

Please cite this paper as:

Lesser, C. (2007-10-18), "Do Bilateral and Regional Approaches for Reducing Technical Barriers to Trade Converge Towards the Multilateral Trading System?", *OECD Trade Policy Papers*, No. 58, OECD Publishing, Paris.  
<http://dx.doi.org/10.1787/051058723767>



OECD Trade Policy Papers No. 58

# Do Bilateral and Regional Approaches for Reducing Technical Barriers to Trade Converge Towards the Multilateral Trading System?

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**Unclassified**

**TAD/TC/WP(2007)12/FINAL**

Organisation de Coopération et de Développement Economiques  
Organisation for Economic Co-operation and Development

**18-Oct-2007**

**English - Or. English**



**TRADE AND AGRICULTURE DIRECTORATE  
TRADE COMMITTEE**

**TAD/TC/WP(2007)12/FINAL  
Unclassified**

**Working Party of the Trade Committee**

**DO BILATERAL AND REGIONAL APPROACHES FOR REDUCING TECHNICAL BARRIERS TO  
TRADE CONVERGE TOWARDS THE MULTILATERAL TRADING SYSTEM?**

**OECD Trade Policy Working Paper No. 58**

**By Caroline Lesser**

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**JT03234270**

Document complet disponible sur OLIS dans son format d'origine  
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**English - Or. English**

## ABSTRACT

As part of its work on regionalism, the OECD Trade and Agriculture Directorate has completed a series of studies that compare rule-making provisions in regional trade agreements with those in the World Trade Organisation (e.g., in the area of services, investment and competition). This paper aims to complement existing studies, by examining legal provisions regarding “technical barriers to trade” (i.e., technical regulations, standards and conformity assessment procedures) in selected bilateral and regional trade agreements, and their degree of similarity and convergence with the *WTO Agreement on Technical Barriers to Trade*, and with each other.

The study reveals that most provisions regarding technical barriers to trade (TBT) included in bilateral and regional trade agreements converge towards the multilateral trading system. When implemented effectively, agreements seeking deeper economic integration and regulatory cooperation, in particular, can complement and strengthen the implementation the *WTO Agreements on Technical Barriers to Trade* by setting the pace for improved regulatory practices and TBT-related infrastructure in member countries (e.g., through regional consultation fora and joint standardisation and accreditation bodies). Some caveats however remain. When overlapping agreements promote different criteria for the harmonisation of standard-related measures and when bilateral or regional initiatives are conducted in isolation from international efforts and divert attention from multilateral trade and standards-related negotiations, new obstacles may arise both for regulators and businesses. Such constraints are further magnified for low income countries afflicted by administrative and technical capacity-related problems. To remedy these potential problems, the study proposes a number of policy recommendations.

**Keywords:** Technical barriers to trade, TBT, regulatory measures, technical regulations, standards, conformity assessment procedures, certification, testing, metrology, non-tariff barriers, WTO Agreement on Technical Barriers to Trade, equivalence, harmonisation, mutual recognition, regionalism, regional trade agreements, bilateral free trade agreements, custom unions, multilateral trading system.

## ACKNOWLEDGEMENTS

This study has been prepared by Caroline Lesser of the OECD Trade and Agriculture Directorate under the supervision of Ms. Barbara Fliess and Mr. Anthony Kleitz of the Trade Liberalisation and Regulatory Issues Division.

The author wishes to thank Ms. Ana Maria Vallina, Head of the Foreign Trade Department, in Chile's Ministry of Economy, for her valuable input regarding the Chile case study; Mr. Sze Gin Low, Senior Assistant Director of the WTO and International Trade Negotiations Department, in Singapore's Ministry of Trade and Industry and his colleagues from SPRING Singapore and the Infocomm Development Authority for their valuable comments on the Singapore case study; and finally, Ms. Zitouni, Head of Section at the Department for Standardisation and the Promotion of Quality, Ministry of Industry, Commerce and Economy of Morocco, for her input into the Morocco case study. Valuable initial research assistance has been provided by Mr. Nicolas Sauter.

The author is grateful to Mr. Ken Heydon, Visiting Fellow, *London School of Economics and Political Science*, and Mr. David Shortall, independent consultant, who reviewed the paper and provided useful suggestions.

The Working Party of the OECD Trade Committee discussed this study and agreed to make its findings more widely available through declassification on its responsibility.

