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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**On the functioning of the notification procedure under the WTO Agreement on  
Technical Barriers to Trade (TBT Agreement)**

{SWD(2012) 189 final}

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**1. INTRODUCTION**

The **Agreement on Technical Barriers to Trade (the TBT Agreement<sup>1</sup>)** is one of the 13 multilateral agreements on trade in goods negotiated during the Uruguay Round. It entered into force in 1995 with the establishment of the World Trade Organisation (WTO). It obliges all WTO Members to **notify technical regulations and conformity assessment procedures for goods at a draft stage** to the World Trade Organisation and gives the other WTO Members the possibility to comment on them.

- The procedure is a concrete way of helping **EU businesses, including Small and Medium-sized Enterprises (SMEs), to improve their access to third countries' markets** because:
- It allows unnecessary technical obstacles to international trade to be detected and removed at source.
- It helps EU and Member State legislators and EU economic operators to get acquainted with new technical regulations and conformity assessment procedures of other WTO Members.
- It enables the EU to promote its regulatory approach and have an input into other WTO Members' regulations during the dialogue, which takes place before new regulations are adopted.
- It contributes to the convergence of rules and standards at international level.

The TBT notification procedure is therefore an important element of the EU's trade and industrial policy<sup>2</sup> and contributes to the objectives to be achieved through the Europe 2020 strategy<sup>3</sup>, **in particular to smart, sustainable and inclusive growth**.

The **first objective** of this report is to draw the attention of the European institutions and advisory bodies and of EU economic operators, including SMEs, to the opportunities the TBT notification procedure offers. Its **second objective** is to present the latest trends of this

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<sup>1</sup> [http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=library.viewLibrary&section\\_id=1&dspLang=en](http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=library.viewLibrary&section_id=1&dspLang=en)

<sup>2</sup> European Commission Communication *Trade, Growth and World Affairs — Trade Policy as a Core Component of the EU's 2020 Strategy* — COM(2010) 612 final; European Commission Communication *An Integrated Industrial Policy for the Globalisation Era: Putting Competitiveness and Sustainability at Centre Stage* — COM(2010) 614 final.

<sup>3</sup> European Commission Communication *Europe 2020: A strategy for smart, sustainable and inclusive growth* — COM(2010) 2020 final.

instrument by compiling an overview of the development of the procedure in recent years. **Thirdly**, the Commission seizes the opportunity this report gives to recommend concrete action to bring about further improvements. To take advantage of the notification procedure for regulations of other WTO Members, it is crucial that the EU itself not only respects the obligations laid down in the TBT Agreement, but also actively contributes to improving the effectiveness of the procedure. It is important that the European Parliament, the Council and the Member States are aware of how the TBT notification procedure functions and cooperate with the Commission to achieve the objectives of compliance and enhanced transparency.

## 2. PRESENTATION OF THE TBT NOTIFICATION PROCEDURE

### 2.1. Obligations under the TBT Agreement

The TBT Agreement aims to make international trade easier, while recognising the right of WTO Members to adopt national technical regulations and conformity assessment procedures which could result in technical barriers to trade (due to adjustment costs as a result of divergent rules, information costs etc.). To ensure that such measures do not create discriminatory or unnecessary barriers to trade, the TBT Agreement contains a number of substantive and procedural conditions which WTO Members must observe when devising technical regulations and conformity assessment procedures.

These substantive and procedural conditions apply to all technical regulations and conformity assessment procedures related to trade in goods, whether industrial or agricultural. Unlike standards, which are of a voluntary nature, technical regulations lay down mandatory product characteristics and their related processes and production methods<sup>4</sup>. Conformity assessment procedures are used to determine whether the products meet these mandatory requirements.

#### 2.1.1. *The substantive conditions: non-discrimination, avoidance of unnecessary barriers to trade, use of relevant international standards*

A measure that falls within the scope of the TBT Agreement must comply with the **non-discrimination principle**. The non-discrimination principle, the keystone of WTO law, is embodied in the General Agreement on Tariffs and Trade (GATT). It prohibits discrimination between imported and domestically produced goods (principle of national treatment, Article III of GATT) and amongst imported goods (most-favoured-nation principle, Article I of GATT). In the same vein, Article 2.1 of the TBT Agreement requires WTO Members to grant products originating from any other Member treatment that is no less favourable than that accorded to like products of national origin and to like products originating in any other country.

