should circulate the annotated agenda as early as possible but no less than ten calendar days before the meeting⁴.

1.10. However, taking into account the processes and procedures that need to be followed by some delegations to inform the government, applicable regulator, standards body or conformity assessment body of the STC and to obtain an appropriate response from the government, regulator, standards body or conformity assessment body, the time frames recommended in the fifth triennial review⁵ may be too short under certain circumstances. It has also happened in some of the past meetings of the Committee that some delegations had indicated that the matter had been referred to their capitals and that they would only be able to provide a response at the next meeting of the Committee. In this regard, South Africa wishes to propose the following:

1.2.1 Proposal

1.11. As the time frames to inform both the Secretariat and the Member involved of the intention of a Member to raise an STC and the circulation of the agenda, may be too short and impractical for certain Members, South Africa proposes that the calendar days should be changed to at least twenty (20) WTO working days to inform the Secretariat and the Member involved of the STC prior to the meeting and that the Secretariat should circulate the annotated agenda no less than fifteen (15) WTO working days prior to the meeting.

² https://www.wto.org/english/tratop_e/dispu_e/dispu_agreements_index_e.htm

³ G/TBT/26, 13 November 2009, para. 67.

⁴ G/TBT/26, 13 November 2009, para. 68.

⁵ G/TBT/26, 13 November 2009, para. 68.

1.12. In cases where a Member is in a position to do so, the Member raising the STC should inform the respondent Member of its intention to raise an STC prior to the time frame recommended by the Committee to enable all Members, but especially developing country and Least Developed Country Members where applicable, to consult and solicit a response from the responsible regulator and/or conformity assessment body to respond to the STC raised as effectively as possible.

1.3 Sharing of experiences

1.13. The sharing of experiences is another important item on the agenda of TBT Committee meetings. The sharing of information on the implementation, administration and operation of the TBT Agreement provides valuable lessons that could be learned by bringing to Members' attention best practices and the challenges experienced, as well as the cooperation between Members to facilitate trade, in removing technical barriers, while at the same time addressing the necessary risks that emanate from some shortcomings in good regulatory practices.

1.14. Hence the Committee recommendation at the sixth⁶ and seventh⁷ triennial reviews of the Agreement to hold thematic sessions has further built on the valuable experiences gained. The Thematic sessions provide valuable opportunities for information sharing and capacity building through this exposure. However, in the past, the proposals for speakers and topics have been slightly unbalanced and generally dominated by some developed and developing Members, which did not represent the whole WTO Membership. Members from all development levels and regions of the world should be encouraged to share their experiences whether good or challenging.

1.3.1 Proposal

1.15. With a view to further deepen the Committee's exchange of experiences on specific topics, it is proposed that the Committee continues to hold thematic discussions as appropriate pursuant to the decisions and recommendations before the Committee.

1.16. Although contributions from all Members to the thematic discussions are always welcome, a more balanced discussion is proposed that includes the sharing of good experiences and the sharing of challenges experienced, as well as representation from all regions in the world that include developed, developing and least developed Members. Members from all regions and development levels should be encouraged to contribute to the thematic sessions.

1.17. The volunteering of specific topics and speakers for thematic sessions should be maintained and also encouraged, but in order to ensure balanced representation and a wide perspective on the topics decided for discussion at thematic sessions; Members should have the confidence to approach other Members that have experience on a specific topic to share their experiences with the Committee. The Secretariat may also approach regional organizations which have ad hoc TBT Committee observer status or other observers and persons with specific expertise, to address the Committee on specific topics proposed for thematic sessions.

1.4 Decisions of the Committee on Observer status requests

1.18. The TBT Committee has already granted twelve (12) International Intergovernmental Organizations with observer status and twelve (12) with ad hoc observer status, while the applications for observer status of five (5) Organizations are still pending⁸ namely, the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Convention on Biological Diversity (CBD), the Gulf Organization for Industrial Consulting (GOIC), the International Accreditation Forum (IAF) and International Laboratory Accreditation Cooperation (ILAC) and the Office International de la Vigne et du Vin (OIV).

⁶ G/TBT/32, 29 November 2012, para. 26.

⁷ G/TBT/37, 3 December 2015, para. 8.3.

⁸ G/TBT/GEN/2/Rev.12, 22 August 2016.

