
Committee on Technical Barriers to Trade

**FOURTH TRIENNIAL REVIEW OF
THE OPERATION AND IMPLEMENTATION OF
THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE UNDER ARTICLE 15.4**

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I. INTRODUCTION

1. Article 15.4 of the Agreement on Technical Barriers to Trade (TBT Agreement) provides that: "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." The TBT Committee concluded the First, Second and Third Triennial Reviews of the Operation and Implementation of the Agreement on 13 November 1997 (G/TBT/5), 10 November 2000 (G/TBT/9) and 7 November 2003 (G/TBT/13) respectively.

2. Pursuant to the Third Triennial Review, the Committee has followed-up on the specific recommendations for action contained therein. In particular, the Committee held in 2004 an exchange of experiences related to the identification of elements of good regulatory practice at the domestic level.¹ Moreover, in order to promote a better understanding of Members' conformity assessment systems, a number of events were held by the Committee: a Special Meeting dedicated to Conformity Assessment Procedures on 29 June 2004²; a Workshop on Supplier's Declaration of Conformity on 21 March 2005³; and, a Workshop on the Different Approaches to Conformity Assessment, including on the Acceptance of Conformity Assessment Results on 16-17 March 2006.⁴ On terms and definitions, the Secretariat of ISO informed the Committee of the changes involved by the revisions of the ISO/IEC Guide 2: 1991 and the Committee will hold discussions on the reference to the Guide 2: 1991 in Annex 1 of the TBT Agreement on terms and their definitions. Furthermore, with the objective of increasing transparency in the identification and prioritization of technical assistance needs, the Committee adopted on 2 November 2005, a Format for the Voluntary Notification of Specific Technical Assistance Needs and Responses.⁵ Moreover, with a view to assisting the operation as well as public understanding of the Agreement, the Secretariat prepared a "Handbook on the TBT Agreement".

3. The Committee concluded the Fourth Triennial Review of the Agreement at its meeting of 9 November 2006. The elements considered during the Review and decisions and recommendations adopted by the Committee are set out below⁶: (A.) Implementation and Administration of the Agreement; (B.) Good Regulatory Practice; (C.) Conformity Assessment Procedures; (D.) Transparency; (E.) Technical Assistance; and, (F.) Special and Differential Treatment.

II. ELEMENTS OF THE FOURTH TRIENNIAL REVIEW

A. IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

4. With regard to the implementation and administration of the Agreement by Members, Article 15.2 provides that: "Each Member shall, promptly after the date on which the WTO Agreement enters into force for it, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement. Any changes of such measures thereafter shall also be notified to the Committee."

¹ See G/TBT/13, para. 14 and G/TBT/M/32-34.

² A Report of the special meeting is contained in G/TBT/M/33/Add.1.

³ A Report of the workshop is contained in Annex 1 of G/TBT/M/35.

⁴ A Report of the workshop is contained in G/TBT/M/38/Add.1.

⁵ G/TBT/16.

⁶ A list of documents submitted and discussed during the Fourth Triennial Review is contained in Annex 1. This Annex constitutes an integral part of this Report.

5. Since the Third Triennial Review, 16 Members have submitted their statements of implementation and administration of the Agreement under Article 15.2 and 10 Members have updated their original statements.⁷ In total, 108 Members have submitted their statements of implementation and administration of the Agreement.

6. The Committee reiterates the importance of Members fulfilling their obligations under Article 15.2.

B. GOOD REGULATORY PRACTICE

7. Good regulatory practice has been characterized by the Committee as a priority for Members in facilitating trade.⁸ It can help to avoid unnecessary obstacles to trade in the preparation, adoption and application of technical regulations, standards and conformity assessment procedures. Such practices can contribute to the effective implementation of the disciplines of the Agreement by each Member.

8. The Committee stresses the benefits of simplifying and improving regulatory environments and emphasizes the need for openness, transparency and accountability in the development and application of technical regulations and conformity assessment procedures. The Committee further considers that the appropriate regulatory framework can, *inter alia*: enhance predictability and innovation and thereby provide a more stable business climate; help to maintain a competitive environment thereby contributing to growth and consumer confidence; and cut unnecessary administrative costs that may result from overly complex regulations, in particular for small and medium-sized enterprises.

9. Since the entry into force of the Agreement, and in order to foster a common understanding of the issues involved, the Committee has engaged in an exchange of experiences on various aspects of good regulatory practice and in particular since the Third Triennial Review, on the identification of elements of good regulatory practice.⁹

1. Aspects of Good Regulatory Practice

10. With respect to technical regulations, the Committee notes the importance of Members considering, on a case by case basis, whether there is a need to regulate or whether other instruments are better suited to achieve the policy objectives sought, and whether existing regulations need to be maintained. In this respect, the Committee reiterates the need for regulators to begin by clearly identifying the problem to be addressed, including its magnitude and the legitimate objective sought, and then consider alternative approaches consistent with the Agreement to fulfil that legitimate objective. The Committee stresses the importance of Members avoiding the promulgation of technical regulations or conformity assessment procedures where they may not be necessary.

11. When a Member decides that there is a need to prepare, adopt or apply a technical regulation or establish a conformity assessment procedure, the Committee underlines that such technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective and that conformity assessment procedures shall not be more strict or be applied more strictly than is necessary to give the importing Member adequate confidence that products conform with the applicable technical regulations or standards.

12. The Committee notes that regulatory impact assessments can be a useful tool to facilitate regulatory decision-making, including with respect to assessing whether or not government intervention is necessary. Also, the Committee emphasizes the importance, when the option to regulate is

⁷ The latest list of Members having submitted their statements can be found in document G/TBT/GEN/1/Rev.4.

