WTO Agreements

Non-tariff barriers: technicalities, red tape, etc

Technical regulations and standards

Technical regulations and industrial standards are important, but they vary from country to country. Having too many different standards makes life difficult for producers and exporters. If the standards are set arbitrarily, they could be used as an excuse for protectionism. Standards can become obstacles to trade.

The Agreement on Technical Barriers to Trade tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles. The WTO’s version is a modification of the code negotiated in the 1973-79 Tokyo Round.

The agreement recognizes countries’ rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Moreover, members are not prevented from taking measures necessary to ensure their standards are met. In order to prevent too much diversity, the agreement encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result.

The agreement sets out a code of good practice for the preparation, adoption and application of standards by central government bodies. It also includes provisions describing how local government and non-governmental bodies should apply their own regulations — normally they should use the same principles as apply to central governments.

The agreement says the procedures used to decide whether a product conforms with national standards have to be fair and equitable. It discourages any methods that would give domestically produced goods an unfair advantage. The agreement also encourages countries to recognize each other’s testing procedures. That way, a product can be assessed to see if it meets the importing country’s standards through testing in the country where it is made.

Manufacturers and exporters need to know what the latest standards are in their prospective markets. To help ensure that this information is made available conveniently, all WTO member governments are required to establish national enquiry points.

Import licensing: keeping procedures clear

Although less widely used now than in the past, import licensing systems are subject to disciplines in the WTO. The Agreement on Import Licensing Procedures says import licensing should be simple, transparent and predictable. For example, the agreement requires governments
to publish sufficient information for traders to know how and why the licences are granted. It also describes how countries should notify the WTO when they introduce new import licensing procedures or change existing procedures. The agreement offers guidance on how governments should assess applications for licences.

Some licences are issued automatically if certain conditions are met. The agreement sets criteria for automatic licensing so that the procedures used do not restrict trade.

Other licences are not issued automatically. Here, the agreement tries to minimise the importers’ burden in applying for licences, so that the administrative work does not in itself restrict or distort imports. The agreement says the agencies handling licensing should not normally take more than 30 days to deal with an application — 60 days when all applications are considered at the same time.

The present agreement is a modification of the “code” (i.e. agreement signed by only some GATT signatories) negotiated in the 1973-79 Tokyo Round. It is now part of the WTO package signed by all WTO members.

Rules for the valuation of goods at customs

For importers, the process of estimating the value of a product at customs presents problems that can be just as serious as the actual duty rate charged. The WTO agreement on customs valuation aims for a fair, uniform and neutral system for the valuation of goods for customs purposes — a system that conforms to commercial realities, and which outlaws the use of arbitrary or fictitious customs values.

The agreement provides a set of valuation rules, expanding and giving greater precision to the provisions on customs valuation in the original GATT.

A related Uruguay Round ministerial decision gives customs administrations the right to request further information in cases where they have reason to doubt the accuracy of the declared value of imported goods. If the administration maintains a reasonable doubt, despite any additional information, it may be deemed that the customs value of the imported goods cannot be determined on the basis of the declared value.

Preshipment inspection: a further check on imports

Preshipment inspection is the practice of employing specialized private companies (or “independent entities”) to check shipment details — essentially price, quantity and quality — of goods ordered overseas. Used by governments of developing countries, the purpose is to safeguard national financial interests (prevention of capital flight and commercial fraud as well as customs duty evasion, for instance) and to compensate for inadequacies in administrative infrastructures.
The agreement recognizes that GATT principles and obligations apply to the activities of preshipment inspection agencies mandated by governments. The obligations placed on governments which use preshipment inspections include non-discrimination, transparency, protection of confidential business information, avoidance of unreasonable delay, the use of specific guidelines for conducting price verification and the avoidance of conflicts of interest by the inspection agencies. The obligations of exporting members towards countries using preshipment inspection include non-discrimination in the application of domestic laws and regulations, prompt publication of those laws and regulations and the provision of technical assistance where requested.

The agreement establishes an independent review procedure. It is administered jointly by an organization representing inspection agencies and an organization representing exporters. Its purpose is to resolve disputes between an exporter and an inspection agency.

**Rules of origin: made in ... where?**

“Rules of origin” are the criteria used to define where a product was made. They are an essential part of trade rules because a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty (charged to counter export subsidies), and more. Rules of origin are also used to compile trade statistics, and for “made in ...” labels that are attached to products. This first-ever agreement on the subject requires WTO members to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standard (in other words, they should state what does confer origin rather than what does not).

For the longer term, the agreement aims for common (“harmonized”) rules of origin among all WTO members, except in some kinds of preferential trade — for example, countries setting up a free trade area are allowed to use different rules of origin for products traded under their free trade agreement. The agreement establishes a harmonization work programme, to be completed by July 1998, based upon a set of principles, including making rules of origin objective, understandable and predictable. The work is being conducted by a Committee on Rules of Origin in the WTO and a Technical Committee under the auspices of the World Customs Organization in Brussels. The outcome will be a single set of rules of origin to be applied under non-preferential trading conditions by all WTO members in all circumstances.

An annex to the agreement sets out a “common declaration” dealing with the operation of rules of origin on goods which qualify for preferential treatment.
Investment measures: reducing trade distortions

The Agreement on Trade-Related Investment Measures (TRIMS) applies only to measures that affect trade in goods. It recognizes that certain measures can restrict and distort trade, and states that no member shall apply any measure that discriminates against foreigners or foreign products (i.e. violates “national treatment” principles in GATT). It also outlaws investment measures that lead to restrictions in quantities (violating another principle in GATT). An illustrative list of TRIMS agreed to be inconsistent with these GATT articles is appended to the agreement. The list includes measures which require particular levels of local procurement by an enterprise (“local content requirements”). It also discourages measures which limit a company’s imports or set targets for the company to export (“trade balancing requirements”).

Under the agreement, countries must inform the WTO and fellow-members of all investment measures that do not conform with the agreement. Developed countries have to eliminate these in two years (by the end of 1996); developing countries have five years (to end of 1999); and least developed countries seven.

The agreement establishes a Committee on TRIMS to monitor the implementation of these commitments. The agreement also says that WTO members should consider, by 1 January 2000, whether there should also be provisions on investment policy and competition policy.