



**Regional Training of Trainers  
on how to design, negotiate, and implement FTAs**

## **Session 3A: Technical Barriers to Trade**

**October 2022**



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# History of the TBT Agreement

## Landmark

- **1947-48:** The provisions of the GATT 1947 contained only a general reference to technical regulations and standards in Articles III, XI and XX.
- **1973-79:** Under the Tokyo Round a plurilateral Agreement on Technical Barriers to Trade, the "Standards Code", was negotiated. The Standards Code laid down the rules for preparation, adoption and application of technical regulations, standards and conformity assessment procedures.
- **1986-1993:** During the Uruguay Round (UR), negotiators strengthened and clarified the provisions of the Tokyo Round Standards Code.
- **1 Jan. 1995:** Part of the "Single Undertaking", the Agreement entered into force.

# The objectives of TBT Agreement

to help governments in achievement a balance between

## upholding legitimate regulatory policy objectives

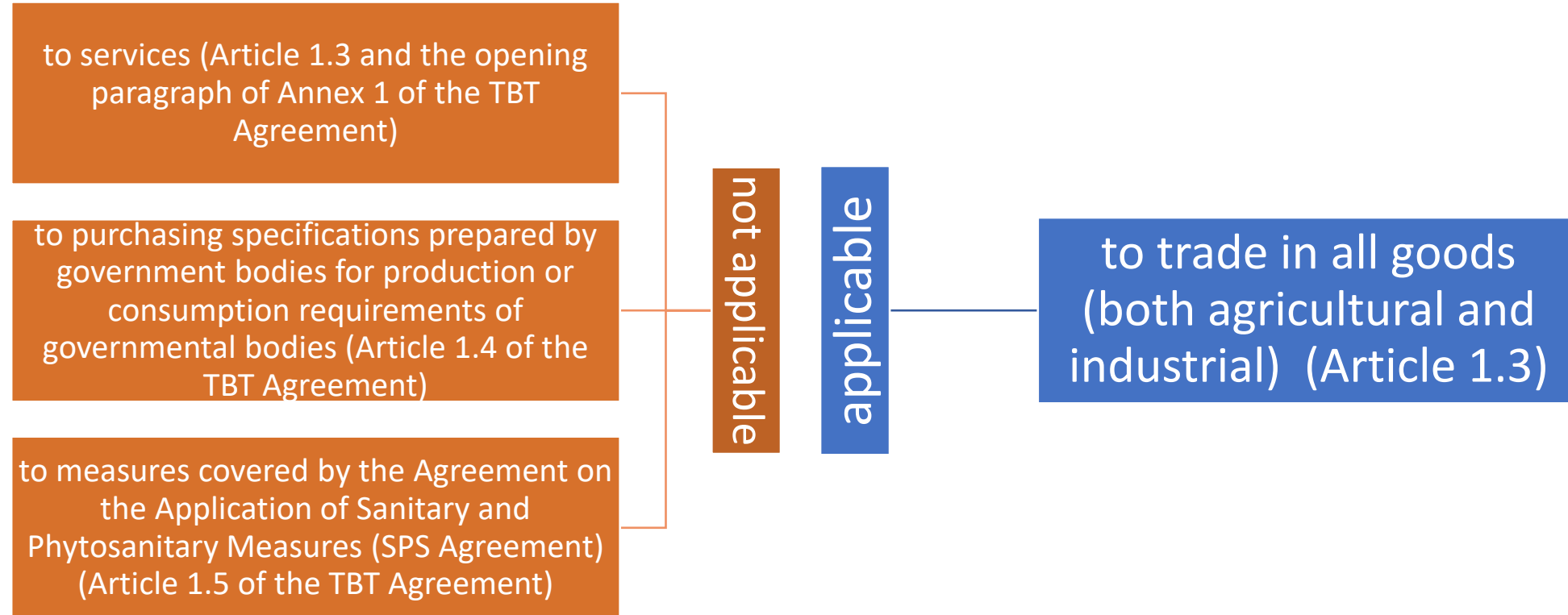
- the protection of human and animal life and health
- the protection of the environment



## respecting key disciplines in the Agreement

- non-discrimination
- avoidance of unnecessary barriers to trade
- use and development of international standards as a basis of technical regulations, where possible
- rights of members to adopt technical measures

# TBT Agreement is



# Structure of the Agreement

The TBT Agreement consists of a Preamble, setting out the general objectives of the Agreement, 15 articles and three annexes.

- The first set of provisions concerns the preparation, adoption and application of technical regulations (Articles 2-3).
- The second set deals with the preparation, adoption and application of standards (Article 4, and Code of good practice for the preparation, adoption and application of standards (Annex 3).
- The third set of provisions relates to conformity assessment procedures (Articles 5-9).
- The remainder of the Agreement (Articles 10-14) deals with transparency, technical assistance, special and differential treatment, dispute settlement and institutional issues (the work of the TBT Committee).
- In addition, Annex 1 contains definitions of the terms used in the Agreement and Annex 2 lays down provisions referred to technical experts groups. Annex 3 deals with the preparation, adoption and application of standards by standardizing bodies.

## PROVISIONS OF THE TBT AGREEMENT

### PREAMBLE

Article 1 General Provisions

### TECHNICAL REGULATIONS AND STANDARDS

Article 2 Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

Article 3 Preparation, Adoption and Application of Technical Regulations by Local Government Bodies and Non-Governmental Bodies

Article 4 Preparation, Adoption and Application of Standards

### CONFORMITY WITH TECHNICAL REGULATIONS AND STANDARDS

Article 5 Procedures for Assessment of Conformity by Central Government Bodies

Article 6 Recognition of Conformity Assessment by Central Government Bodies

Article 7 Procedures for Assessment of Conformity by Local Government Bodies

Article 8 Procedures for Assessment of Conformity by Non-Governmental Bodies

Article 9 International and Regional Systems

### INFORMATION AND ASSISTANCE

Article 10 Information About Technical Regulations, Standards and Conformity Assessment Procedures

Article 11 Technical Assistance to Other Members

Article 12 Special and Differential Treatment of Developing Country Members

### INSTITUTIONS, CONSULTATION AND DISPUTE SETTLEMENT

Article 13 The Committee on Technical Barriers to Trade

Article 14 Consultation and Dispute Settlement

### FINAL PROVISIONS

Article 15 Final Provisions (Reservations, Review and Annexes)

### ANNEXES

Annex 1 Terms and their definitions for the purpose of this Agreement

Annex 2 Technical expert groups

Annex 3 Code of good practice for the preparation, adoption and application of standards

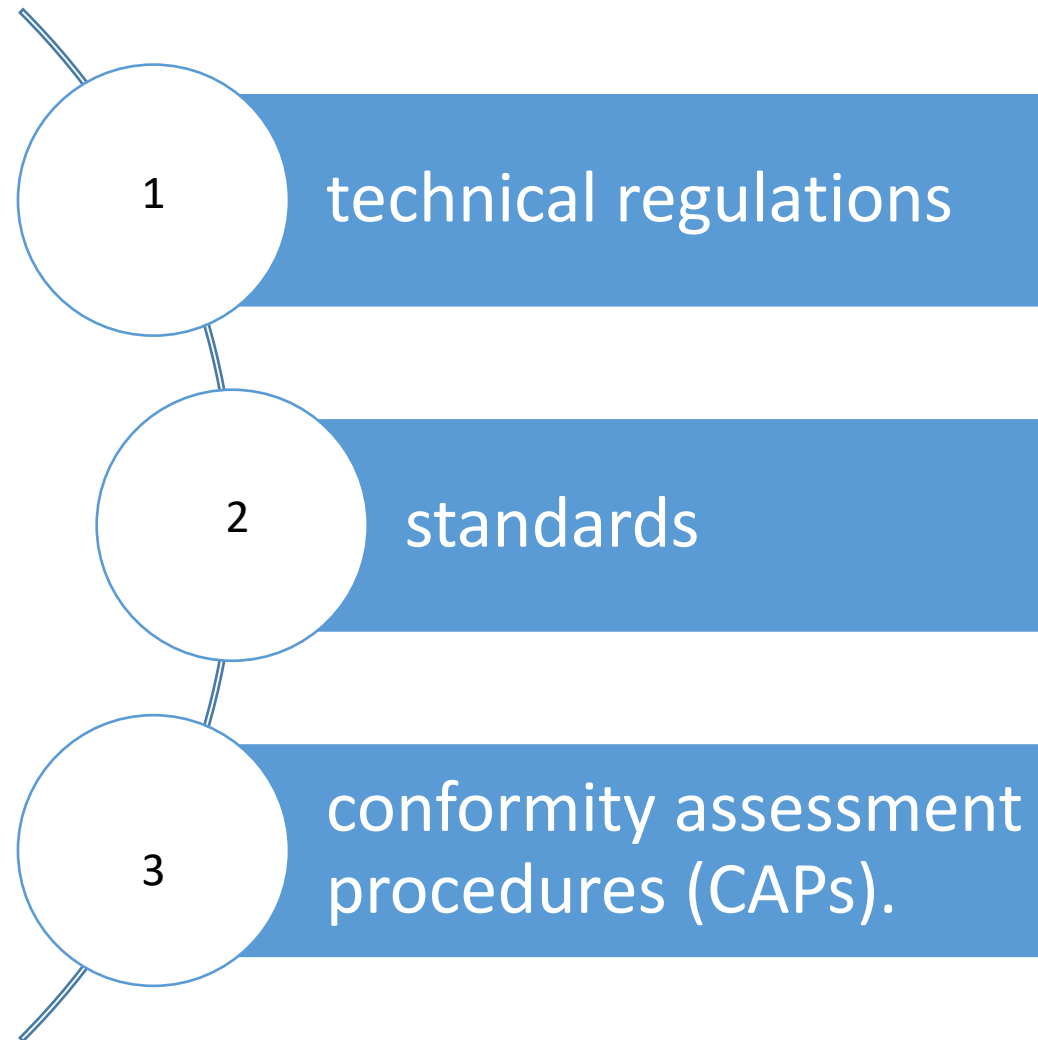
# Scope and application of the TBT Agreement and FTA TBT chapters

On completion of this section, the attendees will be able:

- to discuss about the general scope of the TBT Agreement and FTA TBT chapters.
- to be familiar with the key concepts of the TBT Agreement and recognize the differences between “technical regulations”, “standards,” and “conformity assessment procedures”.
- to appreciate the relationship between the TBT Agreement and FTA.