Moreover, technical regulations are authorised only when they are **necessary to achieve a legitimate objective**. Similarly, conformity assessment procedures must not be more strict, or be applied more strictly, than necessary to give the importing WTO Member adequate confidence that products conform with relevant requirements. A non-exhaustive list of legitimate objectives can be found in Article 2.2 of the TBT Agreement, which includes the prevention of deceptive practices, the protection of human health or safety, and the environment. Between 2008 and 2011, the protection of human health and safety was

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<sup>4</sup> The rules laid down in the TBT Agreement for standards will not be discussed in this report.

indicated as the legitimate objective pursued for roughly half of the TBT notifications<sup>5</sup>. Moreover, this "necessity" requirement means that a balance must be struck between the legitimate objective pursued and the risk of non-fulfilment, in order to choose the approach which involves the least restriction on trade but is equally effective. To this end, the national legislator can draw on the TBT Agreement, which suggests a number of approaches that facilitate trade, such as the use of performance-based technical regulations, and the recognition of the equivalence of technical regulations of other WTO Members and foreign conformity assessment results<sup>6</sup>.

**Relevant international standards** must also be used when devising technical regulations or conformity assessment procedures. Several provisions of the TBT Agreement promote the use of international standards as a way of fostering the harmonisation of technical rules. In particular, Article 2.4 states that, where relevant international standards exist, WTO Members 'shall use them ... as a basis for their technical regulations', except when such international standards would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued. A domestic technical regulation could, for example, go beyond what is required by the relevant international standard to achieve the regulatory objectives of a WTO Member related to climate change or to address its citizens' legitimate expectations in terms of an adequate level of protection. Similar principles are laid down in Article 5.4 for conformity assessment procedures.

#### *2.1.2. The formal condition: notification of draft legislation*

Pursuant to Articles 2.9 and 5.6 of the TBT Agreement, WTO Members are required to **notify technical regulations and conformity assessment procedures** when the following two conditions are fulfilled: first, there is no relevant international standard or the draft measure is not 'in accordance' with the existing relevant international standard, and second, the proposed measure may have a significant effect on the trade of other Members. The concept of a significant effect on the trade of other Members includes both import-enhancing and import-reducing effects on the trade of other Members, as long as these are significant<sup>7</sup>.

Notifications shall take place **at an early appropriate stage, when amendments can still be introduced and comments taken into account**<sup>8</sup>. The notifying Member shall allow reasonable time for other Members to make comments in writing. WTO Members have agreed in the TBT Committee that a 60 – 90 day period is considered a reasonable time. Developed countries are encouraged to allow more than 60 days for comments<sup>9</sup>. The comments shall be discussed on request and taken into account. This means that other WTO Members can be kept informed of the development of new or modified product requirements. The notifications the WTO Secretariat receives are publicly available<sup>10</sup>, so that economic operators also have the possibility to be alerted and to get acquainted with the new requirements.

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<sup>5</sup> The notifying authorities must indicate the objective and rationale of the measure under point 7 of the notification form accompanying the draft technical regulation or conformity assessment procedure.

<sup>6</sup> See Articles 2.8, 2.7 and 6.3 of the TBT Agreement.

<sup>7</sup> Recommendation of the TBT Committee: WTO document G/TBT/1/Rev.10, pt.7.

<sup>8</sup> Articles 2.9.2 and 5.6.2 of the TBT Agreement.

<sup>9</sup> Recommendation of the TBT Committee: WTO document G/TBT/1/Rev.10, pt.7.

<sup>10</sup> See European Commission TBT database: <http://ec.europa.eu/enterprise/tbt/> or the WTO TBT Information Management System: <http://tbtims.wto.org>.

WTO Members have the **right to comment** in writing on proposed technical regulations or conformity assessment procedures. In principle, comments should refer to the fact that the proposed regulations do not comply with the TBT Agreement. The comments should lead to a dialogue with the notifying WTO Member. The right to comment formally under this procedure is limited to WTO Members and is not accorded to interested parties, such as economic operators. Concerns of economic operators therefore need to be transmitted by a WTO Member. It is up to every WTO Member to organise how the concerns of its own economic operators are heard and taken into account.

## **2.2. The EU's internal organisation with regard to the notification procedure**

Various parties must participate and cooperate with each other for the notification procedure to function properly and be useful and efficient. In the EU, the participation of the European institutions, the Member States and economic operators is of the utmost importance. A TBT website set up by the EU helps to coordinate the participation of all those involved.

### *2.2.1. The European Commission*

The TBT Agreement requires each WTO Member to set up a notification authority to ensure the implementation of the provisions concerning notification procedures, and to ensure that an enquiry point exists<sup>11</sup>. The enquiry point must answer all reasonable enquiries from other Members and interested parties on technical regulations adopted or proposed or conformity assessment procedures and is also in charge of handling comments received from other WTO Members on notifications<sup>12</sup>. In the EU, these obligations are fulfilled by one unit of the European Commission in the Directorate-General for Enterprise and Industry,<sup>13</sup> which has been designated as the **EU TBT Notification and Enquiry Point**.