1.19. One of the applications for TBT Committee observer status dates back to 1998, while another dates back to 2000⁹.

1.20. The inability of the Committee to decide on observer status requests of some Organizations, while others were granted observer status soon after a request had been submitted to the Committee for decision, shows an inconsistent approach to the consideration of observer status requests.

1.21. Bearing in mind the Rules of Procedure for the Meetings of the WTO Committee on Technical Barriers to Trade and Guidelines for Observer Status for Governments and International Intergovernmental Organizations and Article V of the Agreement Establishing the WTO; South Africa is proposing that the Committee proceeds as follows on observer status decisions:

1.4.1 Proposal

1.22. The Secretariat informs the TBT Committee Members of a request for observer status, within ten (10) working days after such a request has been received through the circulation of an official WTO TBT Committee document. The Secretariat reminds Members of the request at the next formal TBT Committee meeting immediately after the receipt of such a request under agenda item "Updating by Observers".

1.23. Sufficient time should be allowed for Members to consult on the observer status request, but that time should be limited to the time between the meeting where Members were first made aware of the request and the following formal meeting of the Committee. At the latter formal meeting, Members should decide on the basis of consensus whether observer status should be granted to the applying organization, or where reservations exist, the Members with reservations inform the Committee thereof.

1.24. Requests for observer status should not remain pending. Where Members have expressed reservations about an organizations' observer status, the Secretariat should inform the organization that Members expressed reservations and that observer status, could therefore, not be granted.

2 GOOD REGULATORY PRACTICE: DOMESTIC TBT COMMITTEE'S EFFECTIVE SET UP AND FUNCTIONING

2.1. At the fourth triennial review of the TBT Agreement in 2006, the Committee agreed, with a view to deepening understanding of the contribution good regulatory practice can make to the implementation of the TBT Agreement, to share experiences on, amongst others, the establishment of domestic administrative mechanisms to facilitate cooperation and coordination between competent authorities and co-ordination with other stakeholders¹⁰.

2.2. Many Members have set up domestic TBT Committees to assist with the effective implementation and operation of the TBT Agreement.

2.3. However, there are still some Members whom have not yet established domestic TBT Committees and some who experience difficulties to get their Committees operate satisfactorily.

2.4. Therefore, South Africa proposes as follows:

2.1 Proposal

2.5. The Committee holds another thematic session with the specific focus of sharing of experiences on:

- a. Role players who should be involved in a domestic TBT Committee;
- b. The terms of reference of a domestic TBT committee;

⁹ RD/TBT/1/Rev.4, 1 November 2016.

¹⁰ G/TBT/19, 14 November 2006, para 19.

- c. The functions of a domestic TBT Committee; and,
- d. The establishment and functions of regional TBT Committees in facilitating cooperation and harmonization of technical regulations and conformity assessment procedures.

3 TRANSPARENCY: ENQUIRY POINT INTEGRATION WITH EPING ALERT

3.1. At the seventh triennial review of the TBT Agreement, the Committee agreed "to request the Secretariat to explore the development of an export alert system for TBT notifications, in cooperation with other organizations¹¹".

3.2. As a result, the WTO, in cooperation with the United Nations Department of Economic and Social Affairs (DESA) and the International Trade Centre (ITC) established a notification alert system, "ePing alert", which was launched on 8 November 2016 at the commencement of the eighth Special Meeting on Procedures for Information Exchange.

3.3. The ePing alert is an indispensable online tool, which provides to all Members, observers, and the public access to WTO members' TBT and SPS notifications to the WTO of proposed new measures being developed for their required pursued regulatory objectives. It also facilitates public awareness and the identification of potential technical barriers in draft measures at an early stage, thereby facilitating the removal of potential technical barriers in draft measures, before its adoption.

3.4. Recalling that the Committee agreed in 1995 that "Regular meetings of persons responsible for information exchange, including persons responsible for enquiry points and notifications, will be held on a biennial basis"¹², South Africa proposes the following, for the ninth Special Meeting on Procedures for Information Exchange:

3.1 Proposal

3.5. At the ninth Special Meeting on Procedures for Information Exchange, Members are invited to share their experiences with their TBT Enquiry Point integration with, and usage of the notification alert system, "ePing alert" and the linkage of their domestic "early warning systems" with "ePing Alert".

¹¹ G/TBT/37, December 2015, para 5.12(d)(iii)

¹² G/TBT/1/Rev.13, 8 March 2017, item 5.8.1, page 42