# The TBT Agreement distinguishes between three categories of measures

(Annex 1 contains definitions)



# Technical Regulations (TBT Annex 1.1)

It lays down  
product  
characteristics

... or their related  
processes and  
production  
methods

Compliance is  
mandatory

# Technical Regulations' requirements

Terminology requirements

Symbol requirements

Packaging requirements

Marking requirements

Labelling requirements

## Technical Regulations (Obligations)

central governmental  
bodies (Article 2)

local government bodies  
and non-governmental  
bodies (Article 3).

# Technical Regulations (Criteria)

EC - Asbestos  
(WT/DS135)

EC - Sardines (WT/DS231)



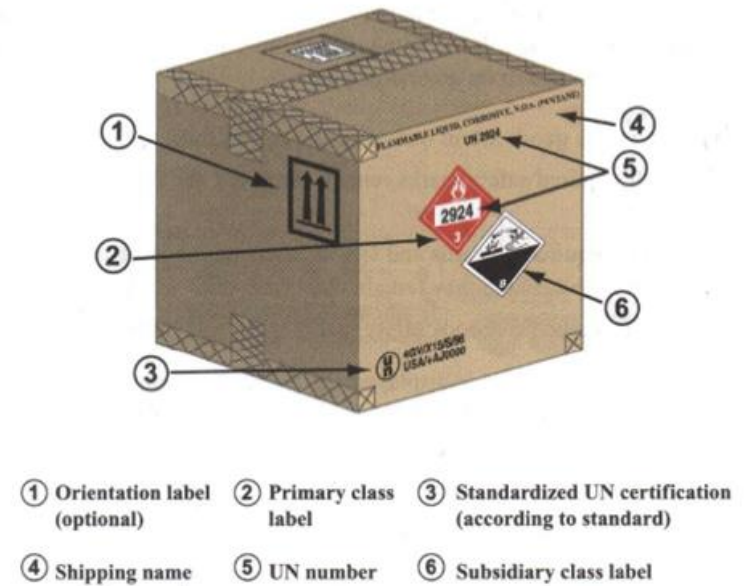
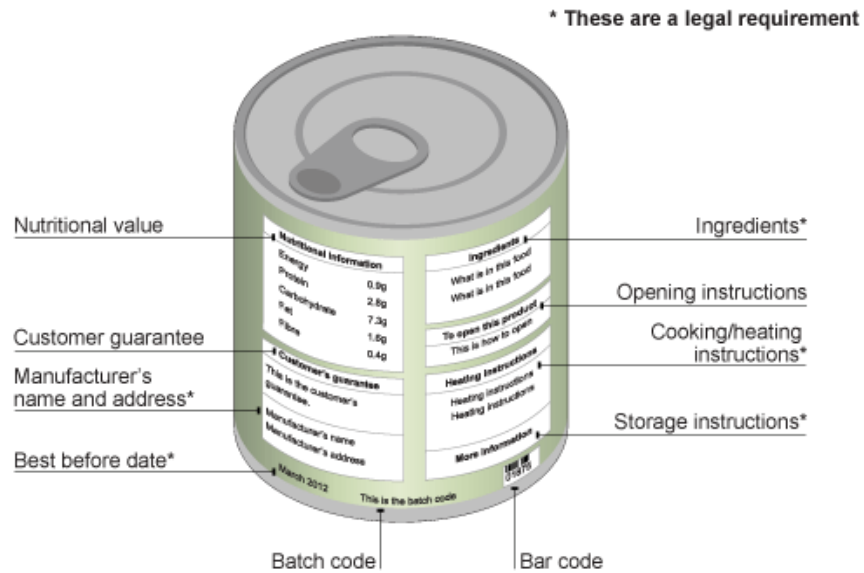
(i) that the requirements (set out in the document containing the technical regulation) must apply to an **identifiable** product or group of products (even if this is not expressly identified in the document)



(ii) that the requirements must specify one or more **characteristics** of the product (these may be intrinsic to the product itself, or simply related to it, and they may be prescribed or imposed in either a positive or a negative form)



(iii) that compliance with the product characteristics must be **mandatory**

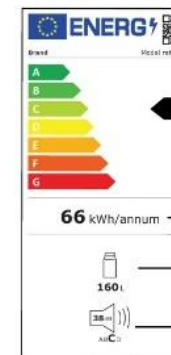


## How to recognise a rescaled product ?

Current energy label



New energy label



The QR code gives access to more information on the model

The rescaled energy efficiency class for this fridge, an A+++ in the previous label

The annual energy consumption of this fridge is calculated with refined methods

The volume of the fridge expressed in liters (L)

The noise level measured in decibels (dB) and using a four classes scale

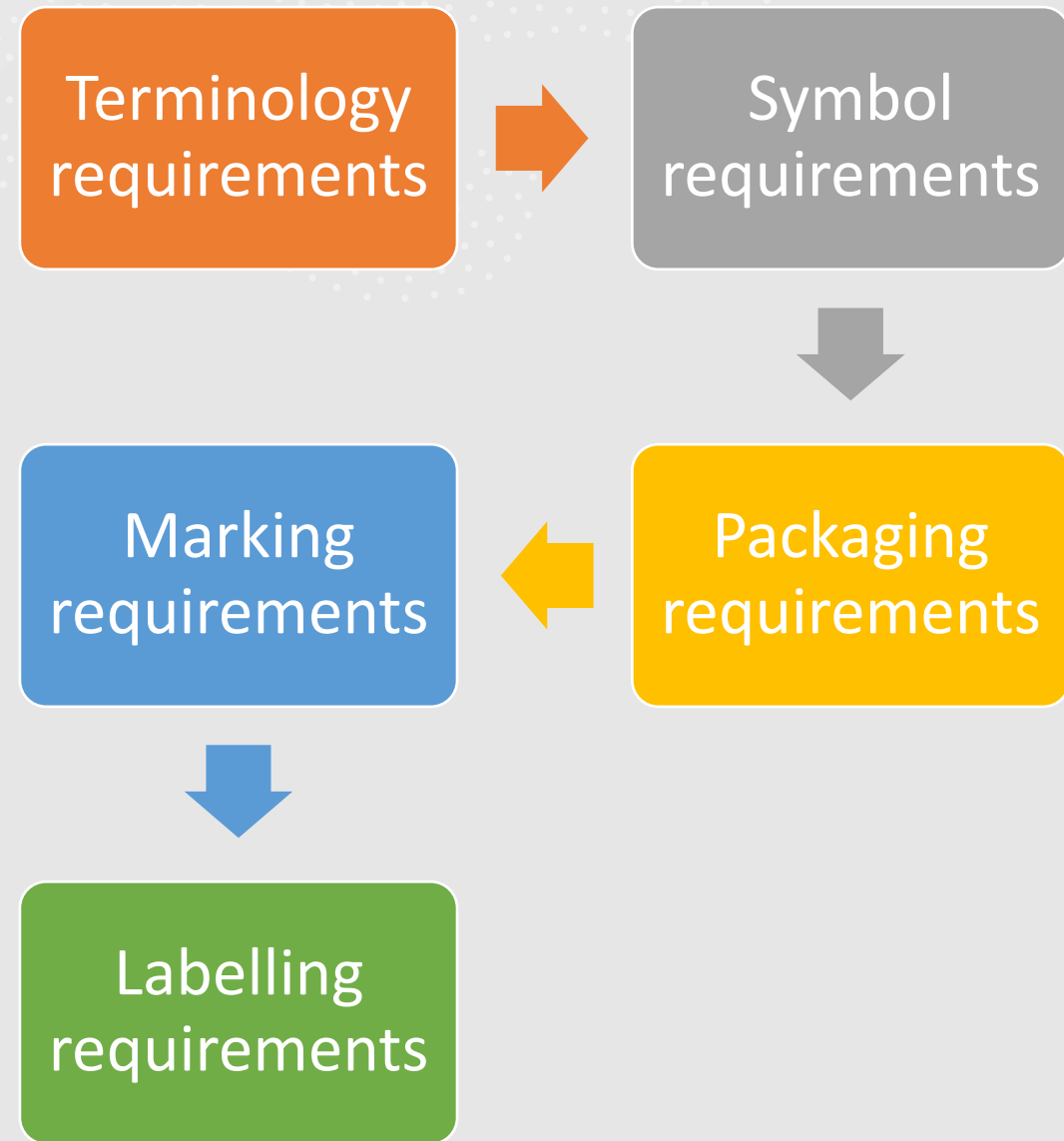
# Standards (TBT Annex 1.2)

Approved by a recognized body

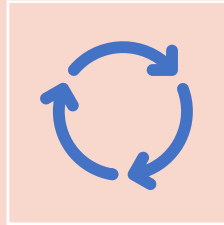
Provides for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods

Compliance is voluntary

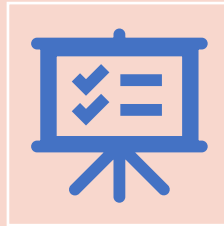
# Standards' requirements (Annex 1, paragraph 2)



# Standards (Obligations)



Preparation, adoption and  
application of Standards  
(Article 4)



