

**Encourage and Support Lebanese SMEs to benefit from growth markets**  
**National Seminar for Lebanon**  
**9-10 October 2014, Beirut – Lebanon**

**Policy Brief**

**TECHNICAL BARRIERS TO TRADE (TBT)**

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Technical specifications *versus* Technical Barriers to Trade (TBTs) in international trade

Technical specifications affect virtually all products that are offered currently in any free market economy. Mass production of goods determines the necessity of detailed descriptions and processes for the purpose of assembling or fabricating such products on the basis of technical specifications.

Consequently, technical specifications influence greatly the design, production processes, final presentation, marketing and price of industrial products. Industry relies heavily on them.

Obviously, not all technical specifications qualify as Technical Barriers to Trade (TBTs), but the scope of this term is quite large. A standard or technical specification, or a procedure to assess conformity with standards or technical regulations, becomes a technical barrier to trade if used in a way to impede international trade rather than for the purposes of achieving a legitimate objective.

Technical barriers to trade are with product standards the two main categories of non-tariff measures in WTO law.

Use and abuse of TBTs became apparent after the entry into force of GATT (1947), which did not regulate them in great detail. GATT article XX establishes exceptions to GATT obligations that are relevant to TBT measures. It lays down a number of specific instances in which countries may be exempted from GATT rules, including:

- The protection of exhaustible natural resources
- The protection of human, animal or plant life

## The WTO TBT Agreement

Thus, it is not surprising that in the absence of a comprehensive legal structure for the treatment of TBTs (and standards), the contracting parties decided in the 1970s to negotiate a specific agreement. A first Tokyo Round TBT Agreement was then adopted until the approval of the WTO TBT Agreement at the Uruguay Round of Negotiations.

Insofar as they apply to trade in goods, the WTO TBT Agreement applies to all:

- Technical regulations strict sensu, defined as measures that lay down product characteristics or their related processes and production methods, with which compliance is mandatory
- Standards, defined as measures approved by a Recognised Body that provide, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is voluntary (i.e. not mandatory)
- (including Processes and Production Methods (PPMs) that are related to characteristics of the products)
- Packaging
- Marking
- Labelling requirements
- Procedures for conformity assessment, defined as procedures used, directly or indirectly, to determine the fulfilment of relevant requirements contained in technical regulations or standards.

As for institutional coverage, the WTO TBT Agreement concerns equally measures adopted by central government, local government, international, regional and non-governmental bodies.

The WTO TBT Agreement does not apply to:

- Sanitary and phytosanitary (SPS) measures
- Purchasing specifications prepared by governments, i.e. government procurement specifications
- Regulations and standards related to services (see GATS, art. VI.4)

The WTO TBT Agreement pursues the objective to ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to international trade. However, no country is prevented from taking measures necessary to ensure (1) the quality of its exports, (2) the protection of human, animal or plant life or health, (3) the protection of the environment, (4) the prevention of deceptive practices, at levels it considers appropriate and (5) the protection of its essential security interest. Regulatory measures undertaken with the purpose to protect a country's legitimate objectives shall neither hinder the rights of other WTO members, not what has been achieved through market access

liberalization (i.e. lower import duties and taxes). TBTs may create obstacles to international trade only in order to pursue legitimate policy objectives (two-step test).

Consequently, arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, are prohibited.

The TBT Agreement also provides for transparency in the adoption of TBTs and proportionality. In addition, the principle of equivalence compels WTO members to consider accepting technical regulations adopted by other WTO members as equivalent to their own, provided that these measures are an effective way of addressing the objectives pursued.

Harmonization of measures used by WTO members based on provisions of relevant international standards is one of the key requirements of the WTO TBT Agreement. Such harmonization diminishes the trade-restrictive effect of technical regulations and standards. WTO members are required to base their technical regulations and standards on relevant international standards.

#### A brief look into the *acquis communautaire* on TBTs

The European Union has adapted its legislation to WTO-law in the field of TBTs; in fact, it has gone well beyond WTO levels of regulation. EU legislation in this matter relates to procedures for the provision of information by Member States in the field of technical standards and regulations. In the intra-EU environment, a notification procedure has been established so that Member States and especially their industries are in a position to frame themselves their technical specifications.

Within the EU, standards reference numbers linked to legislation are published in the EU Official Journal.

#### The approximation of legislation clause in the EU-Lebanon Association Agreement

The Euro-Mediterranean Agreement establishing an Association between the European Community and its Member States, of the one part, and the Republic of Lebanon (AA), of the other part, signed on 17 June 2002, which entered into force on 1<sup>st</sup> April 2006, lays down that the parties shall cooperate in strengthening the Lebanese institutions responsible for standardisation and quality, among others. It also contains a general clause dealing with the approximation of legislation.

This approximation of legislation clause is instrumental to avoiding the risk of perceiving technical requirements as a protective trade measure. In fact, the best advice for Lebanon would be to adopt all EU technical standards and specifications in order to offer a better protection to the consumer and to become much more competitive on the international markets.