⁸ G/TBT/5, para. 23 and G/TBT/9, para. 37.

⁹ Information on the OECD Guiding Principles for Regulatory Quality and Performance was circulated in G/TBT/GEN/19.

considered, of assessing the costs and benefits of proposed regulations, including likely impact on consumers, trade and industry.

13. When considering regulatory options, the Committee recalls that minimizing the use of mandatory measures, or relying on voluntary instruments, can facilitate adaptability and innovation and thereby contribute to creating incentives for businesses and opening up market access opportunities while still being effective in achieving legitimate objectives. Conversely, over-regulation may disproportionately affect business and trade and be unnecessary to achieve the legitimate objective pursued.

14. In accordance with the relevant provisions of the Agreement, the Committee reiterates the importance of Members using relevant international standards, guides or recommendations when drafting new regulations or conformity assessment procedures. In this regard, the Committee notes the usefulness of expressly identifying relevant international standards and taking into account progress made in the development of international standards before initiating any regulatory proposal. Furthermore, the Committee emphasizes the usefulness of considering how other Members address the matter.

15. The Committee stresses that where regulation is deemed necessary Members shall, wherever appropriate, specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics in accordance with Article 2.8. While noting that performance-based regulations have the benefit of being easily adaptable and encouraging innovation, the Committee stresses the importance of clear and transparent criteria against which to verify compliance. The Committee also notes that a certain level of expertise and skill is required in verifying compliance with performance-based regulations developed in terms of desired outcomes and that, therefore, capacity constraints in developing country Members need to be taken into account.

16. With respect to regulatory coordination at the domestic level, the Committee notes that Members have various mechanisms to ensure transparency, openness and accountability in the development and application of technical regulations and conformity assessment procedures. The Committee encourages information-sharing between government, industry, relevant stakeholders and the wider public on regulatory actions, including with other Members and their stakeholders. Such information-sharing can promote greater public understanding of the purposes and effects of – as well as the justifications for – regulations. This may also increase public confidence and trust that participants in the process will have their concerns heard and considered, and that the competent authorities will make their decisions on a transparent, well reasoned, and well supported basis.

17. Moreover, the Committee notes the usefulness of a Member establishing administrative mechanisms for coordination between competent authorities. It notes that a number of Members have set up TBT coordinating committees to facilitate communication and cooperation between relevant government authorities. The Committee also emphasizes the importance of including local governments as well as non-governmental parties in the domestic consultation activities.

2. Regulatory Cooperation Between Members

18. Regulatory cooperation between regulators from different Members, whether informal or formal in nature, and including training activities, can help achieve a better understanding of different regulatory systems and approaches to addressing identified needs. Furthermore, it can promote regulatory convergence, harmonization, mutual recognition and equivalency, thereby contributing to the avoidance of unnecessary regulatory differences and to the reduction of unnecessary barriers to trade.

3. Future Work

19. With a view to deepening understanding of the contribution good regulatory practice can make to the implementation of the TBT Agreement, the Committee agrees to share experiences on:

- (a) factors used by regulators to determine whether there is a need to regulate in a given situation or whether other instruments are better suited to fulfil the legitimate objective sought;
- (b) the use of tools, such as regulatory impact assessment, to assist regulatory decision-making (including with respect to (a) above);
- (c) the use of performance-based regulations by Members;
- (d) how good regulatory practices have been integrated into Members' regulatory structures, including the use of mechanisms to ensure openness, transparency and accountability of the regulatory processes;
- (e) the establishment of domestic administrative mechanisms to facilitate cooperation and coordination between competent authorities and co-ordination with other stakeholders;
- (f) how regulatory cooperation between Members has contributed to the avoidance of unnecessary regulatory differences; and
- (g) steps taken and criteria used to arrive at an equivalency decision between Members (Article 2.7), or harmonization on the basis of international standards (Article 2.6).

20. Furthermore, with a view to advancing its work on good regulatory practice, the Committee agrees to hold a workshop on good regulatory practice addressing, among other topics, regulatory impact assessment.

C. CONFORMITY ASSESSMENT PROCEDURES

21. With a view to promoting a better understanding of Members' conformity assessment systems, the Committee has intensified the exchange of information and experiences on various aspects of conformity assessment procedures since the Third Triennial Review. In accordance with the work programme agreed¹⁰, two workshops were held in March 2005 and March 2006, respectively on Supplier's Declaration of Conformity¹¹ and the Different Approaches to Conformity Assessment, Including on the Acceptance of Conformity Assessment Results.¹² The Committee takes note of the useful and detailed exchange of views and information which took place at these events and reiterates the importance of improving Members' implementation of Articles 5-9 of the Agreement.

¹⁰ G/TBT/13, para. 40.

¹¹ See Annex 1 of G/TBT/M/35.

¹² See G/TBT/M/38/Add.1. The objective of the March 2006 Workshop on the Different Approaches to Conformity Assessment was to promote a better understanding of conformity assessment systems in general. The workshop discussion was divided into three sessions: (i) Conformity assessment procedures at the domestic level; (ii) mechanisms to facilitate the acceptance of conformity assessment results (pursuant to Article 6 of the TBT Agreement); and (iii) conformity assessment infrastructure in developing country Members. The programme (G/TBT/GEN/31) as well as presentations are available on the TBT webpage: http://www.wto.org/english/tratop_e/tbt_e/tbt_e.htm#events.