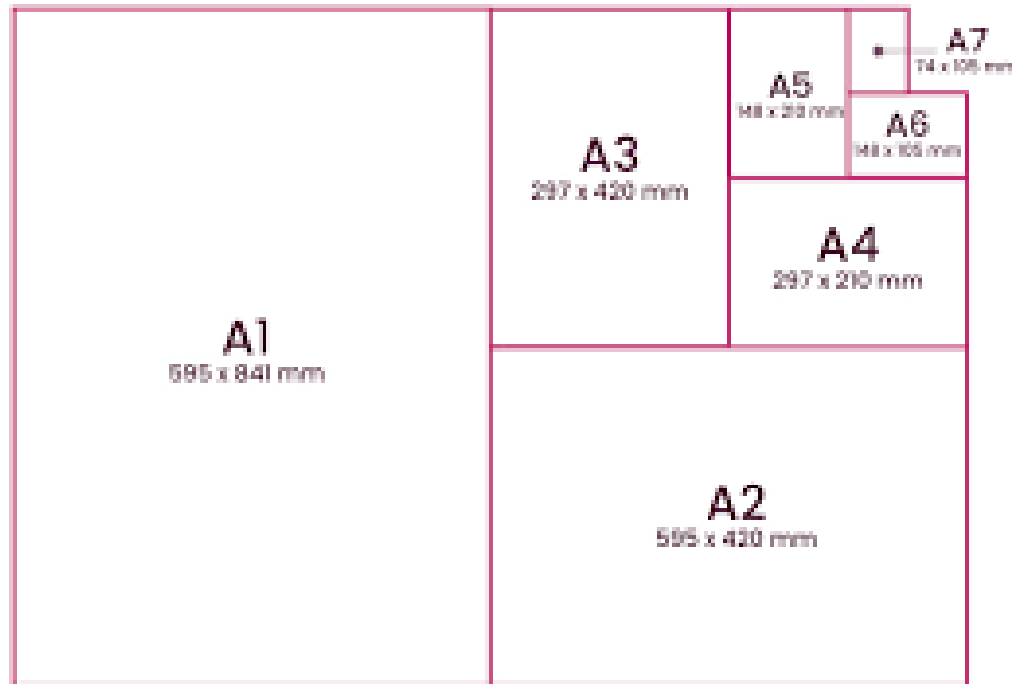
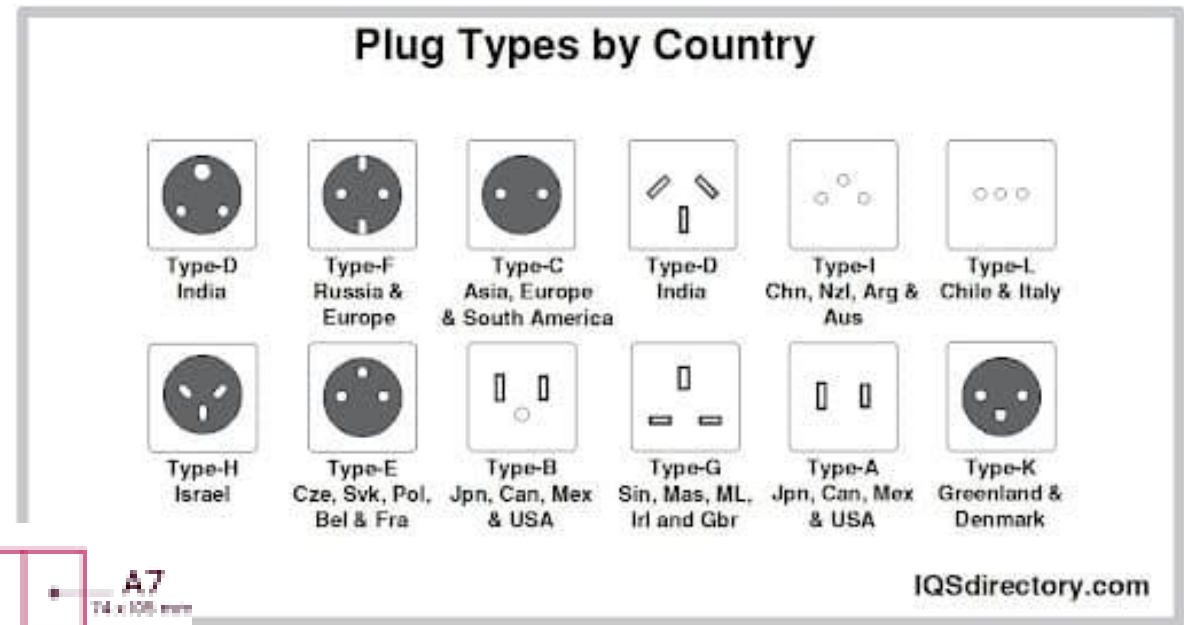
Code of Good Practice for the  
Preparation, Adoption and  
Application of Standards  
(Annex 3)

# What is the Code of Good Practice?

The Agreement sets out a code of good practice for the preparation, adoption and application of standards by central government bodies

lays down disciplines in respect of local governmental, non-governmental and regional standardizing bodies developing voluntary standards.

# Examples



# Conformity Assessment Procedure (CAPs)

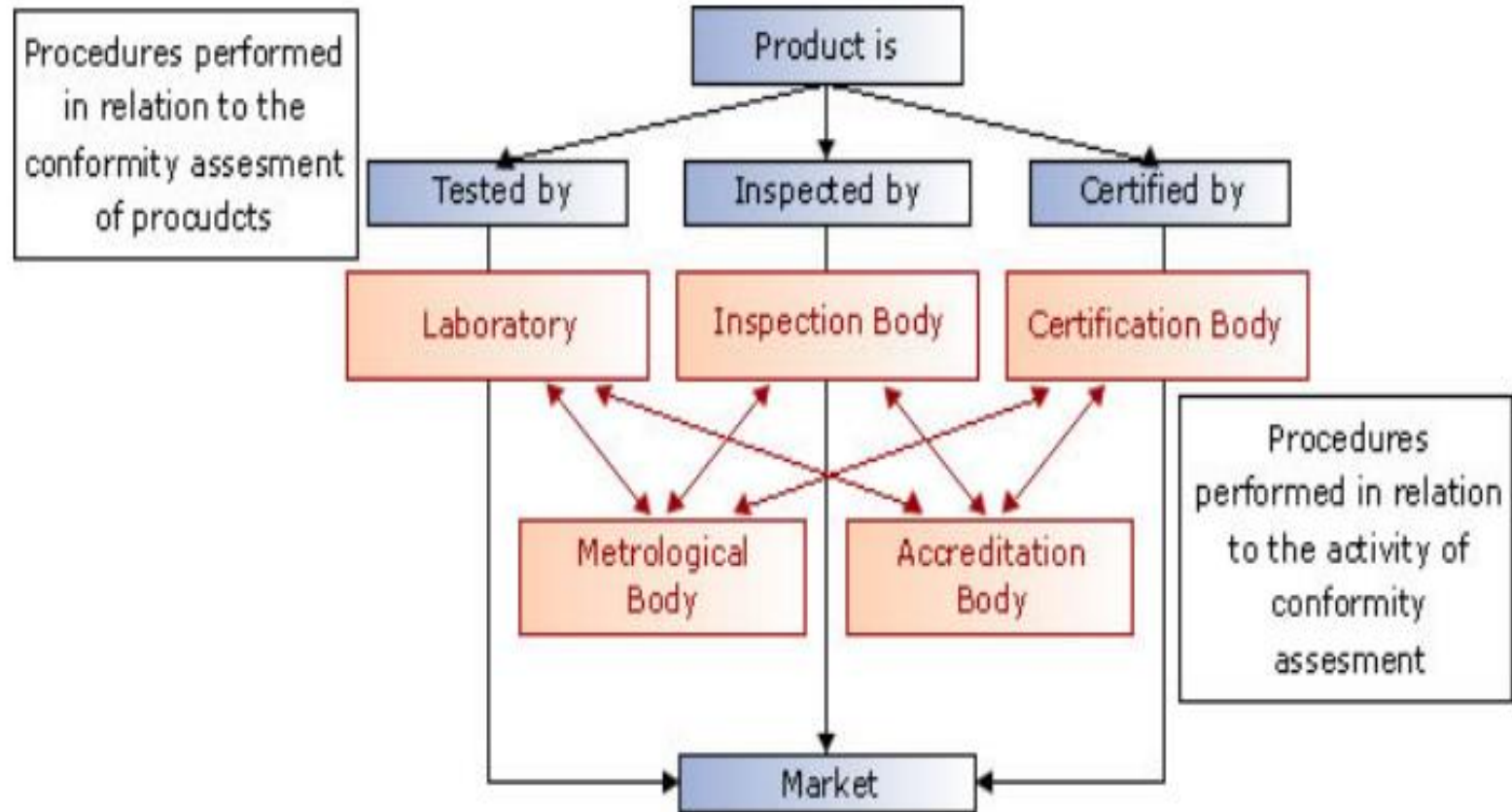
(TBT Annex 1.3)

Any procedure (sampling, testing, inspection, evaluation, verification, registration, accreditation, etc)

Used directly or indirectly to determine

Relevant requirements in technical regulations and standards are fulfilled

# CAPs procedures



# TBT chapter in FTA

Provisions on technical regulations, standards and conformity assessments are found both under TBT chapters with the aim:

- to foster enhanced transparency or encourage harmonization, and

- to mutual recognize the conformity assessment procedures, and

- to deal with good regulatory practices or international regulatory cooperation depending on the agreement.

- to emphasize the adoption of international standards in areas of greater integration

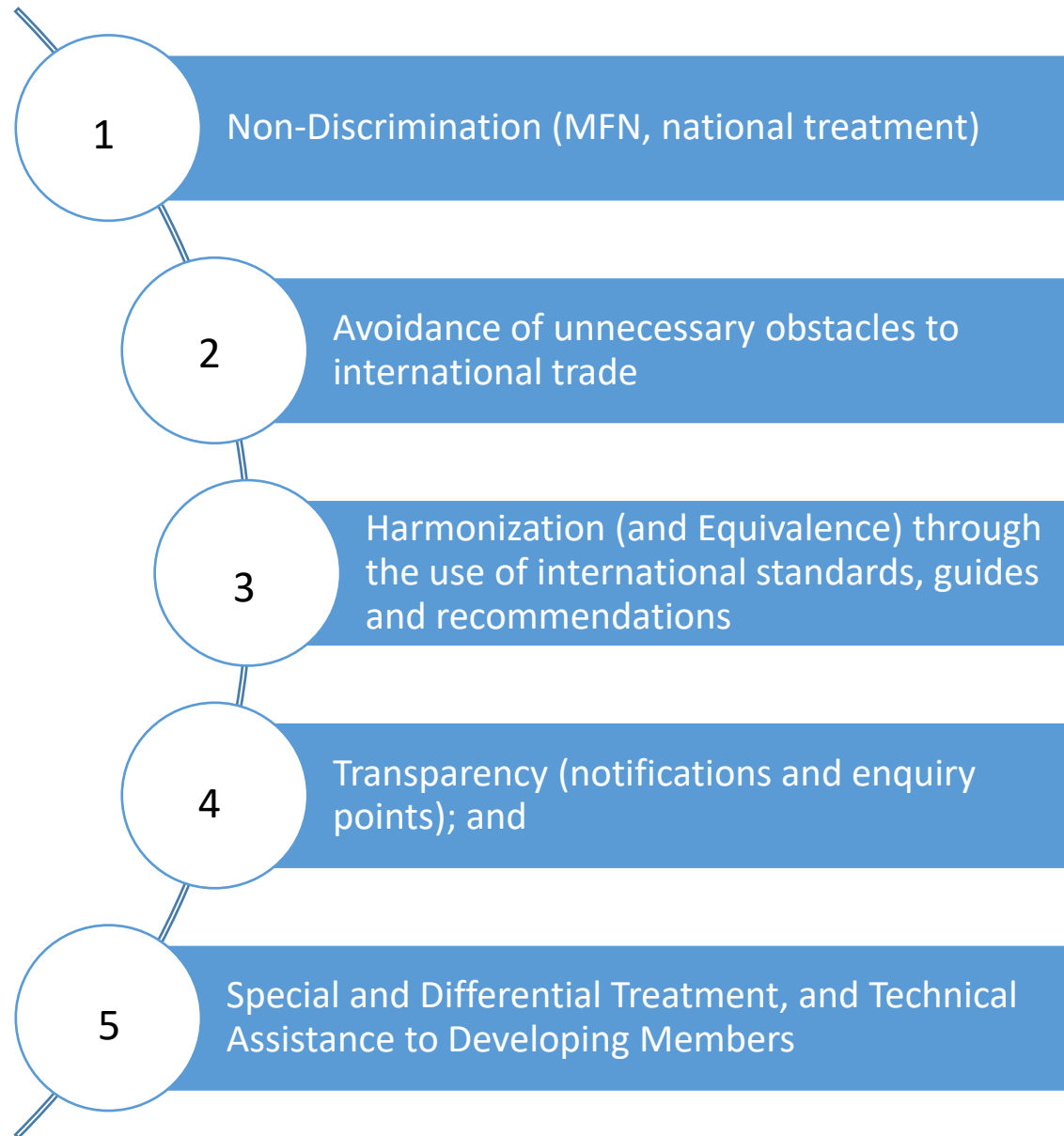
- to enhance regulatory cooperation, provide more direct and facilitated engagement on TBT issues, and increase the transparency of regulatory processes