The role of the EU TBT Notification and Enquiry Point is twofold. It ensures that EU legislation, to be adopted either by the European Parliament and the Council or by the European Commission as an implementing measure, is notified at a draft stage to the WTO. It is also responsible for distributing other WTO Members' notifications to all interested parties and ensures that comments are sent to the notifying WTO Member on the EU's behalf when it appears that the measure in question could create market access problems for EU exporters. To be able to issue comments on a notification of another WTO Member, the EU TBT Notification and Enquiry Point seeks contributions from all interested parties, i.e. sectoral units of the European Commission, units of the Directorate-General for Trade, EU delegations in third countries, Member States and businesses in the EU. When editing comments from the EU on notifications of other WTO Members, the EU TBT Notification and Enquiry Point ensures they are consistent with all the EU's policies.

### *2.2.2. EU co-legislators: Parliament and Council*

The European Parliament and the Council also play an important role as they adopt legislation containing technical regulations and conformity assessment procedures that has to comply with the TBT Agreement. Given that the Agreement requires notification at a draft stage, the EU TBT Notification and Enquiry Point notifies the other WTO Members of EU legislation laying down product requirements that fall within the scope of the TBT Agreement, once the

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<sup>11</sup> Article 10 of the TBT Agreement.

<sup>12</sup> Recommendation of the TBT Committee: WTO document G/TBT/1/Rev.10, pt.7.

<sup>13</sup> Unit ENTR/C/3 'Notification of technical regulations'.

Commission has adopted its proposal for a Regulation, Directive or Decision of the European Parliament and the Council. The Commission analyses comments from other WTO Members and takes them into account in the legislative procedure.

Both Council and Parliament, when drafting and adopting amendments to a Commission proposal, must take its impact on international trade into account. Other WTO Members carefully follow the legislative discussions and often comment in writing or in TBT Committee meetings (which take place three times a year in the WTO in Geneva) on the compatibility of proposed amendments with the TBT Agreement.

### 2.2.3. *Member States*

Besides the EU TBT Notification and Enquiry Point, all 27 Member States have their own TBT notification authorities and enquiry points. Member States are responsible for assessing whether their proposed national technical regulations and conformity assessment procedures would have a significant impact on trade and, if they would, for notifying them directly to the WTO. Replies to comments from other WTO Members are, however, given by the EU TBT Notification and Enquiry Point (after coordination with the Member State concerned) on behalf of the EU, since these replies are considered part of the common commercial policy, which is an exclusive EU competence<sup>14</sup>. Coordination between Member States and the European Commission is ensured through the internal EU notification procedure laid down in Directive 98/34/EC<sup>15</sup> and the Commission services meet every year with the representatives concerned from Member States to enhance such coordination.

Member States also need to inform their public authorities and national economic operators of the obligations and opportunities related to the TBT notification procedure. The Commission regularly receives comments on other WTO Members' notifications from Member States. Some Member States have established efficient national mechanisms to get feedback directly from national industry, including smaller business federations or individual companies. The Commission uses this feedback to fight against potential technical barriers to trade.

### 2.2.4. *Economic operators*

**EU industry comments** on other WTO Members' notifications **are of great importance to prevent the emergence of unnecessary obstacles to international trade**. Several European industry federations located in Brussels are well aware of the means offered by the TBT Agreement and regularly send comments to Commission departments<sup>16</sup>. Some also contribute via the Market Access Advisory Committee that has been set up in the context of the European Commission's Market Access Strategy<sup>17</sup>. Other European economic operators send their comments to the EU delegation in the notifying WTO Member.

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<sup>14</sup> Article 207 of the Treaty on the Functioning of the European Union.

<sup>15</sup> Directive 98/34/EC of the European Parliament and the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ L 204, 21.7.1998, p. 37.

<sup>16</sup> To raise awareness among economic operators, the Commission organised a large-scale conference on 29 March 2007 in Brussels. 150 people attended the conference. For more information see: [http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=library.viewLibrary&section\\_id=175&dspLang=en](http://ec.europa.eu/enterprise/tbt/index.cfm?fuseaction=library.viewLibrary&section_id=175&dspLang=en).

<sup>17</sup> European Commission Communication *Global Europe: A stronger partnership to deliver market access for European exporters* — COM(2007) 183 final.