1. Approaches to Conformity Assessment

(a) Use of Appropriate Conformity Assessment Procedures

22. In the preparation, adoption and use of conformity assessment procedures, the Committee reiterates the importance of complying with the provisions of Articles 5 to 9, 11 and 12 which set out the obligations concerning non-discrimination, unnecessary obstacles to trade, the use of international standards, guides or recommendations, transparency, technical assistance and special and differential treatment.

23. In order to assist Members in better understanding whether the use of a particular conformity assessment procedure is appropriate in a given situation, the Committee agrees to exchange views on the various considerations that are relevant when deciding on the type of procedure to be used, including the level of risk associated with products. Moreover, with a view to gaining insight into how different procedures are applied to different situations and categories of products by Members,¹³ the Committee agrees to continue sharing experiences on the use of different types of conformity assessment procedures.

(b) Use of Supplier's Declaration of Conformity (SDoC)

24. The Committee recognizes the benefits of SDoC for the assurance of conformity when used in appropriate circumstances and for certain sectors. From a manufacturer's perspective, SDoC can allow flexibility and non-discriminatory treatment in the choice of location for testing or other conformity assessment procedures and can reduce associated costs. When deciding whether or not to use SDoC, Members should analyze a range of elements in order to determine the costs and benefits of doing so.

25. The Committee reiterates that when evaluating the approach to conformity assessment, and in particular SDoC, Members should consider the following: risk assessment, giving particular consideration to the characteristics of the sectors and the products; adequate regulatory and legal regimes to implement SDoC, including those related to product liability; and well-developed market surveillance systems with appropriate resources and enforcement mechanisms, which may include penalties for false/misleading declarations, and consumer redress. In using SDoC, the Committee stresses again the importance of Members complying with their transparency obligations so that suppliers are informed when such conformity assessment procedures are proposed.

26. The Committee notes that SDoC may be difficult for developing country Members to implement. In this regard, the Committee further notes the need expressed by developing country Members for technical assistance and resources in order to implement SDoC.

27. The Committee agrees to continue to exchange experiences on the design and implementation of SDoC and on situations for which SDoC may be a suitable conformity assessment procedure.

(c) Use of Accreditation to Qualify Conformity Assessment Bodies

28. The Committee notes that accreditation is widely recognized as a tool to demonstrate the technical competence of conformity assessment bodies in exporting Members. The Committee stresses

¹³ See G/TBT/M/38/Add.1. At the March 2006 Workshop on Different Approaches to Conformity Assessment, participants provided concrete examples of existing approaches at the domestic level and explained the mechanisms in place to make the conformity assessment procedures both effective and well-suited to the regulatory purpose at hand. Presentations were also provided on the implementation of voluntary conformity assessment market programs, and on sector-specific approaches to conformity assessment in relation to the following sectors: vehicle emission and noise, electricity and forest certification.

the importance of Members complying with the provisions of the Agreement with regard to accreditation.

29. The Committee recalls the necessity of using international standards, guides, or recommendations in relation to accreditation, which should help to achieve confidence. Such confidence is essential to the designation of conformity assessment bodies in other Members.

30. A number of problems in relation to accreditation in certain developing country Members may be noted, for example: insufficient number of accredited bodies for the assessment of conformity at the domestic or regional level, high costs in obtaining foreign accreditation, and difficulties in establishing internationally recognized accreditation bodies. The Committee reiterates the importance of assisting developing country Members in this respect, in conformity with Article 11.

31. The Committee agrees to share experiences on the use of accreditation to qualify the technical competence of conformity assessment bodies.

2. International Standards, Guides or Recommendations

32. The Committee reiterates the importance of Members (i) using relevant international standards, guides or recommendations, or the relevant parts of them, as a basis for their conformity assessment procedures, in cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, and except where such guides or recommendations or relevant parts are inappropriate for the Members concerned (Article 5.4); and (ii) playing a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards, guides or recommendations for conformity assessment procedures (Article 5.5). The Committee notes that certain international standards, guides or recommendations concerning conformity assessment procedures have been recently developed or revised.¹⁴

33. A focused discussion on Members' experience in using international standards, guides or recommendations can help regulators to better understand how they can be applied and how Article 5.4 is implemented. Therefore, the Committee agrees to exchange information on Members' experience on their use.

3. Facilitating the Recognition of Conformity Assessment Results

(a) Unilateral Recognition

(i) *Unilateral Recognition of Results of Foreign Conformity Assessment, Including Government Designation*

34. Pursuant to Article 6.1, Members have an obligation to ensure, whenever possible, that results of conformity assessment procedures in other Members, which are equivalent to their own procedures, are accepted. With a view to reducing unnecessary barriers to trade associated with duplicative testing and certification, the Committee acknowledges in particular that government designation is one of the approaches that can facilitate the acceptance of conformity assessment results as foreseen in Article 6.1.2. Under this approach, governments designate specific conformity assessment bodies, including bodies located outside their territories, to undertake conformity assessment activities.

¹⁴ See G/TBT/M/38/Add.1. At the March 2006 Workshop on Different Approaches to Conformity Assessment, Members heard a presentation on the ISO/CASCO Toolbox.

35. The Committee agrees to exchange information on unilateral recognition of results of foreign conformity assessment, including on existing government designation schemes, in relation to Article 6.1.2.

(ii) *Participation of Foreign Conformity Assessment Bodies in Domestic Conformity Assessment Procedures*

36. The Committee renews its encouragement of Members to allow the participation of conformity assessment bodies located in the territory of other Members in their conformity assessment procedures, on a non-discriminatory basis, as stated in Article 6.4. It is stressed that such participation should be facilitated to the extent that it contributes to providing a wider choice of competent conformity assessment bodies for suppliers and regulators. For example, cross-border accreditation arrangements can be cost-effective.