# The main substantive obligations of the TBT Agreement and FTA TBT chapters

On completion of this section, the attendees will be able:

- to discuss the key legal principles and rules applicable to TBT measures as a result of the TBT Agreement, including non-discrimination, the prevention of unnecessary obstacles to international trade, harmonization, equivalence and transparency, and special and differential treatment, and technical assistance.
- Many of these principles and rules may already be familiar to the participants from other portions of the WTO Agreement.

# The five principles contained in the TBT Agreement



# The Non-Discrimination Principle (GATT, art 1 and 3)

## GATT ARTICLE I

Pursuant to Article I, on the Most Favoured Nation Principle, WTO Members are bound to grant to the products of other Members treatment no less favourable than that accorded to the products of any other country. Thus, no Member is to give special trading advantages to one Member at the exclusion of others. All Members are meant to be treated on an equal footing and share the benefits of any moves towards lower trade barriers.

## GATT ARTICLE III

Article III contains the National Treatment Principle. It stipulates that once goods have entered a market, they must be treated no less favourably than like products that are domestically produced. More specifically, Article III:4 requires that the products of any Member imported into any other Member shall be accorded treatment no less favourable than that accorded to like products of national origin in respect of all laws, regulations and requirements affecting their internal sale, offering for sale, purchase, transportation, distribution or use".

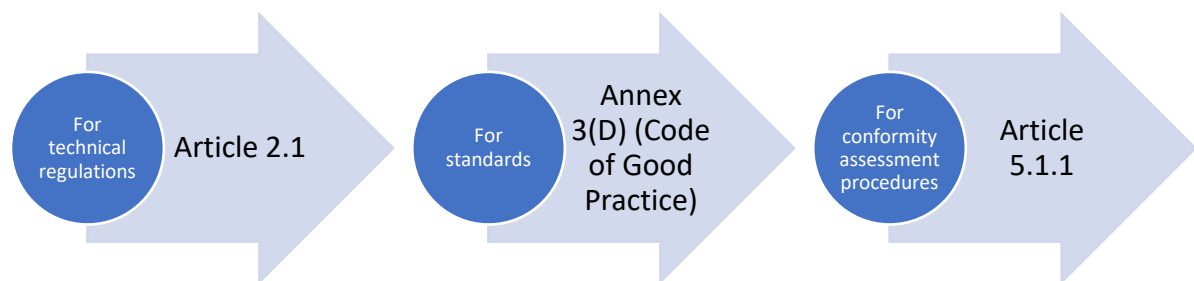
most-  
favoured-  
nation  
treatment  
("MFN  
treatment")

- not to discriminate between "like products" imported from different WTO Members

national  
treatment

- not to discriminate between domestic and imported "like products."

# The principle of non-discrimination



The principle of non-discrimination has been addressed in detail in four TBT disputes: US – Clove Cigarettes, US – Tuna II (Mexico) and US – COOL, all involving technical regulations, and Russia – Railway Equipment, concerning CAPs.

## Technical regulations (Article 2.1)

Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

## Standards (paragraph D of Annex 3, under “substantive provisions”)

In respect of standards, the standardizing body shall accord treatment to products originating in the territory of any other Member of the WTO no less favourable than that accorded to like products of national origin and to like products originating in any other country.

## Conformity assessment procedures (Articles 5.1 and 5.1.1)

5.1 Members shall ensure that, in cases where a positive assurance of conformity with technical regulations or standards is required, their central government bodies apply the following provisions to products originating in the territories of other Members:

5.1.1 conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in the territories of other Members under conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; access entails suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of facilities and to receive the mark of the system.

# The principle of non-discrimination

What is the concept of “Like Products”?  
(Article III of the GATT 1994)

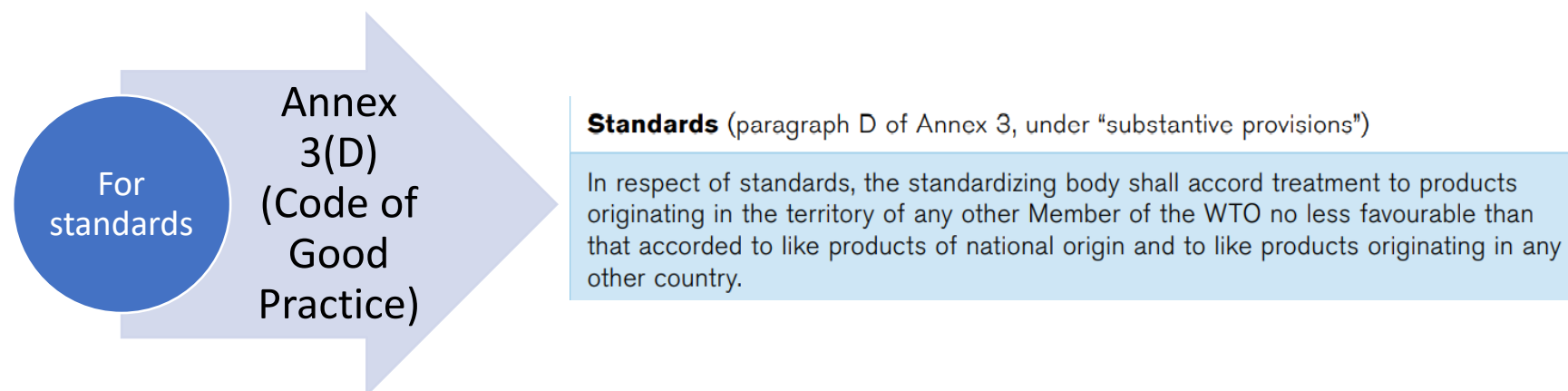
- “physical characteristics”
- “end-uses” (Appellate Body Report, EC - Asbestos, para. 101)
- “consumers’ tastes and habits”
- “HS tariff classification” (the case Japan - Taxes on Alcoholic Beverages (WT/DS8, 10, 11))

What is the concept of  
“No less favorable treatment than”  
(Article III:4 of the GATT 1994)

- “formal difference in treatment”
- “less favorably” treated
- “fundamental thrust and effect of the measure itself”

for technical regulations

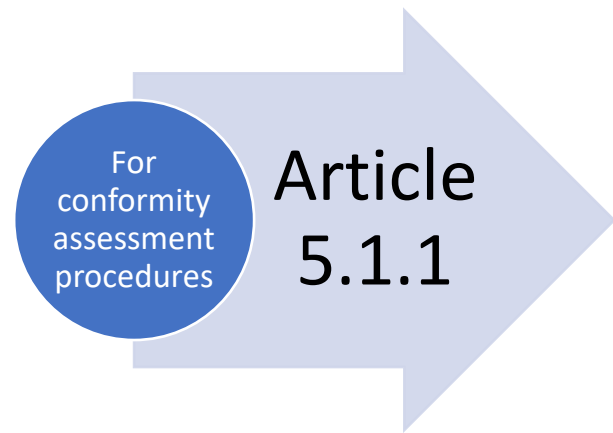
# The principle of non-discrimination



Products from any WTO Member shall be treated by standardizing bodies no less favorably than like products of national origin or originating in any other country.

WTO Members have the obligation to ensure that central government bodies comply with the Code of Good Practice in the Preparation, Adoption and Application of Standards, which includes the obligation of non-discrimination and to treat like products in a no less favorable manner, similarly to what was explained above regarding technical regulations and conformity assessment procedures.

# The principle of non-discrimination



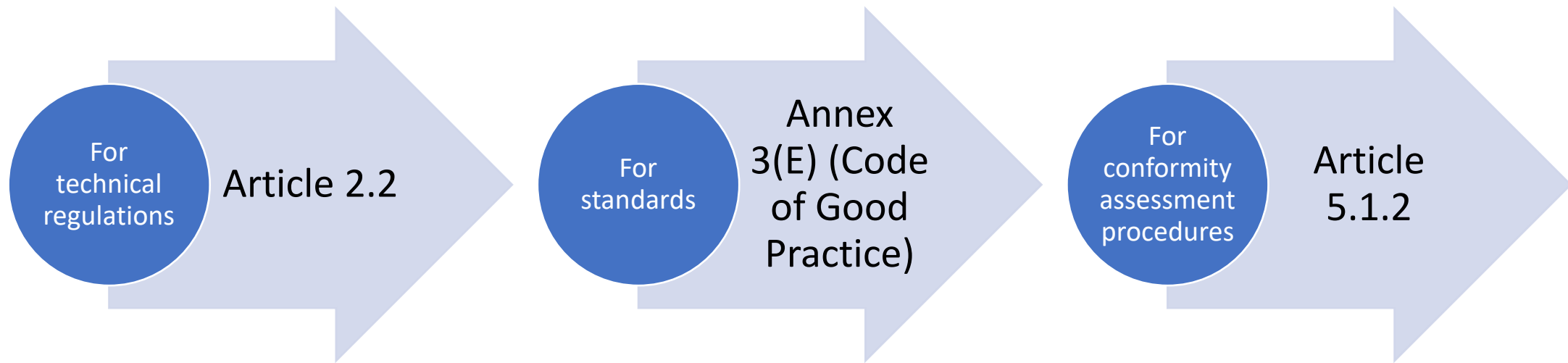
## **Conformity assessment procedures** (Articles 5.1 and 5.1.1)

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the non-discrimination principle is applied to conformity assessment procedures in terms of no less favorable "access", and not "treatment" as is the case in Article 2 on technical regulations, in relation to suppliers of like products of national origin or originating in any other country. Moreover, unlike Article 2.1, non-discrimination in Article 5.1.1 is imposed on like products in comparable situations.