The Commission coordinates matters internally to ensure that all comments reach the TBT Notification and Enquiry Point, which drafts official EU comments. Given the often relatively short comment period of 60 – 90 days, it is important that EU economic operators communicate their concerns as soon as possible and before the final deadline set by the notifying WTO Member<sup>18</sup>.

#### 2.2.5. *The EU TBT website*

In order to provide direct access to notifications and facilitate coordination amongst all involved, the EU TBT Notification and Enquiry Point set up its own public **TBT website**<sup>19</sup> in 2004. This website gives public access to the **TBT database**, which contains all notification forms, draft texts and comments the European Commission sent and received.

The website provides an overview of each TBT notification: the notified documents, any translations available, and the comments the European Commission sent and received are displayed on a single webpage for each notification. The display of all documents guarantees the full transparency of the EU's action under the TBT Agreement. In addition, economic operators and other interested parties can subscribe to an **alert system of new notifications** and consult a **monthly review** of the EU TBT Enquiry Notification and Enquiry Point's activity.

The number of subscribers to the alert system shows that the use of the EU TBT website has been increasing since 2004. In 2011, 529 private or public entities were registered in the alert system (compared to 182 in 2005), and 15 000 searches were performed in the database. One third of subscribers are from third countries. The EU TBT Enquiry Point presented its database on several occasions to the TBT Committee and has been approached by other WTO Members who want to develop their own websites.

### 3. THE EU'S RESPONSE TO THE LATEST DEVELOPMENTS

#### 3.1. Adapting to an increasing number of TBT notifications

The EU has always been proactive in monitoring third countries' measures and is managing to cope with the increasing number of TBT notifications. The number of TBT notifications has been growing exponentially. Whereas fewer than 400 draft texts were notified in 1995, the year the TBT Agreement entered into force, this number has more than tripled since that time, reaching 1216 in 2011<sup>20</sup>. In total, over the last 16 years, WTO Members have notified almost 15 000 texts. There was a huge increase in the number of notifications between 2004 and 2009: it only slightly increased over the first ten years of the TBT notification procedure (from less than 400 in 1995 to 638 in 2004) before going, within six years, from 638 to almost 1500 (see graph under point 1 of the Commission staff working document SWD(2012) 189).

The first reason for this increase is the change in the number of WTO Members, from 128 in the beginning to 153 in 2011. There are some major players among the newcomers, such as China, who joined in 2001, Saudi Arabia (2005), Vietnam (2007) and Ukraine (2008). The

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<sup>18</sup> Ideally, the Commission should receive comments 3 weeks before the final deadline set by the notifying WTO member in the notification form.

<sup>19</sup> <http://ec.europa.eu/enterprise/tbt/>.

<sup>20</sup> The numbers presented in this report do not include the notification of addenda/corrigenda.

awareness campaigns organised by the WTO Secretariat and the national TBT Enquiry Points also made an impact. Moreover, both the WTO Secretariat and WTO Members have funded and participated in technical assistance projects in the TBT field, at regional and national level. The intensified regulatory activity of WTO Members over the last five years in emerging sectors, such as energy efficiency or consumer information, is another important reason. Finally, the financial crisis, which has threatened national economies, could have led to increased regulatory activity.

The EU has been closely observing and monitoring this expanding regulatory framework. This is reflected in the number of comments from the EU on third countries' notifications, which is proportionate to the increase in TBT notifications. Thus, between 2004 and 2009, the number of comments from the EU almost doubled, from 47 to 91 per year. In 2011, the EU sent 102 comments, the highest number ever (see graph under point 1 of the Commission staff working document SWD(2012) 189). It is also actively using TBT Committee meetings to supplement its written comments with oral statements and ask for follow-up to its comments. The EU is one of the most active members in the TBT Committee, commenting on other WTO Members' notifications that are likely to create unnecessary trade barriers. Depending on the notified draft, the EU may request withdrawal, modification, postponement, or it may seek clarification. There are numerous examples of successful cooperation with third countries that led to a favourable outcome for the EU and international trade.

#### **Examples of achievements under the TBT procedure:**

**Withdrawal:** The Colombian draft regulation on alcoholic beverages<sup>21</sup> imposed labelling requirements that were too strict and would have entailed significant costs for economic operators. Following the interventions of the EU in TBT Committee meetings and its written comments, the Colombian authorities withdrew the regulation.

**Modification:** The Brazilian notification on conformity assessment for the safety of toys<sup>22</sup> proposed a burdensome and discriminatory conformity assessment procedure. At the request of the EU and several other trade partners, Brazil modified its regulation in 2010 by easing up on its conformity assessment procedure for imported toys.