37. The Committee agrees to exchange information on the participation of foreign conformity assessment bodies in domestic conformity assessment procedures, pursuant to Article 6.4.

(b) Mutual Recognition

(i) *Mutual Recognition Agreements (MRAs)*

38. Pursuant to Article 6.3, Members are encouraged to be willing to enter into mutual recognition agreements (MRAs) involving the reciprocal acceptance of the results of conformity assessment procedures taking place in the territory of Members concerned.

39. In relation to government-to-government MRAs, possible difficulties and problems may relate to: differences in development levels amongst Members; cost; non-transparency; non-MFN nature; limited opportunity to enter into negotiations for the conclusion of MRAs; the need to take into account the quality of the conformity assessment procedures rather than the origin of the product; and, efficiency and effectiveness of MRAs to solve problems of multiple testing and conformity assessment procedures. The Committee notes that the mutual introduction of cross-border designation systems in equivalent fields by governments can be a cost-effective agreement. The Committee reiterates that the use of relevant international conformity assessment standards, guides and recommendations, as well as greater alignment of conformity assessment procedures could facilitate the conclusion of MRAs.

40. Considerations and factors for the conclusion of effective MRAs between governments may include:¹⁵ sound regulatory infrastructure; sufficient volume of trade in specific sectors between the parties involved to justify the high administrative costs and the generally long-term nature of the negotiations; tangible economic benefits; interest and support of stakeholders; underlying compatibility in the regulatory systems of the potential MRA parties; resource implications of MRA negotiation and implementation; and a confidence-building approach, in particular, where the technical competence of the two parties is not equivalent. In relation to the latter, it is noted that technical assistance can play an important role in enhancing the level of technical competence of parties from developing country Members and building confidence among parties that have different levels of technical competence.

41. The Committee reiterates the importance of Members notifying mutual recognition agreements in accordance with Article 10.7 and invites Members to inform the Secretariat when such agreements are no longer in force.

¹⁵ See G/TBT/M/38/Add.1. At the March 2006 Workshop on Different Approaches to Conformity Assessment, participants shared information on the merits and possible difficulties in negotiating and implementing government-to-government mutual recognition agreements.

42. The Committee agrees to further exchange information on (i) the operation of existing MRAs, including cases where implementation has not been deemed satisfactory; and (ii) their cost-effectiveness.

(ii) *Voluntary Mutual Recognition Arrangements Between Domestic and Foreign Conformity Assessment Bodies*

43. The Committee notes that voluntary mutual recognition arrangements have been reached among individual laboratories, certification and inspection bodies.¹⁶ In addition, regional and multilateral recognition arrangements have been reached between accreditation bodies. A number of international and regional systems have developed over time with the objective of establishing networks of conformity assessment bodies whose competence can be relied upon by all members. Pursuant to these arrangements, each party undertakes to recognize the equivalence of accreditation systems, certificates, test or inspection reports issued by any other party to the arrangement as equivalent to their own and to promote that equivalence throughout its territory of operation. Some of these arrangements have been recognized by governments as a basis for the acceptance of test results and certification activities in relation to specific regulations.

44. Hence, the Committee notes that the existence of international and regional voluntary mutual recognition arrangements can facilitate acceptance of results of conformity assessment.¹⁷

45. The Committee agrees to further exchange information on voluntary mutual recognition arrangements and on the extent to which results of conformity assessment are accepted by regulators.

4. Future Work

46. With a view to furthering the understanding of the implementation of Articles 5-9 of the Agreement, and as indicated above, the Committee agrees to continue sharing experiences on:

- (a) approaches to conformity assessment, and in particular on
 - (i) various considerations that are relevant when deciding on the need for a conformity assessment procedure and on the type of procedure, including the level of risk associated with products;
 - (ii) the use of different types of conformity assessment procedures;
 - (iii) the design and implementation of SDoC and situations for which SDoC may be a suitable conformity assessment procedure; and
 - (iv) the use of accreditation to qualify the technical competence of conformity assessment bodies;
- (b) the use of international standards, guides or recommendations in Members' domestic conformity assessment procedures; and

¹⁶ See G/TBT/M/38/Add.1. At the March 2006 Workshop on Different Approaches to Conformity Assessment, Members shared information on the IECEE CB scheme.

¹⁷ See G/TBT/M/38/Add.1. At the March 2006 Workshop on Different Approaches to Conformity Assessment, Members exchanged information on ways to promote acceptance by regulatory authorities of results by conformity assessment bodies participating in voluntary arrangements.

- (c) recognition of conformity assessment results, and in particular on
 - (i) unilateral recognition of results of foreign conformity assessment, including on existing government designation schemes in relation to Article 6.1.2;
 - (ii) the participation of foreign conformity assessment bodies in domestic conformity assessment procedures pursuant to Article 6.4;
 - (iii) the operation of existing MRAs, including cases where implementation has not been deemed satisfactory; and their cost-effectiveness; and
 - (iv) voluntary mutual recognition arrangements and on the extent to which results of conformity assessment are accepted by regulators.

D. TRANSPARENCY

47. The Committee reiterates the importance of Members fully complying with their transparency obligations under the Agreement, in particular, those related to the notification of technical regulations and conformity assessment procedures, as required under Articles 2.9, 2.10, 5.6, 5.7 and 10.7. A number of decisions and recommendations have been made with a view to facilitating access to information and further improving the implementation of transparency procedures under the Agreement.¹⁸ The Committee encourages Members to follow these decisions and recommendations.