# Avoidance of unnecessary obstacles to trade



# Avoidance of unnecessary obstacles to trade



## Article 2.2

### Article 2.2

“Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.

The concept of “necessity” described in GATT Article XX, paragraphs (b) and (d)

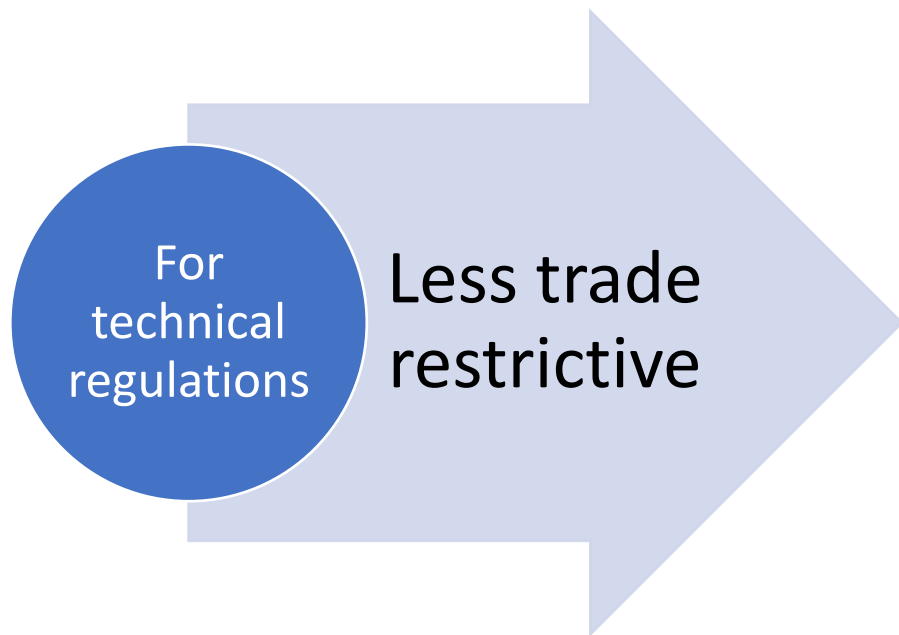
Legitimate objectives are, inter alia:

- national security requirements;
- the prevention of deceptive practices;
- protection of human health or safety, animal or plant life or health, or the environment.

In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products.”

The concept of “less trade restrictive means” is linked to the one of “necessity”

# Avoidance of unnecessary obstacles to trade



The instruments to adopt a less trade restrictive are :

- a. Use of International Standards (Art 2,2; Art 2,.4, and Art 2,5)
- b. Use of Equivalence (Article 2.7).
- c. Adoption of Technical Regulations based on performance (Art 2,8).
- d. Review of regulations based on the change of circumstances (Art 2.3).
- e. Good regulatory practice. Discussions have taken place in the TBT Committee on the issue of (WTO, document G/TBT/13):

# Avoidance of unnecessary obstacles to trade

For  
standards

paragraph  
**E of the  
Code of  
Good  
Practice**

“a standardizing body shall ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade”

Similarly to technical regulations, a means to avoid unnecessary obstacles to international trade is foreseen in the stated preference for standards based on performance rather than design.

# Avoidance of unnecessary obstacles to trade

For  
conformity  
assessment  
procedures

## Article 5.1.2

5.1.2 conformity assessment procedures are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. This means, *inter alia*, 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, taking account of the risks nonconformity would create.

Differences in the concept of necessity between Article 2.2 on technical regulations and Article 5.1.2 on conformity assessment procedures (CAPs).

- Article 5.1.2 implies that there may be several ways to determine the necessity of a CAPs while Article 2.2 states that technical regulations "shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create"; and
- the necessity of a technical regulation is determined in relation to its trade restrictiveness while the necessity of the conformity assessment procedure is established in relation to its strictness.

# Avoidance of unnecessary obstacles to trade

For  
conformity  
assessment  
procedures

Requirements  
in Article 5.2

Timing

undertaken and completed as expeditiously as possible and in a no less favorable order for like products

Transparency

respect the obligations aimed at transparency such as Publication/communication; Prompt examination; Expeditious transmission; Continuation of the procedure; Timely information

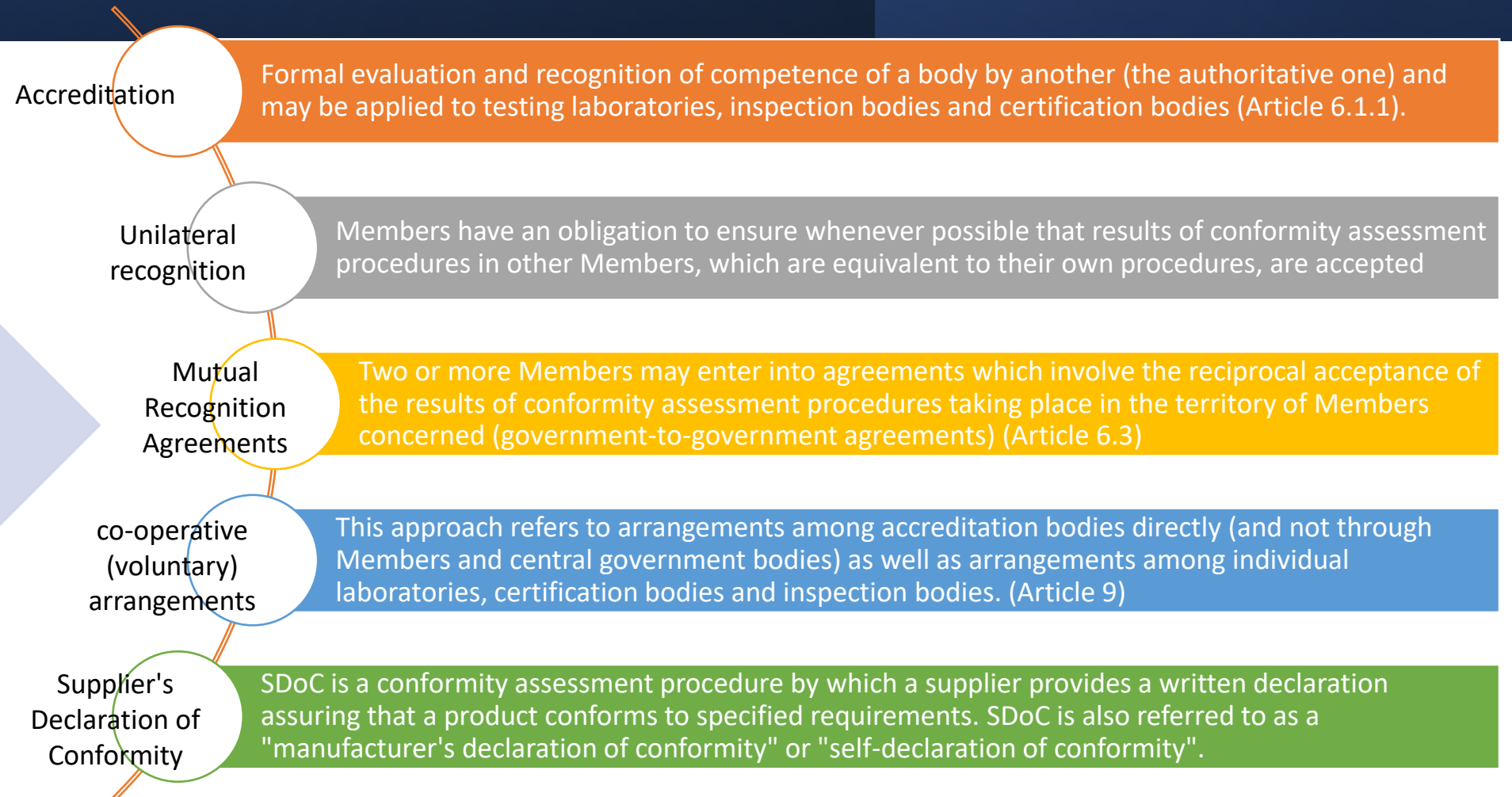
Information

the amount of information and keep in confidentiality

Operation  
conditions

fees imposed are equitable; avoid unnecessary inconvenience; assessing of the limitation of what is necessary ; reviewing procedure exists

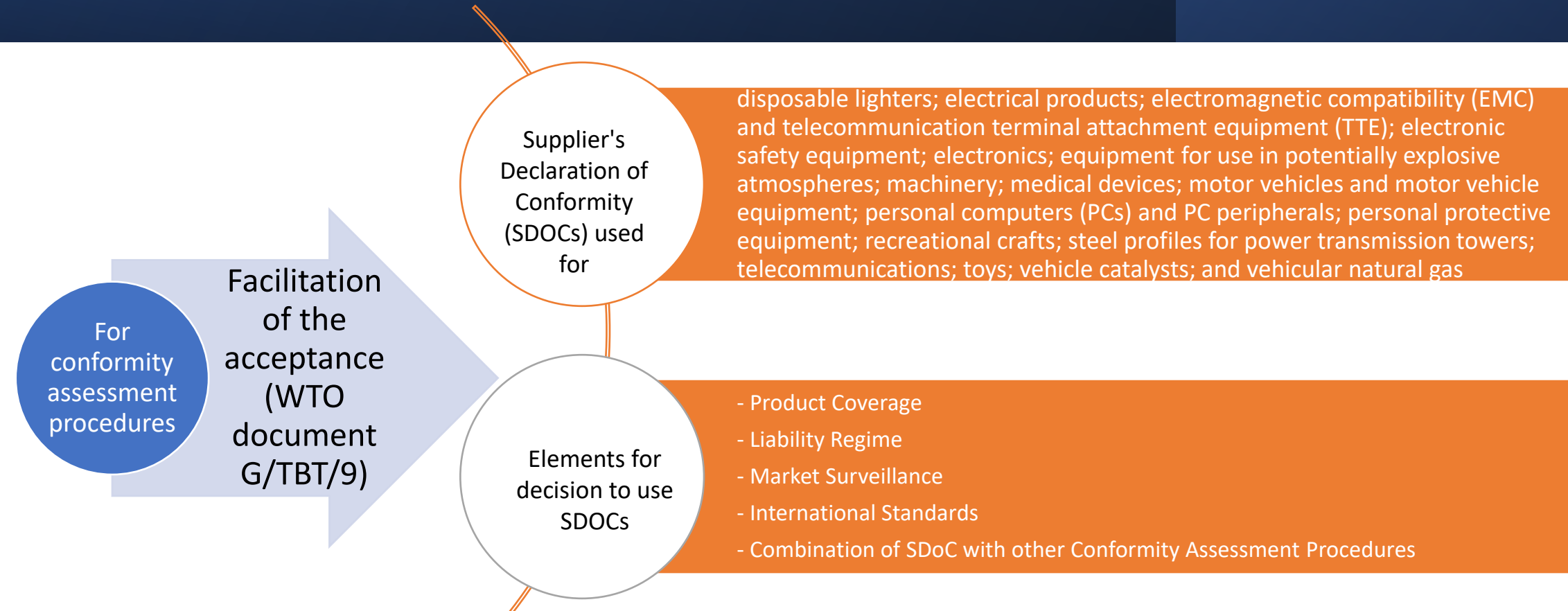
# Avoidance of unnecessary obstacles to trade



For  
conformity  
assessment  
procedures

Facilitation  
of the  
acceptance  
(WTO  
document  
G/TBT/9)

# Avoidance of unnecessary obstacles to trade



# The Harmonization Principle in the TBT Agreement

Members are encouraged to participate in the international harmonization of standards, and to use agreed international standards as a basis for domestic technical regulations and standards.