**Postponement:** The Indian notification on tyres for automotive vehicles was first notified in 2006<sup>23</sup>. Further to written comments from the EU and its numerous interventions in TBT Committee meetings, the adoption of the draft was postponed. An amended version was notified in 2010<sup>24</sup>.

**Clarification:** With regard to the Chinese notification on supervision and administration of the inspection and quarantine of imports of solid waste, China clarified that importers who were accredited according to certain European standards would also qualify for the required registration<sup>25</sup>.

### **3.2. Responding to the active participation of more WTO Members**

The EU has also been adapting to the emergence of new players in the TBT procedure and their critical views on its regulatory choices. The significant increase in the number of notifications over recent years is not only to be ascribed to big countries but also to smaller

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<sup>21</sup> G/TBT/N/COL/120.

<sup>22</sup> G/TBT/N/BRA/259, 313 and 339.

<sup>23</sup> G/TBT/N/IND/20.

<sup>24</sup> G/TBT/N/IND/40.

<sup>25</sup> G/TBT/N/CHN/649.

global players such as Saudi Arabia, Qatar and Bahrain. The active participation of developing countries, such as Uganda, which notified the highest number of texts in 2010, confirmed this trend.

More WTO Members have been actively participating in the procedure, increasingly notifying and also commenting on notifications. Other WTO members often comment on texts notified by the EU. In 2011, the EU TBT Enquiry Point received 25 comments from third countries, in particular from China, New Zealand, Japan and the U.S.A. (see graph under point 2 of the Commission staff working document SWD(2012) 189). In the TBT Committee, among WTO Members, the EU received the most comments in recent years. Indeed, the EU, being a huge export market, with 500 million potential consumers, and often at the forefront of regulatory developments, fostering a high level of consumer protection and pursuing an ambitious environmental policy, is closely monitored by numerous trading partners.

The EU replies to all comments received by explaining its legislation, defending it or amending it when necessary. The replies are given in writing to written comments the EU TBT Notification and Enquiry Point receives under the notification procedure or orally during TBT Committee meetings in reply to statements other WTO Members make. The European Commission answers each WTO Member's written comments individually on the EU's behalf. Most of the issues raised regarding EU legislation since 1995 have related to the agricultural sector, the registration of chemicals, animal welfare and ecodesign/labelling.

#### **Examples of the EU's responsiveness:**

**Modification:** A 2002 Commission Regulation on wine sector products<sup>26</sup> was modified several times following its notification and comments from third countries. When a new Commission Regulation on wine products was notified in 2008<sup>27</sup>, 11 provisions of the draft were amended to take into account written comments from 4 different WTO Members.

**Taking the concerns of other parties into account:** In addition to written comments, the EU replied to concerns expressed orally in TBT Committee meetings. Third countries' concerns regarding REACH<sup>28</sup> have therefore been taken into account in the guidance documents that aim to facilitate the implementation of this Regulation.

**Clarification:** In 2010, several WTO Members expressed their concerns in the TBT Committee that the European accreditation framework set up by Regulation (EC) No 765/2008<sup>29</sup> could undermine the ability of non-EU conformity assessment bodies to perform tasks in the regulated area. The EU clarified that the new rules had been developed for internal market purposes only and that the possibilities of accepting or recognising the results of foreign conformity assessments were unaffected by the new Regulation.

### **3.3. Facing the challenge of transparency**

In line with the overall trend, the EU has also significantly increased the number of its notifications per year. Over the last ten years, the number has more than tripled, from 17 to 63. In 2008, the number of EU notifications doubled compared to the previous year (see graph under point 2 of the Commission staff working document SWD(2012) 189). The number of

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<sup>26</sup> G/TBT/N/EEC/15.  
<sup>27</sup> G/TBT/N/EEC/264.  
<sup>28</sup> G/TBT/N/EEC/52.  
<sup>29</sup> G/TBT/N/EEC/152.

Member States' notifications has fluctuated since 1995, but stabilised over the last 3 years at 54 notifications per year (see graph under point 3 of the Commission staff working document SWD(2012) 189). However, compared to the number of Member States' notifications under the internal notification procedure<sup>30</sup>, the number remains low.

Regarding the comment period of 60 – 90 days granted to other WTO Members before the notified legislation is adopted, statistics show that, in practice, the allocated time for comments has varied between 58 and 61 days over the last 5 years, compared to 46 days in 1997<sup>31</sup>. Regarding EU notifications, the average number of days given for comments in 2011 was 65 (see graph under point 4 of the Commission staff working document SWD(2012) 189). This progress has given WTO Members more opportunities to analyse the technical regulations of third countries and has helped improve the TBT procedure. However, as underlined in the last WTO Trade Policy Review on the EU, the length of the comment period related to the notifications of EU Member States could be further increased<sup>32</sup>.