48. Pursuant to Article 10.1, each Member shall ensure that an enquiry point exists which is able to answer all reasonable enquiries from other Members and interested parties in other Members. 131 Members have submitted information on their enquiry points.¹⁹ The Committee reiterates the importance of Members fulfilling their obligations under Article 10.1.

49. Article 10.7 of the Agreement requires Members to notify agreements between Members on issues related to technical regulations, standards or conformity assessment procedures and which may have a significant effect on trade. From 1995-2005, 46 such notifications have been submitted.²⁰

50. The Committee notes that pursuant to a 1995 Committee Decision to hold "regular meetings of persons responsible for information exchange, including persons responsible for enquiry points and notifications"²¹, the Fourth Special Meeting on Procedures for Information Exchange took place on 2-3 November 2004.²²

1. Publication of a Notice of Proposed Technical Regulations and Conformity Assessment Procedures

51. Pursuant to Articles 2.9.1 and 5.6.1, Members are required to publish a notice of a proposed technical regulation or conformity assessment procedure if it may have a significant effect on trade and whenever a relevant international standard does not exist or the proposed regulation or procedure is not in accordance with it. The Committee notes that there appears to be no uniformity between Members as to how this notice is to be published and agrees to examine ways in which the publications for such

¹⁸ "Decisions and Recommendations adopted by the Committee since 1 January 1995", Note by the Secretariat, 23 May 2002, G/TBT/1/Rev.8, pages 11-18.

¹⁹ The latest list of enquiry points is contained in document G/TBT/ENQ/28.

²⁰ Notifications under Article 10.7 are circulated under document symbol G/TBT/10.7/Member initials/--".

²¹ G/TBT/1/Rev.8, page 19.

²² A Report of this meeting is contained in Annex 2 of G/TBT/M/34.

notices – and their content – are made available, so as to enable all interested parties to become acquainted with them.²³

2. Notifications of Proposed Technical Regulations and Conformity Assessment Procedures of Local Governments at the Level Directly Below that of the Central Government

52. Pursuant to Articles 3.2 (on technical regulations) and 7.2 (on conformity assessment procedures), Members are required to fulfil the notification obligations contained in Articles 2 and 5 for measures of local governments, at the level directly below that of Members' central governments. The Committee notes that 10 technical regulations and conformity assessment procedures proposed by local governments at the level directly below that of the central government have been notified in the period 1995 to 2005. The Committee reiterates the importance of Members fulfilling their notification obligations under Articles 3.2 and 7.2.²⁴ The Committee invites Members to indicate the local government bodies in their jurisdiction that are subject to these obligations.

3. Texts of Notified Technical Regulations and Conformity Assessment Procedures

(a) Access to Texts

53. The Committee notes that knowledge of the text of a notified technical regulation and conformity assessment procedure is essential. It informs exporters about the proposed regulations and procedures that apply to products they intend to place on a given market. In order to facilitate systematic access to texts of notified measures, the Committee encourages Members to provide (i) more detailed information in Section 6 "Description of content" of the notification form so as to enable Members to make a first analysis of the proposal; and (ii) the website address where Members can download the full text of the notified measure in Section 11 of the notification form "Text available from" or any other means to quickly and easily access the text of the proposed regulations and procedures. Moreover, the Committee notes some preliminary information provided by the WTO Secretariat on possibilities to attach to the notification form a copy of the text of the notified measure.²⁵ The Committee agrees to further explore ways to implement such a feature.

54. The Committee further encourages Members to notify the availability of the adopted final text as an addendum to the original notification and provide information on where the final text can be obtained (including website address).

(b) Translations

55. Members are encouraged to provide translations of documents covered by specific notifications in any WTO official language of their choice without being requested to do so. The Committee notes that such translations may facilitate Members' ability to comment on notified technical regulations and conformity assessment procedures and be particularly useful for developing country Members as costs and time spent on translations may be reduced. In this context, the Committee reiterates the importance of sharing translation of texts of notified technical regulations and conformity assessment procedures.²⁶

56. As some Members often have these documents translated into one official language of the WTO, the Committee agrees to explore ways to enhance the sharing of translation of documents referred to in notifications, such as posting on Members' websites or developing a format to inform

²³ A list of official publications in relation to technical regulations, conformity assessment procedures and standards is contained in document G/TBT/GEN/39 (List of Members' Publications in Relation to Technical Regulations, Conformity Assessment Procedures and Standards).

²⁴ G/TBT/5, para. 9; G/TBT/9, para. 11; G/TBT/13, para. 23.

²⁵ See "Attachments to TBT Notifications", Information from the Secretariat, G/TBT/GEN/40.

²⁶ See also G/TBT/13, para. 26.

other Members of the existence of translations of notified measures. The Committee also recalls that the existence of translations should be indicated in Section 5 "Title and number of pages" of the notification form.

4. Comments on Proposed Technical Regulations and Conformity Assessment Procedures

(a) Length of Time Allowed for Comments

57. The Committee notes that an insufficient period of time for presentation of comments on proposed technical regulations and conformity assessment prevents Members from exercising their rights to submit comments. The Committee recalls the recommendation that the normal time-limit for presentation of comments be no less than 60 days, and, where possible, 90 days.²⁷

58. Furthermore, the Committee encourages Members to provide sufficient time between the end of the comment period and the adoption of the notified technical regulations and conformity assessment procedures for the consideration of comments made and the preparation of subsequent responses.