The study is available on the OECD website in English (and soon in French): <http://www.oecd.org/tad>

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## EXECUTIVE SUMMARY

1. While tariff barriers have substantially been reduced during successive GATT and WTO negotiations, mandatory technical regulations, voluntary standards and related conformity assessment procedures continue to represent potentially important obstacles to trade (i.e., “technical barriers to trade” or TBT). As regulatory measures, they aim to achieve legitimate public policy objectives, such as public health, safety and environmental protection. However, these measures can also discriminate against imports, unnecessarily restrict trade, introduce market distortions and sustain rent-seeking behaviour. Furthermore, differences in regulations, standards and conformity assessment procedures from market to market raise compliance costs for companies operating in multiple markets.

2. The *WTO Agreement on Technical Barriers to Trade* (“WTO TBT Agreement”) aims to ensure that these measures do not constitute unnecessary barriers to trade, by providing disciplines for the elaboration, application, notification and review of technical regulations, standards and conformity assessment procedures in WTO Members. In parallel, WTO Members have increasingly engaged in bilateral, regional and plurilateral free trade agreements and custom unions (referred to here as “RTAs”) which often include TBT provisions too. In fact, RTAs concluded in the last ten years often extend their reach beyond traditional border measures affecting trade and often seek “deeper” integration. As such agreements proliferate, a country often becomes a member of several different RTAs. This is likely to create a “spaghetti bowl” of overlapping arrangements, which can in turn potentially duplicate (or contradict) multilateral liberalisation efforts.

3. This paper examines TBT provisions in selected RTAs, reviews to what extent such provisions go beyond the WTO TBT Agreement, and assesses their degree of convergence or divergence with the multilateral trading system. In addition, the paper identifies key factors that influence the different approaches used to reduce TBT in RTAs and examines the implications of the proliferation of various TBT commitments for three countries at different levels of development -- Chile, Singapore and Morocco. Finally, the study provides policy recommendations for RTA negotiators and policymakers more generally. The analysis relies on a qualitative assessment of 82 RTAs concluded in Asia, the Americas, Africa and Europe, as well as across regions (involving both developed and developing countries). The sample includes agreements concluded by the three countries under examination, as well as agreements reviewed by other organisations (ECDPM, forthcoming, Piermartini and Budetta, 2006 and Kotschwar, 2001). The paper analyses and compares rule-making provisions, yet does not quantify their effect on global and regional trade flows.

### **What are the most common TBT provisions in bilateral and regional trade agreements?**

4. The approaches to reducing TBT most frequently promoted in the reviewed RTAs are the (mutual) recognition of conformity assessment results --which are often considered to be less costly than harmonisation of regulations, standards and conformity assessment procedures-- and transparency requirements, urging members to notify each other about new technical regulations and conformity assessment procedures or modification to existing regulations and procedures when these differ from international standards or are likely to affect trade. Other approaches used include the harmonisation of technical regulations, standards and conformity assessment procedures among Parties, and, to a lesser extent, acceptance of technical regulations of other Parties as equivalent (when these differ in terms of technical specifications). These different approaches are compatible with each other, so that a specific RTA sometimes includes provisions pertaining to several of these principles. Yet, none of the reviewed

agreements includes provisions for the mutual recognition of technical regulations and standards, which only prevails in the EU Single Market.

5. The majority of reviewed RTAs call for the establishment of a joint committee, body or network to monitor the implementation of the TBT provisions, develop proposals for future improvements and facilitate the exchange of information between Parties. Such a body can be sector-specific (e.g., Chile-Canada agreement) or be substituted to the appointment of “co-ordinators” or “contact points” in each Party (e.g., some RTAs to which the US is a party). Likewise, the majority of reviewed RTAs contain provisions for the resolution of TBT-related disputes, most of which call for consultations in case of disagreement. Fewer RTAs also envisage recourse to regional technical sub-groups or ad-hoc working groups that can provide non-binding recommendations (e.g., ALADI). Finally, approximately 40% of all reviewed RTAs include provisions for technical assistance, where more developed Parties commit to support poorer Parties by delivering TBT-related training to officials and traders, helping strengthening institutions to improve transparency, and reinforcing physical infrastructure for testing and certification of products and accreditation of conformity assessment bodies (e.g., EC’s assistance to Chile).

6. It is unfortunately difficult to gauge the overall progress achieved in the actual implementation of TBT liberalisation, due to limited literature and reports available on the subject, particularly in the case of bilateral free trade agreements. While most agreements set up joint committees to monitor implementation, often on an annual basis, relatively few make status reports regarding compliance publicly available (except for regional groupings and customs unions). What however emerges from the available literature is that TBT liberalisation efforts, particularly in the area of harmonisation of regulations and standards and mutual recognition of conformity assessment procedures, are more likely to be *effectively implemented* among more developed (high or upper-middle income) countries, since poorer countries often lack the necessary domestic institutions and capacities to enforce such provisions, or are afflicted by a lack of sustained high-level political will to drive further institutional improvements.

