



## CONFORMITY ASSESSMENT PROCEDURES - OPERATION OF THE COMMITTEE

### EIGHTH TRIENNIAL REVIEW

#### *Submission from Brazil*

The following communication, dated 5 June 2018, is being circulated at the request of the delegation of Brazil.

---

On the occasion of the Eighth Triennial Review of the operation and implementation of the Agreement on Technical Barriers to Trade (TBT), under its Article 15.4<sup>1</sup>, Brazil presents to the Committee on Technical Barriers to Trade the following matter for its consideration, recommendation and possible adoption.

### 1 CONFORMITY ASSESSMENT PROCEDURES

1.1. The TBT Agreement recognizes the importance of the acceptance of results of conformity assessment procedures in its article 6.1, which provides that Members "shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures".

1.2. With a view to enhancing the implementation of this provision, during the Second Triennial Review, Members have agreed on an indicative list of approaches<sup>2</sup> to facilitate the acceptance of results of conformity assessment procedures, which encompasses: (1) mutual recognition agreements (MRAs) for conformity assessment to specific regulations; (2) cooperative (voluntary) arrangements between domestic and foreign conformity assessment bodies; (3) the use of accreditation to qualify conformity assessment bodies; (4) government designation; (5) unilateral recognition of results of foreign conformity assessment; and (6) manufacturer's/supplier's declarations (SDoC).

1.3. However even if one Member uses one or more of the approaches suggested, other Members may not accept CA results, especially when third party CA is concerned. To address this challenge, bilateral and regional agreements with TBT chapters have increasingly included provisions to facilitate the recognition of conformity assessment results. Enhancing transparency, with provisions such as explaining the reasons why one of the Parties have not accepted the other

---

<sup>1</sup> Article 15.4 - Not later than the end of the third year from the date of entry into force of the WTO Agreement and at the end of each three-year period thereafter, the Committee shall review the operation and implementation of this Agreement, including the provisions relating to transparency, with a view to recommending an adjustment of the rights and obligations of this Agreement where necessary to ensure mutual economic advantage and balance of rights and obligations, without prejudice to the provisions of Article 12. Having regard, inter alia, to the experience gained in the implementation of the Agreement, the Committee shall, where appropriate, submit proposals for amendments to the text of this Agreement to the Council for Trade in Goods.

<sup>2</sup> G/TBT/9, Annex 5

---

party's results, or building trust and confidence among accreditation bodies, through the adherence to multilateral recognition agreements to qualify conformity assessment bodies such as ILAC (International Laboratory Accreditation Cooperation) and IAF (International Accreditation Forum), are among the provisions that can be found in those chapters.

1.4. In this context, Brazil believes that further discussion at the multilateral level on the practical implementation of the approaches to facilitate the recognition of CA results and certificates is highly desirable and would be of great value to developing and less developed countries. A new exchange of ideas would allow an updated overview of the practices and successful initiatives in this field.

### **1.1 Proposal**

1.5. In light of the above, Brazil encourages Members to resume debate on the Indicative List of Approaches G/TBT/9, Annex 5, with a view to update the state of affairs and actual use of the quoted instruments, either bilaterally or in regional trade agreements.

1.6. Brazil proposes that thematic sessions should be held with a view to discussing practical examples of how acceptance of conformity assessment results and certificates has been accomplished among Members, especially in cases of third party CA.

## **2 OPERATION OF THE COMMITTEE**

2.1. The 22<sup>nd</sup> Annual Review of the Implementation and Operation of the TBT Agreement<sup>3</sup> indicated a steady growth in the number of STCs raised in the TBT Committee over the years. The Review also showed, however, that such increase is mostly due to previously raised STCs, as opposed to newly raised ones. In 2016, for example, out of a total of 173 STCs raised, 142 (or 82%) were previously raised STCs, and 31 (18%) were newly raised STCs.

2.2. By contrast, among SPS measures<sup>4</sup>, in 2016, out of a total of 37 STCs, 24 (or 65%) were previously raised STCs, and 13 (or 35%) were newly raised STCs. Article 12.2 of the SPS Agreement specifically mandates the SPS Committee to "encourage and facilitate ad hoc consultations and negotiation on specific sanitary and phytosanitary issues". On the basis of that provision, in 2014, the SPS Committee decided to create a detailed procedure that provides for predictability with respect to the functioning of such consultations.<sup>5</sup>

2.3. The participation of Members in that procedure is voluntary (art.1.1). It provides that any Member may at any time request consultations with another Member regarding any SPS measures (art.1.3). It also provides for specific rules on the request for consultations and on responses to such requests, including the applicable timelines (arts. 2.1 to 2.7). Also importantly, according to the agreed procedure, a Facilitator – who will most of the times be the Chairperson of the Committee, but may be anyone else as agreed by the Members – will help the involved Members to reach a mutually satisfactory solution (arts 2.8 to 2.15).

2.4. While the TBT Agreement does not specifically refer to ad hoc consultations, its Article 13.1 refers to the "purpose of affording Members the opportunity of consulting on any matters" and Article 13.2 allows the Committee to "establish working parties or other bodies as may be appropriate". Therefore, it appears the TBT Committee can create a procedure equivalent to the one existent in the SPS Committee.

2.5. During the 4<sup>th</sup> Triennial Review of the TBT Committee, Costa Rica submitted a similar proposal relating to ad hoc consultations<sup>6</sup>. As Costa Rica then explained, that would be an "expeditious procedure able to secure more of a response from countries that have established regulations that affect trade". Comments in response from other Members were generally in favor of the proposal, but pointed out the need to define more precisely how the proposed mechanism would function.

---

<sup>3</sup> Document G/TBT/39/Rev.1

<sup>4</sup> See Document G/SPS/GEN/204/Rev.17

<sup>5</sup> See Document G/SPS/61

<sup>6</sup> Document G/TBT/W/266

2.6. In Brazil's view, the detailed procedure established by the SPS Committee, as summarized above, is a good example of a mechanism that would be helpful to resolve STCs relating to TBT measures. While the detailed procedure itself appears not to have been used since its creation in 2014, on several occasions, Members have referred to the possibility of initiating consultations within the ad hoc procedure if the regular forum within the Committee meetings proved insufficient.

2.7. Given that the number of STCs relating to TBT measures has been much higher than those relating to SPS measures in the past years, an additional mechanism to encourage satisfactory and effectively resolution of trade concerns could prove to be important at this stage.

## **2.1 Proposal**

2.8. Brazil would like to encourage Members to consider creating a detailed voluntary procedure for ad hoc consultation, which could be mirror or adapted from the procedure that has been adopted for consultations in the SPS Committee (document G/SPS/61).

2.9. Brazil suggests that the new voluntary procedure should include, among others: the possibility of requesting ad hoc consultations at any time; the role of the Facilitator, who could be the Chairman of the Committee or another person as agreed by the Members involved; rules on whether, and when, the content of consultation requests and responses, as well as Facilitator reports, should be shared with the Committee; and rules to ensure that, where the content of consultations is not disclosed, the Committee and other Members will at least be informed of the fact that ad hoc consultations have been requested, accepted or justifiably not accepted, answered and/or completed as per the procedure.

---