(b) Sharing and Discussion of Comments

59. The Committee notes that the sharing, on a voluntary basis, of comments and responses on notifications could contribute significantly to other Members' understanding of whether their comments have been taken into account, and could assist Members to benefit from the technical knowledge and legal expertise of their trading partners; this could be particularly useful for developing country Members. In the preparation of comments and subsequent responses, the Committee has stressed the importance of domestic coordination between the various interested parties.

60. The Committee notes that Members have increased their efforts since the last review to promote a more widespread dissemination of comments and replies relating to notified draft technical regulations and conformity assessments procedures. Certain Members have put in place websites on which all comments and replies issued or received are made public. The Committee notes that the consultation of these websites may allow Members to take advantage of the legal expertise expressed by other Members and to identify "best practices" with respect to the regulatory approach to certain problems. In this context, the Committee encourages Members to exchange comments and to provide information on websites on which comments received from Members and replies thereto are posted, taking into account the fact that some bilateral communications between Members could be of a confidential nature. Based on the information provided by Members, a list of these websites could be prepared by the Secretariat.

5. Timing of the Entry into Force of Technical Regulations

61. Pursuant to Article 2.12, Members shall leave a reasonable interval between the publication of technical regulations and their entry into force, except in the case of certain urgent circumstances.

62. The Ministerial Decision on Implementation-Related Issues and Concerns, adopted on 14 November 2001 in Doha, provides that, subject to the conditions specified in Article 2.12, the phrase "reasonable interval" shall be understood to mean normally a period of not less than six months, except when this would be ineffective to fulfil the legitimate objectives pursued.²⁸ The Committee stresses the importance of the Doha Ministerial Decision in relation to Article 2.12 on technical regulations.

²⁷ G/TBT/1/Rev.8, page 17.

²⁸ WT/MIN(01)/17, para.5.2; included in G/TBT/1/Rev.8, page 30.

63. Furthermore, while noting that Article 2.12 already includes reference to developing country Members and their specific needs, the Committee encourages Members to provide an interval of more than six months, when possible, between the publication of technical regulations and their entry into force so that producers, in particular in developing country Members, have sufficient time to adapt to the new requirements.

6. Notification of the Existence of a Work Programme by a Standardizing Body

64. Paragraph J of the Code of Good Practice for the Preparation, Adoption and Application of Standards (Annex 3 to the Agreement) requires in relevant parts that: "At least once every six months, the standardizing body shall publish a work programme containing its name and address, the standards it is currently preparing and the standards which it has adopted in the preceding period. ... No later than at the time of publication of its work programme, the standardizing body shall notify the existence thereof to the ISO/IEC Information Centre in Geneva."

65. With a view to enhancing transparency in terms of the obligations of standardizing bodies under Paragraph J, the Committee (i) invites the ISO/IEC Information Centre to provide information to the Committee on the status of notifications of the existence of a work programme made under Paragraph J when the WTO TBT Standards Code Directory is published; and (ii) encourages standardizing bodies that communicate their work programmes via the internet to specify the exact web pages where the information on work programmes is located under the item "Publication" of the notification form.²⁹

7. Acceptance of the Code of Good Practice by Regional Standardizing Bodies

66. The Committee recalls that pursuant to paragraph B of the Code of Good Practice, the Code is open to acceptance by any standardizing body within the territory of a Member of the WTO, whether a central government body, a local government body, or a non-governmental body; to any governmental regional standardizing body one or more members of which are Members of the WTO; and to any non-governmental regional standardizing body one or more members of which are situated within the territory of a Member of the WTO. The Committee recalls further that paragraph C provides that standardizing bodies that have accepted or withdrawn from the Code of Good Practice shall notify this fact to the ISO/IEC Information Centre in Geneva.

67. The Committee encourages regional standardizing bodies to accept the Code of Good Practice and to notify their acceptance of the Code to the ISO/IEC Information Centre.

8. Future Work

68. With a view to facilitating the implementation of transparency procedures under the Agreement, and as indicated above, the Committee agrees:

- (a) with regard to the publication of a notice of proposed technical regulations and conformity assessment procedures
 - (i) to examine ways in which the publications for such notices – and their content – are made available, so as to enable all interested parties to become acquainted with them;
- (b) with regard to the notification of proposed technical regulations and conformity assessment procedures of local governments at the level directly below that of the central government

²⁹ The form is contained in G/TBT/W/4/Rev.1, page 6.

- (i) to invite Members to indicate the local government bodies in their jurisdiction that are subject to the notification obligations contained in Articles 3.2 and 7.2;
- (c) with regard to texts of notified technical regulations and conformity assessment procedures
 - (i) to encourage Members to provide: (i) more detailed information on proposed technical regulations and conformity assessment procedures in Section 6 "Description of content" of the notification form; and (ii) the website address where Members can download the full text of the notified measure in Section 11 "Text available from" of the notification form or any other means to quickly and easily access the text;
 - (ii) to explore ways to attach to the notification form a copy of the text of the notified measure;
 - (iii) to encourage Members to notify the availability of the adopted final text as an addendum to the original notification and to provide information on where the final text can be obtained, including website address; and
 - (iv) to explore ways to enhance the sharing of translation of documents referred to in notifications, such as posting on Members' websites or developing a format to inform other Members of the existence of translations of notified measures;
- (d) with regard to comments on proposed technical regulations and conformity assessment procedures
 - (i) to encourage Members to provide sufficient time between the end of the comment period and the adoption of the notified technical regulations and conformity assessment procedures for the consideration of comments made and the preparation of subsequent responses;
 - (ii) to encourage Members to exchange comments and to provide information on websites on which comments received from Members and replies thereto are posted, taking into account the fact that some bilateral communications between Members could be of a confidential nature; and
 - (iii) to request the Secretariat to prepare a list of these websites, based on the information provided by Members;
- (e) with regard to the timing of the entry into force of technical regulations
 - (i) to encourage Members to provide an interval of more than six months, when possible, between the publication of technical regulations and their entry into force;
- (f) with regard to the notification of the existence of a work programme
 - (i) to invite the ISO/IEC Information Centre to provide information to the Committee on the status of notifications of the existence of a work programme made under Paragraph J when the WTO TBT Standards Code Directory is published;