TBT Agreement's Preamble:

*Recognizing the important contribution that international standards and conformity assessment systems can make in this regard by improving efficiency of production and facilitating the conduct of international trade;*

*Desiring therefore to encourage the development of such international standards and conformity assessment systems;*

*Recognizing the contribution which international standardization can make to the transfer of technology from developed to developing countries;*

# The Harmonization Principle in the TBT Agreement

## The main requirements

WTO Members and standardizing bodies shall use international standards – or relevant parts of them - as a basis for their technical regulations and standards; and international guides and recommendations as a basis for their conformity assessment procedures (TBT Agreement's Articles 2.4, 5.4, and Annex 3 paragraph F)

WTO Members and standardizing bodies shall participate, within the limits of their resources, in the preparation of international standards, guides and recommendations by international standardizing bodies (TBT Agreement's Articles 2.6, 5.5, and Annex 3 paragraph H)

Standardizing bodies shall make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies, including international or regional standardizing bodies (TBT Agreement's Annex 3 paragraph H)

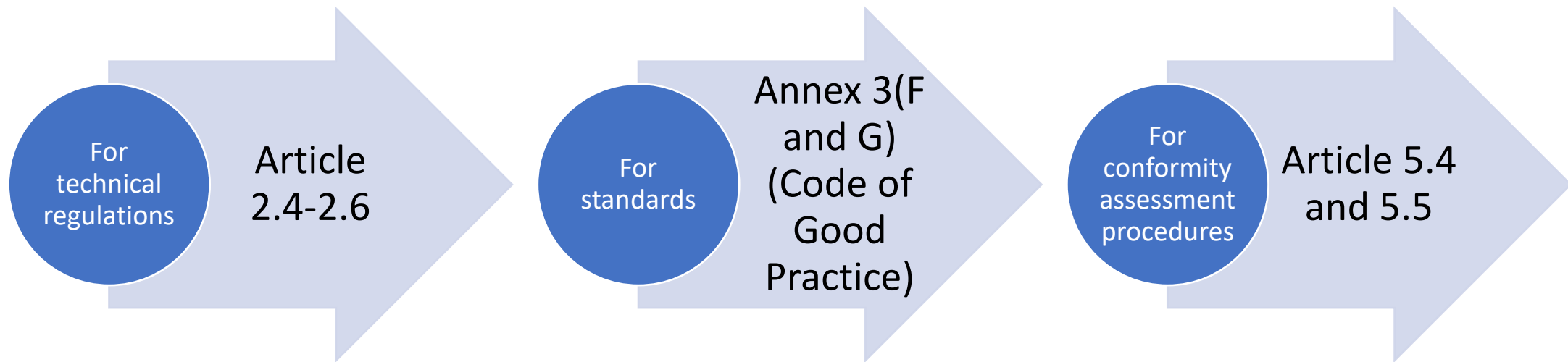
# The Harmonization Principle in the TBT Agreement

## The main rights

WTO Members' technical regulations will be rebuttably presumed not to create an unnecessary obstacle to trade (Article 2.5 of the TBT Agreement)

WTO Members and standardizing bodies may adopt technical regulations and standards which are not based on relevant international standards, when these are seen as ineffective or inappropriate to fulfil a legitimate objective. (Articles 2.4, 5.4, and Annex 3 paragraph F of the TBT Agreement)

# The Harmonization Principle in the TBT Agreement



# The Harmonization Principle in the TBT Agreement

2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems.

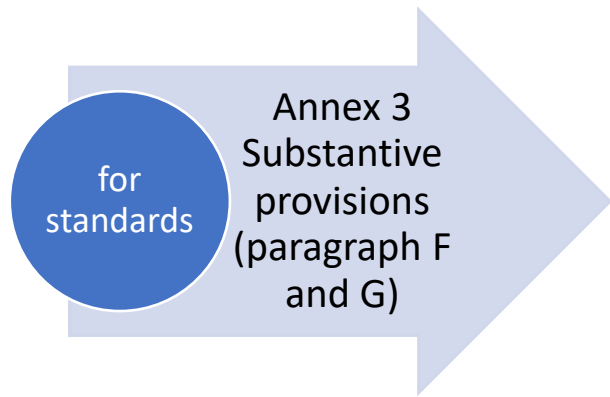
2.5 A Member preparing, adopting or applying a technical regulation which may have a significant effect on trade of other Members shall, upon the request of another Member, explain the justification for that technical regulation in terms of the provisions of paragraphs 2 to 4. Whenever a technical regulation is prepared, adopted or applied for one of the legitimate objectives explicitly mentioned in paragraph 2, and is in accordance with relevant international standards, it shall be rebuttably presumed not to create an unnecessary obstacle to international trade.

2.6 With a view to harmonizing technical regulations on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of international standards for products for which they either have adopted, or expect to adopt, technical regulations.

For  
technical  
regulations

## Article 2.4-2.6

# The Harmonization Principle in the TBT Agreement



F. Where international standards exist or their completion is imminent, the standardizing body shall use them, or the relevant parts of them, as a basis for the standards it develops, except where such international standards or relevant parts would be ineffective or inappropriate, for instance, because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems.

G. With a view to harmonizing standards on as wide a basis as possible, the standardizing body shall, in an appropriate way, play a full part, within the limits of its resources, in the preparation by relevant international standardizing bodies of international standards regarding subject matter for which it either has adopted, or expects to adopt, standards. For standardizing bodies within the territory of a Member, participation in a particular international standardization activity shall, whenever possible, take place through one delegation representing all standardizing bodies in the territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardization activity relates.

# The Harmonization Principle in the TBT Agreement

for  
conformity  
assessment  
procedures

## Articles 5.4 and 5.5

5.4 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, Members shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Members concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

5.5 With a view to harmonizing conformity assessment procedures on as wide a basis as possible, Members shall play a full part, within the limits of their resources, in the preparation by appropriate international standardizing bodies of guides and recommendations for conformity assessment procedures.

# The Harmonization Principle in the TBT Agreement

## International Standardizing Bodies

Articles 2.4 and 2.6 for technical regulations, Articles 5.4 and 5.5 for conformity assessment procedures and paragraphs F and G of the Code of Good Practice for standards

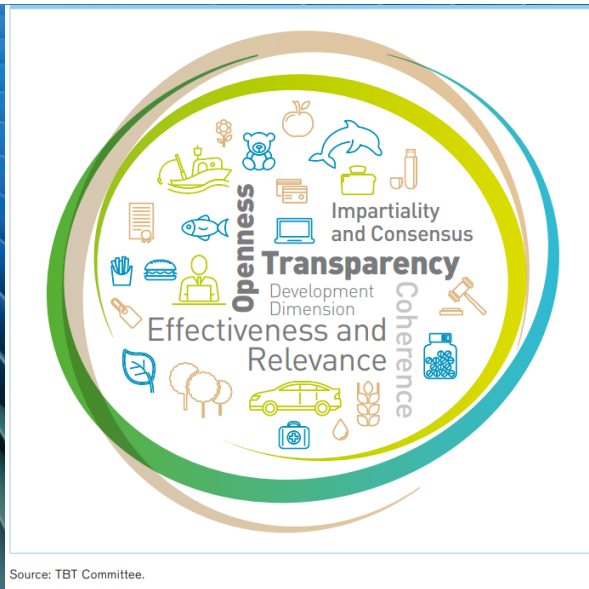
There is no specific reference to any particular international standardizing body.

the International Standardization Organization (ISO),  
the International Electrotechnical Commission (IEC) and  
the International Telecommunication Union (ITU).

AVOID DUPLICATION OF WORK: Standardizing bodies have the obligation to make every effort to avoid duplication of, or overlap with, the work of other standardizing bodies.

DEVELOPMENT OF INTERNATIONAL STANDARDS: The Six Principles

# The Harmonization Principle in the TBT Agreement



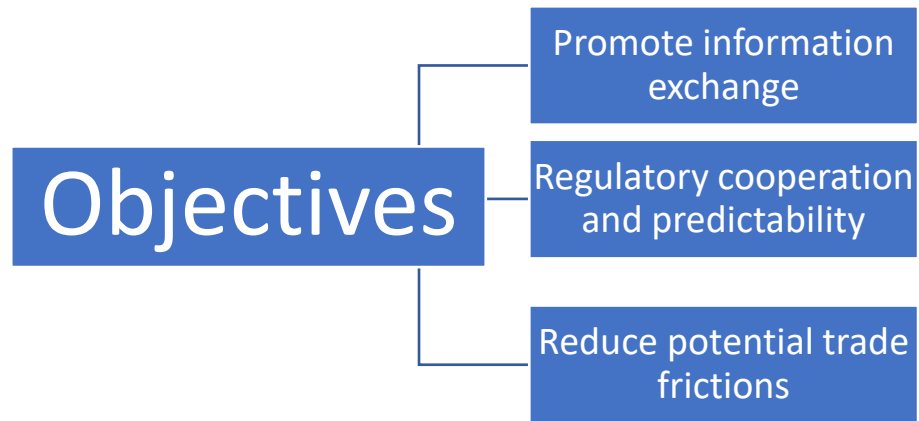
International  
Standardizing  
Bodies

## Development of International Standards: The Six Principles

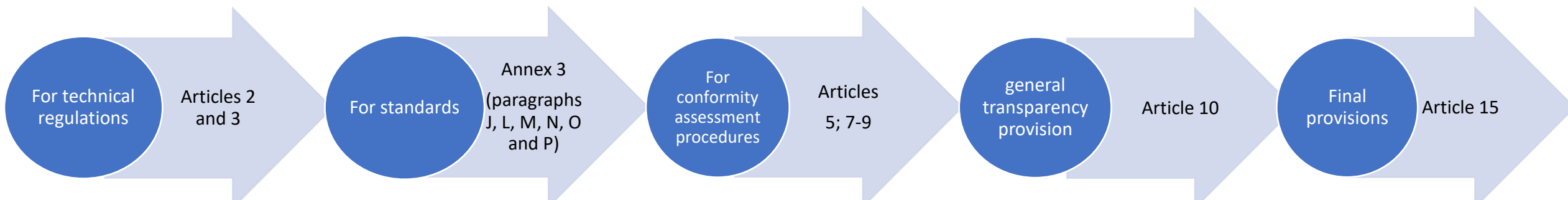
"Principles for the development of international standards, guides and recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement" (WTO Document G/TBT/9, page 24)

1. Transparency: work program/proposal accessibility, adequate time and opportunity for comments
2. Openness: all Members have right to participate at all levels of standard setting
3. Impartiality and consensus: no bias against any Member, region, supplier & consensus procedures
4. Relevance and effectiveness: respond to regulatory and market needs, as well as scientific and technological developments in various countries; no negative impact on competition or innovation; performance-based;
5. Coherence: avoid duplication/overlap with other international standardizing bodies, through co-operation and coordination;
6. Development dimension: promotion of developing countries' participation in international standards; take into account constraints on developing countries.