Progress made on transparency is proportionate to the steps WTO Members have taken to raise awareness of the TBT procedure. Internal coordination to ensure that all legislation that falls within the scope of the TBT Agreement is notified at an appropriate stage has to be carefully monitored on a day-to-day basis and national administrative bodies must be informed regarding such legislation. The European Commission has been particularly active in this field, by regularly organising seminars for its departments and for EU Member States. The EU TBT Notification and Enquiry Point organised three seminars for Commission departments between 2008 and 2011.

#### **4. MULTILATERAL DISCUSSIONS ON TRANSPARENCY IN THE TBT NOTIFICATION PROCEDURE**

##### **4.1. Remaining difficulties**

The TBT Committee has issued and fine-tuned detailed recommendations on transparency<sup>33</sup> which improved the implementation of the notification procedure when followed by WTO Members<sup>34</sup>. However, **some WTO Members still do not respect the basic obligations of the TBT notification procedure**, such as simple notification or notification at draft stage. This is often due to a lack of coordination within national administrative bodies to ensure that the notification authority is aware of the development of legislation that needs to be notified, or due to the inability of the notification authority to impose the notification obligation on the administrative body in charge of the proposed legislation. Some WTO Members do not notify

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<sup>30</sup> Directive 98/34/EC of the European Parliament and the Council of 22 June 1998 laying down a procedure for the provision of information in the field of technical standards and regulations, OJ L 24, 21.7.1998, p. 37.

<sup>31</sup> Sixteenth annual review of the implementation and operation of the TBT Agreement: WTO document G/TBT/29, p. 6.

<sup>32</sup> 'Trade Policy Review: European Union', WTO Secretariat Report, 2011, p. 46: 'For approximately 17% of individual Member State notifications, the comment period, or the period between the date on which a notification was published and its date of adoption, was less than 60 days' (period covered: Oct. 2008–Jan. 2011).

<sup>33</sup> WTO document G/TBT/1/Rev.10.

<sup>34</sup> E.g. a 60 – 90 day comment period, replies to be given in one of the three official languages of the WTO, direct access to the notified text through the notification format, sharing of unofficial translations, communication of adopted and published texts etc.

legislation adopted by the legislative powers (such as the parliament), as coordination between the notification authority and the legislative power is more difficult to negotiate.

Moreover, not all WTO Members use the opportunity to comment on proposed technical regulations and conformity assessment procedures. Many Members have difficulty following notifications or bringing together the technical expertise needed to analyse certain notifications. Similarly, not all enquiry points of WTO Members are fully operational. Some rarely reply, others simply report that they have informed the competent authorities about the query, often no answer is provided despite repeated reminders. This significantly hinders the outcome of the procedure and renders it less efficient.

There are still some grey areas regarding the **scope of the TBT Agreement** and the notification obligation. While two recent WTO panel rulings<sup>35</sup> should help to further define the scope of the Agreement, uncertainties remain, especially with regard to requirements for non-product-related production methods (which do not have any influence on the technical characteristics of the final product) and with regard to voluntary labelling linked to certain requirements without imposing exclusive labelling.

Analysis of the notified texts in the relatively **short comment period of 60 days**, especially when the draft text has to be translated, remains a major challenge for WTO Members and for economic operators. The **budget for translation** is still too limited. It is extremely important to raise **awareness among economic operators** of the procedure and the possibility of sending comments to the authorities of WTO Members. This is particularly true for federations or national companies, especially SMEs, which have limited in-house resources to analyse proposed regulations and react in due time.

Finally, the TBT Committee **should not become a forum that simply reports the concerns of industry**. It should provide an opportunity for public authorities to exchange views on proposed technical regulations and conformity assessment procedures on the basis of all the related policy aspects.

#### 4.2. Regular Discussions in TBT Committee meetings and Triennial Reviews

The **regular meetings of the TBT Committee** and, in particular, the **review on the operation and implementation of the TBT Agreement**, which is carried out according to Article 15.4 of the TBT Agreement every three years, are occasions to discuss and clarify some of the difficulties and challenges related to the notification procedure. The Commission regularly uses these Triennial Reviews to suggest ways of improving transparency in the notification procedure. The EU actively participates in all discussions regarding the Triennial Review and contributed a paper on transparency<sup>36</sup> to the Fifth Triennial Review<sup>37</sup> concluded in November 2009.