- (ii) to encourage standardizing bodies that communicate their work programmes via the internet to specify the exact web pages where the information on work programmes is located under the item "Publication" of the notification form; and
- (g) with regard to the acceptance of the Code of Good Practice by regional standardizing bodies
 - (i) to encourage regional standardizing bodies to accept the Code of Good Practice and to notify their acceptance of the Code to the ISO/IEC Information Centre.

E. TECHNICAL ASSISTANCE

69. Since the entry into force of the Agreement, technical assistance has been considered as an area of priority and features on the agenda of Committee meetings on a permanent basis.³⁰ The Committee reiterates the importance of Members complying with the obligations contained in Article 11 on technical assistance, in particular in relation to conformity assessment procedures.³¹ The Committee also reiterates the importance of transparency in demand and supply of technical assistance and emphasizes the need for effective provision of such assistance.

1. Transparency in Demand and Supply of Technical Assistance

70. In the first years of the Committee's work, it was agreed that in order to enhance implementation of Article 11, Members would on a voluntary basis exchange information regarding its implementation, and that Members that required technical assistance would inform the Committee of any difficulties they encountered in the operation and implementation of the Agreement. Subsequently, and while reiterating the need for enhanced information exchange, the Committee agreed to develop a demand-driven technical cooperation programme; an approach that was confirmed by Ministers in the 2001 Doha Ministerial Decision on Implementation-related Issues and Concerns.³²

71. Following the Second Triennial Review, the Committee conducted a survey on needs identification and prioritization by developing country Members³³ and, at the Third Triennial Review, agreed on a number of recommendations related to improving transparency in the area of technical assistance.³⁴ In subsequent work, the Committee recognized that improvements were needed to facilitate demand and supply of technical assistance and, as a contribution to addressing this issue, the Committee adopted in 2005 a Format for the Voluntary Notification of Specific Technical Assistance Needs and Responses.³⁵ The operation of this mechanism will be reviewed at the end of 2007.

72. The Committee stresses the importance of building upon previous work on improving transparency to ensure the flow of information on technical assistance. The Committee notes in this regard the usefulness of the WTO TBT webpage on TBT-related technical assistance.

³⁰ G/TBT/1/Rev.8, page 22.

³¹ See G/TBT/M/38/Add.1. At the March 2006 Workshop on Different Approaches to Conformity Assessment, participants from a number of developing country Members shared their experiences in either administering existing conformity assessment systems or working to build such systems. Participants presented the operation of these systems, key challenges and problems faced (resource constraints, technical and infrastructural needs, etc). Some international agencies informed the Workshop of their role and work to assist developing country Members in the identification of conformity assessment-related needs and in the provision of technical assistance. The importance of regional coordination was also stressed.

³² WT/MIN(01)/17, para. 5.1.

³³ The questionnaire is contained in G/TBT/W/178; responses are compiled and summarised in G/TBT/W/186 and Add.1. An analysis of the responses is contained in G/TBT/W/193.

³⁴ G/TBT/13, paras. 54-56.

³⁵ G/TBT/16.

2. The Effective Provision of Technical Assistance

73. The Committee recalls the emphasis put by Members in earlier work on the importance of enhancing the effectiveness of technical assistance activities.³⁶ In particular, at the Third Triennial Review, in considering approaches to technical assistance, the Committee noted that there were a number of good practices to enhance the effectiveness and efficiency of technical assistance, as well as modalities for the provision of technical assistance under Article 11 of the Agreement.³⁷

74. With a view to enhancing the effective provision of such technical assistance, and considering that Members, the Committee and the Secretariat have different roles to play in furthering the objectives of Article 11, the Committee notes that there are different aspects to be considered in the delivery and receipt of technical assistance. In this regard, the use of good practices is essential to enhance efficiency and effectiveness. For instance, it is important that technical assistance is provided in a timely manner and that it is predictable and sustainable. Also, in some cases, technical assistance may need to be provided on an urgent and *ad hoc* basis to assist developing country Members regarding the methods by which technical regulations can best be met, in accordance with Article 11.3.2.

3. Participation of Developing Country Members in the Work of International Standardizing Bodies

75. The Committee agreed in 1997 to explore ways and means of improving the implementation of Articles 2.6, 5.5, 11.2, 12.5 and paragraph G of the Code of Good Practice with a view to enhancing Members' awareness of, and participation in, the work of international standardizing bodies. Subsequently, the Committee noted the discussions in the General Council on implementation concerns, particularly in regard to participation by developing country Members in international standardization activities.

76. At the 2001 Doha Ministerial Conference, Members urged the Director-General to continue his cooperative efforts with international standardizing bodies and other institutions, including with a view to according priority to the effective participation of least-developed country Members and facilitating the provision of technical and financial assistance for this purpose.³⁸ At the Third Triennial Review, Members took note of a report issued by the Director-General on actions of relevant international organizations and institutions to increase participation of developing country Members in the work of international standardizing bodies.³⁹

77. Considering the above, the Committee notes and welcomes the actions taken by observer international standardizing bodies to enhance the participation of developing country Members in their work and invites these and other international standardizing bodies to provide information on steps taken to ensure their effective participation.⁴⁰

³⁶ G/TBT/9, para. 45 and G/TBT/13, para. 50.