# Transparency



It is the process whereby the creation, terms, and application of technical regulations, standards and conformity assessment procedures are made public.



# Transparency

Members are  
required to

## Submit

a statement on  
implementation and  
administration of  
the TBT Agreement

## Notify

draft and adopted  
technical  
regulations and  
conformity  
assessment  
procedures

## Publish

all technical  
regulations,  
conformity  
assessment  
procedures and  
agreements

## Establish

an Enquiry Point  
responsible for  
dealing with queries  
from other WTO  
Members about TBT  
related issues

# Transparency

## Circumstances for applying

A relevant international standard does not exist or the technical content of a proposed measure is not in accordance with the technical content of the standard

the proposed measure may have a significant effect on the trade of other WTO Members (both import-enhancing and import-reducing effects)

## Submission process

Online through the WTO TBT Notification Submission System (<https://nss.wto.org/tbtmembers>) to the WTO Secretariat

by email ([crn@wto.org](mailto:crn@wto.org))

## Circulation process

the SPS and TBT notification alert system

ePing and WTO's Documents Online database and the TBT IMS database

# Transparency

## Transparency obligations (Annex 3, The Code of Good Practice)

- Normal time limit for comments on notifications: **60 days**.
- Any WTO Member which is able to provide a time limit **beyond 60 days** is **encouraged** to do so.
- WTO Members are encouraged to advise of any **extension** to the final date for comments.
- Encouragement for **developed country Members** to provide **more than 60 days**, to improve the **ability of developing country Members** to comment on notifications and consistent with S&D

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the notification of their acceptance of, or withdrawal from, the Code of Good Practice (paragraph C)

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the existence of a work program (paragraph J), every six months at least

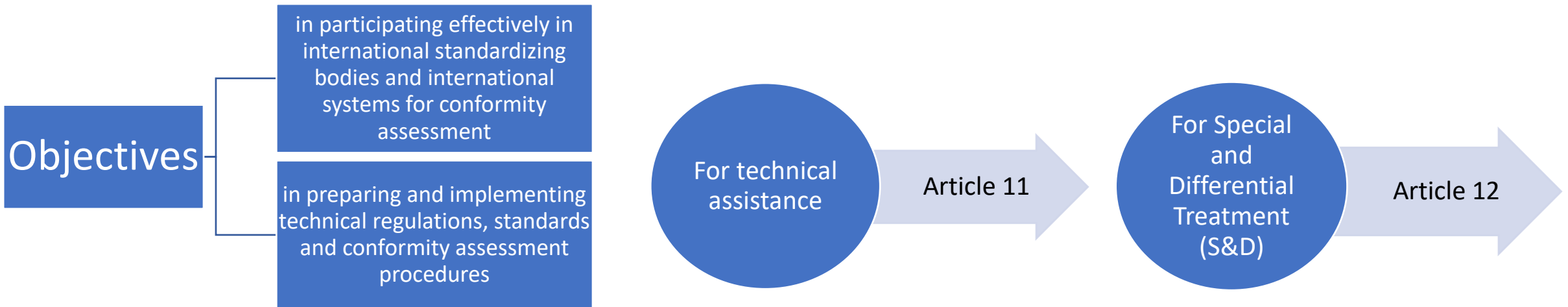
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before the adoption of the measure: WTO Members are required to publish an early notice of their intention to introduce a particular technical regulation or conformity assessment procedure

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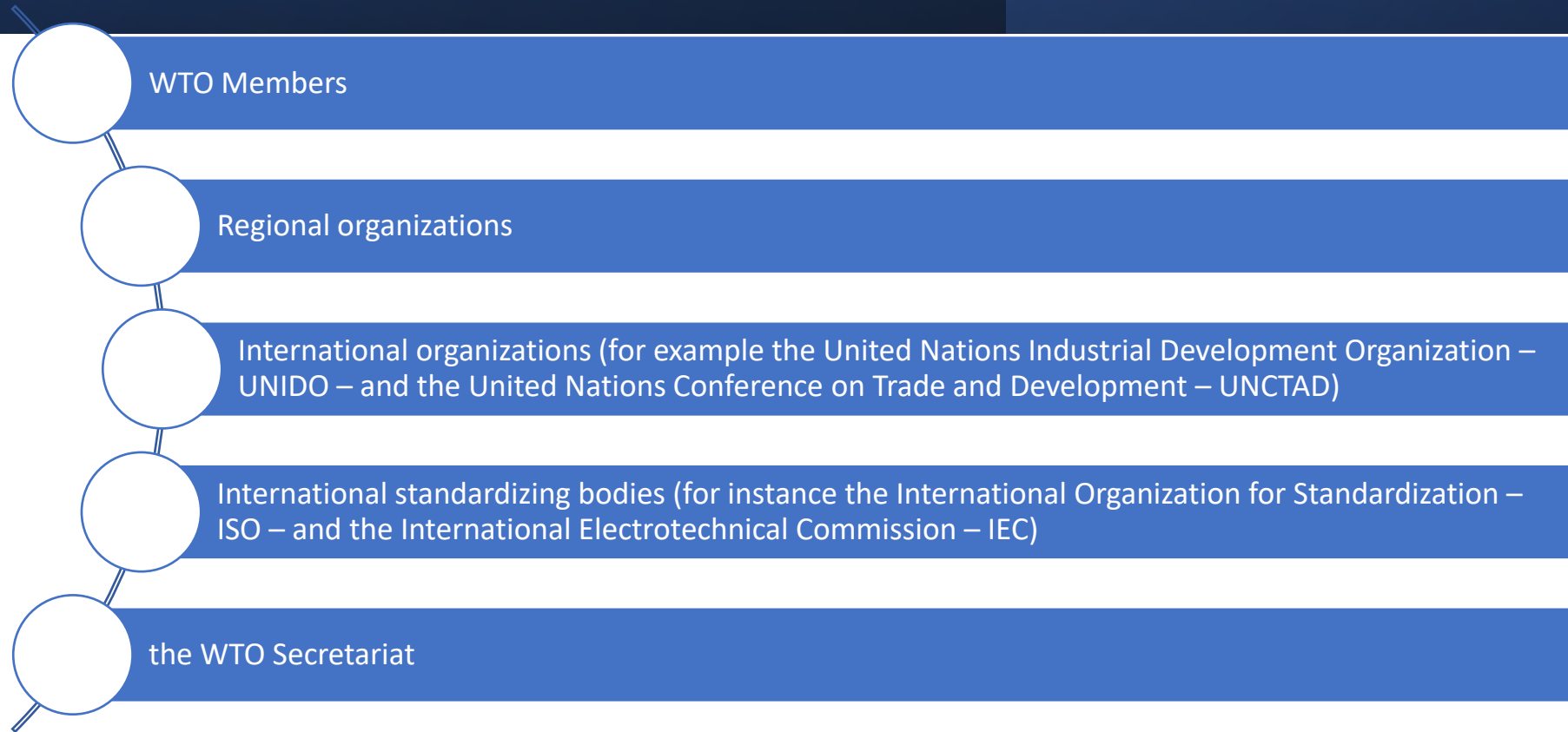
after the adoption of the measure: WTO Members are required to promptly publish, or make otherwise available, all adopted measures, including those which do not have a significant effect on the trade of other WTO Members, or those which are in accordance with an international standard.

# Technical assistance and S&D treatment



# Technical assistance and S&D treatment

Members and organizations are responsible for providing technical assistance



# Technical assistance and S&D treatment

## General provisions of S&D treatment

provisions aimed at increasing trade opportunities for developing countries

provisions which call upon WTO Members to safeguard the interests of developing country Members when adopting protective trade measures