The Triennial Reviews are not only important with regard to issues related to the notification procedure, but also with regard to other systemic issues related to the TBT Agreement: **good regulatory practice, conformity assessment procedures, standards, technical assistance** and the **operation of the TBT Committee**. The TBT Committee has therefore become an

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<sup>35</sup> United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products (DS381) and United States — Certain Country of Origin Labelling Requirements (DS 384, DS 386).

<sup>36</sup> WTO document G/TBT/W/309.

<sup>37</sup> WTO document G/TBT/26.

important forum in which WTO Members can discuss issues related to the international trade of goods and policy approaches. The Commission regularly uses this Committee to present EU policy approaches to other WTO Members and promote regulatory convergence through the use of good regulatory practice in the development of technical regulations and conformity assessment procedures.

The Commission also provides overviews of the EU's and Member States' technical assistance programmes for developing countries that include aid on TBT matters<sup>38</sup>. At the June 2011 TBT Committee meeting, Sweden presented its mentoring programme, implemented from 2008 to 2011, to support the setting up and functioning of the TBT Notification and Enquiry Points of 7 Sub-Saharan African countries<sup>39</sup>. Apart from its technical assistance programmes, the EU TBT Notification and Enquiry Point received, at the request of certain WTO Members, visits from other WTO Members who wanted to know more about how it is organised and how it functions<sup>40</sup>. TBT experts from the European Commission have also participated in technical assistance seminars organised by the WTO in different regions of the world.

## 5. CONCLUSIONS AND THE WAY FORWARD

The TBT notification procedure is a **powerful means of finding out about regulatory developments related to goods in third countries**. When WTO Members comply with the notification obligation, this allows other WTO Members to get acquainted with new technical regulations and conformity assessment procedures and provides a concrete way of reacting to technical barriers to trade. At the same time, the procedure allows general tendencies in other WTO Members or in one particular WTO Member to become widely known and therefore provides important information for the EU's trade and industrial policy.

In order to take full advantage of it, it is of course crucial that the EU itself respects the principles and complies with the obligations laid down in the TBT Agreement. **If the EU does not play by the rules, it cannot ask others to do so**. EU and Member State legislation must therefore follow the principles of the TBT Agreement and be notified according to the rules, with maximum transparency.

Submitting proposed legislation to screening by other WTO Members can also be very useful. Comments from other Members can help identify problems that have not been noticed or aspects that have not been taken into account when drafting legislation<sup>41</sup>.

The procedure also gives regulators around the world the opportunity to compare policy approaches and to reflect on reasons for legislating differently. The TBT notification procedure thus serves as a **benchmarking instrument** and can contribute to a certain degree of convergence at international level, where appropriate. It also helps the EU make its regulatory decisions known and promote them. These decisions are based on thorough evidence-based analysis, extensive consultation with stakeholders and comprehensive impact

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<sup>38</sup> WTO document G/TBT/W/303.

<sup>39</sup> Burundi, Ethiopia, Kenya, Rwanda, Tanzania, Uganda and Zambia.

<sup>40</sup> Visits from an Indian delegation in 2007, from an official from the Chinese TBT Enquiry Point in 2009 and from a Tunisian delegation in 2011.

<sup>41</sup> Despite the analysis and impact assessment, including the assessment of consequences on international trade, that the Commission regularly carries out before proposing legislation.

assessment. Furthermore, it gives the EU an opportunity to explain the reasons for its decisions to other countries.

At present, the Commission, Member States and economic operators use the procedure efficiently. Nevertheless, the Commission sees room for improvement and intends therefore to take the following actions:

**Action 1: Further awareness-raising to trigger comments from EU economic operators, including SMEs**

The Commission will continue to inform Commission departments, economic operators and Member States of the advantages of the procedure, including the option of sending comments directly to the Commission. In particular, the Commission will continue to organise seminars and conferences with Member States and economic operators, including SMEs, and to encourage Member States to raise awareness among national economic operators.

In the context of implementation of the Commission Communication supporting the economic activities of SMEs outside the EU<sup>42</sup>, the Commission will also continue to explore what more can be done to help SMEs participate more actively in the notification procedure. The Commission will ensure that the future multilingual online portal<sup>43</sup>, providing information on foreign markets that is relevant for businesses and an overview of available support activities related to markets outside the EU, will include a link to the TBT database<sup>44</sup>. The Commission also intends to improve its TBT website in 2012 to make it more user-friendly for economic operators, including SMEs.