³⁷ G/TBT/13, paras 50 and 52.

³⁸ WT/MIN(01)/17, para. 5.3. The reports issued by the Director-General are contained in WT/GC/42, 45 and 46/Rev.1. The latest report on TBT related work in response to the above mandate is contained in the last three paragraphs of WT/GC/W/500.

³⁹ G/TBT/W/172.

⁴⁰ For instance, the ISO General Assembly adopted, in 2004, an ISO Strategic Plan for the period 2005-2010 which aims, *inter alia*, at enhancing developing country involvement in its technical activities. The IEC has also reported on the use of its "Affiliate Country Programme", which is aimed at facilitating the participation of developing countries in the elaboration of international electrotechnical standards. The FAO/WHO (for Codex) has set up trust funds to enhance the participation of developing countries in standard setting meetings and activities, training programmes and regional technical consultations on standards and their implementation.

4. Future Work

78. With a view to facilitating the implementation of the TBT Agreement's provisions on technical assistance, the Committee agrees:

- (a) to encourage Members to make use of the Format for the Voluntary Notification of Specific Technical Assistance Needs and Responses contained in G/TBT/16;
- (b) to review, in 2007, the use of the Format for the Voluntary Notification of Specific Technical Assistance Needs and Responses, including the possible further development of the demand-driven technical cooperation mechanism; and
- (c) to exchange experiences in respect of the delivery and receipt of technical assistance with a view to identifying good practices in this regard.

F. SPECIAL AND DIFFERENTIAL TREATMENT

79. The Committee emphasizes the importance of Members providing differential and more favourable treatment to developing country Members, through the implementation of the provisions of Article 12 as well as through the relevant provisions of other Articles of the Agreement. Such treatment could assist developing country Members to effectively implement and benefit from the Agreement.

80. Special and differential treatment has been an important topic of consideration in the Committee. On various occasions, Members have exchanged views and information on how to improve transparency of the operation and implementation of Article 12.⁴¹ In the past, the Committee invited Members on a voluntary basis to exchange information on the implementation of Article 12 and specific problems faced in relation to its operation.⁴²

81. The Committee underscores the continuing need for exchanges of information concerning implementation of the special and differential treatment provisions of the Agreement. This includes sharing of information on special and differential treatment provided by Members and its impact, as well as information on how Members have taken into account special and differential treatment provisions in the preparation of technical regulations and conformity assessment procedures. The Committee notes possible challenges of ascertaining and providing information on special and differential treatment and also a possible link between discussions on special and differential treatment and technical assistance.

1. Future Work

82. In order to have a more focused exchange of information, the Committee agrees:

- (a) to encourage Members to inform the Committee of special and differential treatment provided to developing country Members, including information on how they have taken into account special and differential treatment provisions in the preparation of technical regulations and conformity assessment procedures; and
- (b) to encourage developing country Members to undertake their own assessments of the utility and benefits of such special and differential treatment.

⁴¹ See in particular G/TBT/5, Section H; G/TBT/9, Section F and also Annex 1 concerning a Workshop on Technical Assistance and Differential Treatment in the context of the TBT Agreement held on 19-20 July 2000.

⁴² G/TBT/5, para. 33(a).

83. The exchange of information could cover, *inter alia*, possible linkages between discussions on special and differential treatment and technical assistance.

**ANNEX 1 : LIST OF DOCUMENTS SUBMITTED AND DISCUSSED DURING
THE FOURTH TRIENNIAL REVIEW**

Date	Symbol	Title	Member
24 June 2004	G/TBT/W/239	Colombia's Experience with Good Regulatory Practice	Colombia
3 November 2004	G/TBT/W/248	Good Regulatory Practice	Mexico
25 May 2005	G/TBT/W/251	Intellectual Property Right (IPR) Issues in Standardization	People's Republic of China
8 June 2005	G/TBT/W/252	Fourth Triennial Review of the TBT Agreement	People's Republic of China
13 June 2005	G/TBT/W/253	Fourth Triennial Review of the TBT Agreement	European Communities
14 June 2005	G/TBT/W/254	Good Regulatory Practice	European Communities
26 October 2005	G/TBT/W/258	Good Regulatory Practice	United States
3 March 2006	G/TBT/W/261	Fourth Triennial Review of the TBT Agreement	Chinese Taipei
10 March 2006	G/TBT/W/263	Fourth Triennial Review of the TBT Agreement	Japan
13 March 2006	G/TBT/W/264	Advancing the Discussion of Instrument Choice under Good Regulatory Practice	Canada
23 May 2006	G/TBT/W/265/ Rev.1	Counterfeiting of Certification Marks Affixed to Goods where there Exists a Health and/or Safety Concern	Canada
7 June 2006	G/TBT/W/266	Fourth Triennial Review of the Operation and Implementation of the TBT Agreement	Costa Rica
8 June 2006	G/TBT/W/267	Good Regulatory Practice – National Experiences	Brazil
12 June 2006	G/TBT/W/268	Fourth Triennial Review of the TBT Agreement – Good Regulatory Practice and Transparency	Chile
3 October 2006	G/TBT/W/269	Fourth Triennial Review of the Operation and Implementation of the Agreement on Technical Barriers to Trade	Colombia
8 November 2006	G/TBT/W/251/ Add.1	Intellectual Property Right (IPR) Issues in Standardization	People's Republic of China