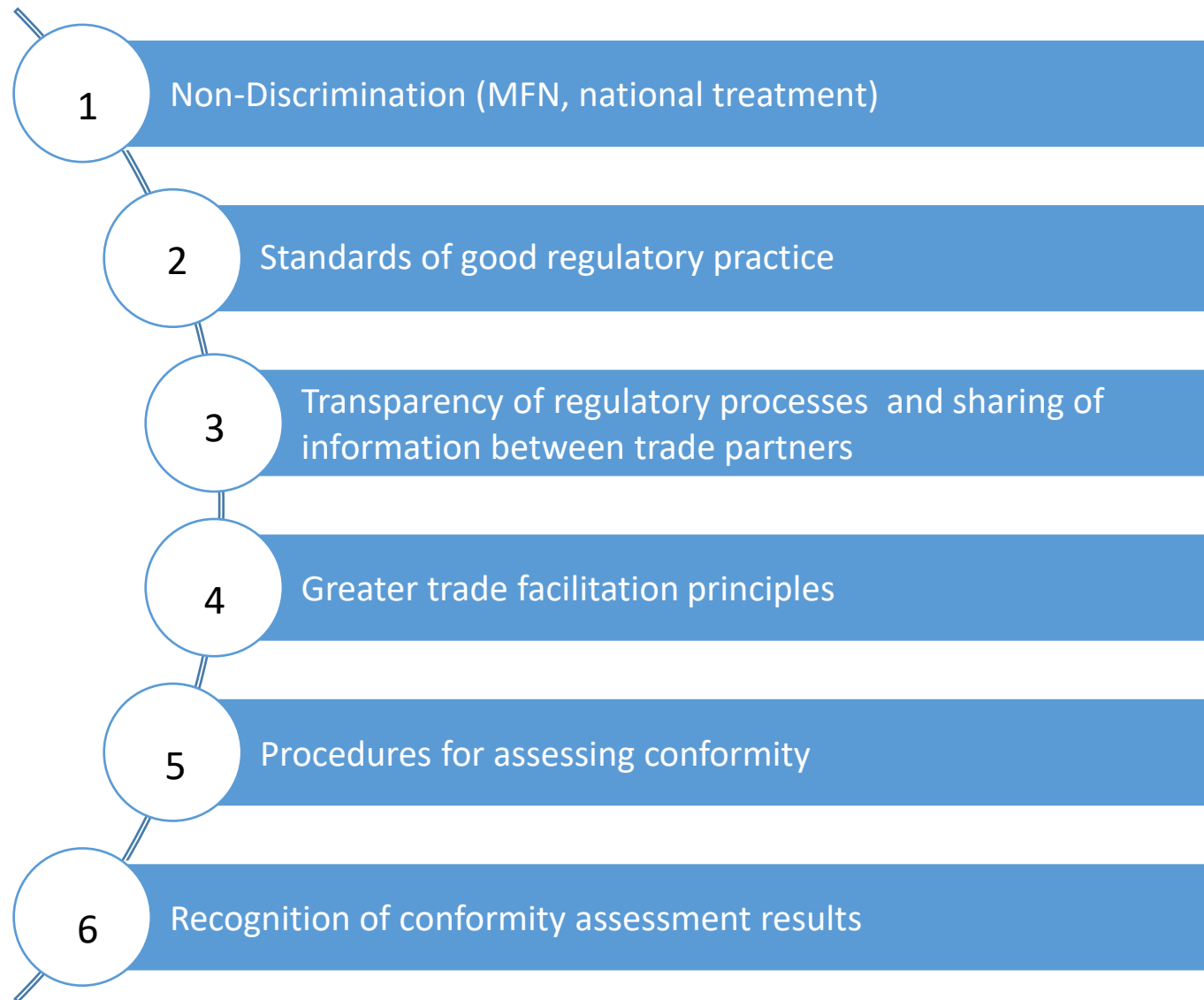
provisions allowing flexibility to developing countries in the use of economic and commercial policy instruments

provisions granting longer transitional periods for the implementation by developing countries of various commitments flowing from these agreements

provision of technical assistance in the implementation of their commitments as well as in their efforts to reap full benefits from the results of the Uruguay Round

provisions in favor of least-developed countries

# The main substantive obligations of the FTA TBT chapters



# FTA TBT chapters

## Common TBT provisions in FTA

Incorporation of WTO TBT Agreement (85%)

Substantive (Harmonization of standards (51%); Equivalence & MRA (22%); Sector-specific provisions: Electrical, electronic and telecom products; Pharmaceuticals and medical products, etc)

Institutional: Transparency provisions (50%), including Enquiry points and notification and Info exchange

Management provisions: TBT committee and Cooperation

Dispute settlement (half exclude TBT from FTA DS)

# FTA TBT chapters

Obligations contained in TBT chapters of FTAs



Acceptance of  
equivalence of  
technical  
regulations



Mutual  
recognition of  
conformity  
assessment  
procedures



Bilateral or  
regional  
harmonization  
of standards



Adoption of  
good regulatory  
practices



Transparency  
provisions

# FTA TBT chapters

## Literature review

According to Isabelle Van Damme (2020) European Union (EU) trade agreements include provisions regarding technical barriers to trade in separate chapters or protocols. TBT chapters in Agreements include mutual recognition or equivalence of standards, the development of standards, agreements regarding the use of international standards (direct and indirect harmonization), forms of regulatory cooperation, as well as a detailed articulation of TBT Agreement rights and obligations.

Provision covered	TBT Chapter/Section	TBT Article	Total	Percent
standards, technical regulations and conformity assessment procedures	66	44	110	64.3
standards, technical regulations, conformity assessment procedures and metrology	16	12	28	16.4
standards, technical regulations, conformity assessment procedures, metrology and authorization procedures	7	5	12	7.0
technical regulations and conformity assessment procedures	1	1	2	1.2
technical regulations and standards	0	8	8	4.7
conformity assessment procedures	3	0	3	1.8
technical regulations	1	0	1	0.6
not specified	1	6	7 <sup>a</sup>	4.1

Source: Molina and Khoroshavina (2015)

a In one of these 7 RTAs, the parties specified that the TBT Agreement governs their trade relationship.  
Note: When the coverage in the text of the RTA was not clearly indicated, the coverage was determined based on the reference to standards, technical regulations, conformity assessment, metrology or authorization procedures made in the provisions.

Molina and Khoroshavina (2015) assessed 238 RTAs, of which 171 include at least one provision on TBT and focuses on seven types of provisions: provisions referring to the TBT Agreement; harmonization and equivalence of technical regulations; harmonization and recognition of conformity assessment procedures; transparency; dispute resolution; marking and labeling and sector-specific commitments.

# Sectoral annexes and their relevance in FTAs

Provisions on technical regulations, standards and conformity assessments in the FTAs/RTAs are found both under TBT chapters and under dedicated chapters dealing with good regulatory practices (GRP) or international regulatory co-operation (IRC) depending on agreement.

While some FTAs/RTAs closely mirror WTO provisions, others go beyond these provisions by clarifying or complementing existing obligations under the TBT Agreement (WTO + provisions) or by covering new aspects (WTO extra provisions)

WTO+ provisions related to regulatory co-operation in FTAs/RTAs include Harmonization, Equivalence, Mutual recognition, and Transparency.

Sector-specific annexes provide examples of harmonization of technical regulations with specific environmental standards. For example, United States– Mexico–Canada Agreement (USMCA) sectoral annex to the TBT chapter on energy efficiency performance standards; the EU-Canada Comprehensive Economic and Trade Agreement (CETA)'s Annex on Motor Vehicle Regulation

FTAs/RTAs encourage these MRAs by including general and/or specific provisions under which Parties recognize the other Party's conformity assessment results generally, or with respect to a specific product.

In addition to horizontal GRP and IRC provisions, most FTAs/RTAs also include provisions relevant to specific products and/or sectors

# Sectoral annexes and their relevance in FTAs

	CPTPP	CETA	USMCA	EU-Japan	EU-Singapore
Motor vehicle regulation		TBT Annex			
Organic Products	TBT Annex				
Energy Performance Standards			Sectoral Annex		
Chemical Substances			Sectoral Annex		
Co-operation in the Field of Agriculture				Chapter 19	
Animal Welfare				Incorporated in Chapter 18 on GRP	
Standards for the generation of energy from renewables					Stand-alone Chapter (Chapter 7, Art. 7.5)

Source: Christophe Bellmann and Colette van der Ven (2020), OECD Trade and Environment Working Papers 2020/04

## Negotiating issues and strategic considerations

On completion of this section, the attendees will be able:

- to be familiar with how disputes are settled under the TBT Agreement.
- to learn that the WTO's Dispute Settlement Understanding ("DSU") applies to TBT disputes. An important dispute involving the TBT Agreement will be noted.
- to be familiar with the Committee on Technical Barriers to Trade. This WTO Committee is charged with overseeing the application and administration of the TBT Agreement.
- to be informed of the regular reviews of this Agreement that the WTO Members are required to conduct

## Negotiating issues and strategic considerations

Pursuant to Article 14.1, the TBT Agreement is subject to the dispute settlement procedures contained in Articles XXII and XXIII of GATT 1994, as elaborated and applied by the WTO's Dispute Settlement Understanding (DSU)

### Article 14

#### *Consultation and Dispute Settlement*

- 14.1 Consultations and the settlement of disputes with respect to any matter affecting the operation of this Agreement shall take place under the auspices of the Dispute Settlement Body and shall follow, *mutatis mutandis*, the provisions of Articles XXII and XXIII of GATT 1994, as elaborated and applied by the Dispute Settlement Understanding.
- 14.2 At the request of a party to a dispute, or at its own initiative, a panel may establish a technical expert group to assist in questions of a technical nature, requiring detailed consideration by experts.
- 14.3 Technical expert groups shall be governed by the procedures of Annex 2.
- 14.4 The dispute settlement provisions set out above can be invoked in cases where a Member considers that another Member has not achieved satisfactory results under Articles 3, 4, 7, 8 and 9 and its trade interests are significantly affected. In this respect, such results shall be equivalent to those as if the body in question were a Member.

## Negotiating issues and strategic considerations

### the Committee on Technical Barriers to Trade

The TBT Committee affords Members (see Article 13.1):

- the opportunity to consult on any matters relating to the operation of the TBT Agreement;
- the opportunity to consult on any matters relating to the furtherance of its objectives; and
- the carrying out of such responsibilities as assigned to it under the TBT Agreement or the WTO Members

## Negotiating issues and strategic considerations

### the TBT Committee is responsible for

- Granting, upon request, specified, time-limited exceptions in whole or in part from obligations under the TBT Agreement, with a view to ensuring that developing country Members are able to comply with the Agreement (Article 12.8);
- periodically examining the special and differential treatment granted to developing country Members on national and international levels (Article 12.10);
- setting up working parties or other bodies as may be appropriate in order to carry out special responsibilities (Article 13.2);
- avoiding unnecessary duplication between its work and that of governments in other technical bodies (Article 13.3);
- annually reviewing the implementation and operation of the TBT Agreement (Article 15.3); and
- reviewing the operation and implementation of the TBT Agreement at the end of each three-year period (Article 15.4)

## Negotiating issues and strategic considerations

General disputes on TBT provisions arising under RTAs are not treated differently from other type of RTA disputes

- 15% of RTAs with TBT provisions include provisions that apply exclusively to the resolution of TBT disputes and do so in general to favor the WTO dispute settlement mechanism over that of the FTA/RTA.
- only in one RTA – NAFTA – do the parties provide under some conditions for the exclusive use of the RTA DSM for certain types of TBT disputes.
- In the remaining FTAs/RTAs, the parties do not provide for a specific way of dealing with TBT disputes and apply instead the general dispute settlement (DS) provisions under the FTA/RTA.
- 55% of the FTAs/RTAs with such a forum-choice clause.
- 24% do not provide for any guidelines in the case of jurisdictional overlapping, which can be problematic.
- 5% do not have their own dispute settlement mechanism.

## Technical Barriers to Trade

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**Regional Training of Trainers  
on how to design, negotiate, and implement FTAs**

## **End of Session 3A: Technical Barriers to Trade**

**Thank you for attention**

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