**Action 2: Support the right of economic operators to obtain information about applicable market access requirements from TBT Enquiry Points**

The TBT Agreement obliges WTO Members to set up a TBT Enquiry Point to answer all reasonable enquiries from other Members and interested parties on technical regulations adopted or proposed, conformity assessment procedures and standards<sup>45</sup>. This opens up a direct communication channel for economic operators with the authorities of other WTO Members, from whom they can obtain information about market access requirements linked to technical regulations, conformity assessment procedures and standards. Such a direct communication channel can be of interest with regard to specific issues, when other sources of information, such as the EU's market access database<sup>46</sup> or the websites of third countries, do not contain enough information. The Commission therefore intends to advertise the TBT Enquiry Points on the revamped TBT website. Depending on the human resources available, the Commission will also consider giving support to European economic operators who need information, for example if the enquiries they send to the enquiry points of other WTO Members are not answered.

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<sup>42</sup> European Commission Communication *Small Business, Big World — A new partnership to help SMEs seize global opportunities*, COM(2011) 702 final.

<sup>43</sup> See point 4.2.2 of the European Commission Communication *Small Business, Big World — A new partnership to help SMEs seize global opportunities*.

<sup>44</sup> <http://ec.europa.eu/enterprise/tbt/>.

<sup>45</sup> See Article 10 of the TBT Agreement.

<sup>46</sup> <http://madb.europa.eu/>.

### **Action 3: Further coordination with other important instruments of the EU's trade and industrial policy**

The Commission will continue to use the TBT notification procedure as part of its trade and industrial policy and will try to create more synergies between the different aspects of the policy. The Market Access Teams in EU delegations in third countries can, for example, provide valuable support if they have the resources to monitor TBT notifications, to create a network to collect comments from EU businesses in third countries, to establish links with Commission departments based in Brussels and to follow up with competent authorities in third countries. Where possible, the Commission will continue to use existing or new regulatory dialogues and trade agreement negotiations to address systemic or specific barriers to trade that have been identified through the TBT notification procedure. The Commission will also continue to promote full compliance with the notification obligation, and with relevant recommendations of the TBT Committee, through negotiations on TBT chapters in free trade agreements, including provisions on transparency.

### **Action 4: Further support for the functioning of the TBT notification procedure at multilateral and bilateral levels**

The Commission will continue to develop and improve the functioning of the procedure by actively participating in TBT Committee meetings. It intends to submit another paper on transparency in the notification procedure in the context of the Sixth Triennial Review, due in November 2012. The Commission will also consider how developing countries could be further supported in order that they can more effectively participate in the notification procedure. This could include enhanced assistance of TBT Notification and Enquiry Points, especially those of the EU's neighbouring countries.

The Commission will consider encouraging the WTO Secretariat to further develop its TBT Information Management System<sup>47</sup> to be an efficient tool for all WTO Members, enabling quicker publication of notifications and allowing Members to easily obtain all the necessary information on notifications and better participate in the procedure.

### **Action 5: Maximum adherence to the notification rules**

The Commission is committed to ensuring that Commission proposals, as well as implementing legislation adopted by the Commission, comply with the TBT Agreement and that they are notified at a draft stage, with a 60 – 90 day comment period for other WTO Members. It will also ensure that comments from other WTO Members are discussed and taken into account before legislation is finalised. It is important that sufficient time is foreseen in the adoption process to enable compliance with the notification obligation.

### **Action 6: Further efforts to improve transparency in the ordinary legislative procedure**

As regards proposals to the European Parliament and the Council containing technical regulations and conformity assessment procedures, the Commission has started to inform WTO Members of significant changes introduced in the legislative procedure, when these proposals have triggered the interest of other WTO Members and when the ordinary

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<sup>47</sup> <http://tbtime.wto.org/web/pages/search/notification/Search.aspx>.

procedure so allowed<sup>48</sup>. To improve transparency, a comment period could be reopened that would allow other WTO Members to comment on the changes introduced in the ordinary procedure and to send the comments received to the co-legislators. The Commission will investigate this possibility on a case-by-case basis.

### **Action 7: More coordination with Member States**

For a coherent, efficient trade policy, and to get the most out of the procedure, the EU must act in concert. Member States must fully comply with the obligations of the TBT Agreement and support the EU policy of transparency in the notification procedure by effectively coordinating their action. The Commission will continue to inform Member States of important aspects of the procedure and the latest developments. It calls on Member States to ensure coordination on their side too.

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<sup>48</sup> In these cases, the EU TBT Notification and Enquiry Point informed the other WTO members through an addendum to the original notifications about the positions taken by the Council or the European Parliament without, however, opening a new comment period on the changes introduced.