### **Going beyond the WTO TBT Agreement?**

7. The analysis shows that while the majority of reviewed agreements do not include provisions that are more stringent than the WTO TBT Agreement as a whole, several RTAs display “WTO plus” characteristics. More far-reaching provisions are mostly found in relation to the acceptance of technical regulations as equivalent and the (mutual) recognition of conformity assessment procedures and bodies, where Parties need to give an explanation, upon request, for non-equivalence or non-recognition to the other Parties. In addition, a few (mainly developed country) Parties have, in parallel to RTAs, concluded mutual recognition arrangements for conformity assessment results (MRAs) for particular sectors, such as telecom, electrical, electronic and medical equipment (e.g., the EC and more developed ASEAN and APEC members such as Singapore).

8. In fact, three key factors in particular seem to influence the extent of TBT “liberalisation” and the approach used to remove TBT barriers in RTAs:

- *The level of development of Parties:* Provisions regarding the harmonisation of technical regulations and standards and, more importantly, regarding the recognition of conformity assessment results, are more likely to occur among *similar countries*, with comparable levels of development. Mutual recognition of conformity assessments, is in particular more probable among countries with similar technological capacities that trust each other’s regulatory procedures, institutions and infrastructure.
- *The degree of integration the RTA seeks to achieve:* RTAs that strive for deeper economic (and political) integration, such as custom unions, agreements aimed at establishing a single market and economic association agreements, often have more-far reaching goals than the WTO TBT



Agreement and seek a (gradual) harmonisation of technical regulations, standards and conformity assessment procedures, and to some extent, of metrology measures. Many of such RTAs involve the establishment of joint monitoring and co-operation mechanisms, such as regional standardisation and accreditation bodies, which are not prescribed by the WTO TBT Agreement (e.g., ASEAN Consultative Committee on Standards and Quality).

- *The involvement of the EU or the US:* In RTAs involving the US, TBT-related liberalisation can take several forms, including acceptance of technical regulations of the other Party as equivalent, alignment towards international standards and recognition of conformity assessment results through a broad range of mechanisms. (Often provisions go beyond WTO rules by requiring Parties to provide an explanation for non-recognition of regulations and conformity assessment results or bodies). In contrast, the preferred option in the majority of RTAs to which the EU is a party, is harmonisation. Harmonisation towards EU regulations, standards and conformity assessment procedures is favoured in RTAs with accession and “neighbouring” countries (e.g., EUROMED countries), while convergence towards international standards is favoured in agreements with more remote countries (e.g., Chile).

### **Convergence or divergence from the multilateral trading system?**

9. The majority of TBT provisions in RTAs can be said to converge towards, and strengthen, the multilateral trading system. First of all, most RTAs concluded after 1995 re-affirm the Parties’ rights and obligations under the WTO TBT Agreement and make reference to its objectives. Likewise, harmonisation requirements encourage, in their vast majority, convergence towards international standards and guides. Furthermore, most transparency commitments included in RTAs are similar in nature to the ones included in the WTO TBT Agreement. Provisions that require Parties to provide an explanation in case of non-recognition of standard-related measures aim to avoid discrimination and further facilitate trade. They can therefore be seen as WTO-converging. This is also the case for mechanisms and arrangements supporting further co-operation among Parties (e.g., through joint standardisation and accreditation, co-operation in the area of metrology and technical assistance). Such initiatives can in fact support and enhance the implementation of the WTO TBT Agreement and set the pace for improved regulatory practices and domestic reforms in RTA Parties, hence acting as building blocks to the multilateral trading system.

10. Risks of divergence can however occur when Parties are called to elaborate or harmonise towards regional regulations, standards and conformity assessment procedures. While such norms are often based on international standards or aim to fill the gap where there are no international standards yet (or where they are considered inappropriate), the existence of different criteria for harmonisation and the multiplicity of standards and procedures can in some cases complicate international trading relationships. The existing literature also point out that while MRAs are consistent with WTO disciplines (which encourage the conclusion of such arrangements), they can in a few cases have a negative impact on third country exports, and therefore go against the spirit of non-discrimination. Such effects can nevertheless be minimised through greater transparency and facilitated accession for third parties.

11. To conclude, the most significant threat to the multilateral system might arise from the fact that human and institutional capacities are diverted away from multilateral liberalisation efforts, to focus on regional endeavours. Shortage of human and financial resources and associated lack of capacity to participate actively in WTO discussions and international standardisation activities on the one hand, and regional negotiations, liberalisation activities and institutions, on the other, is an important concern, particularly for developing countries. This paper indeed highlights that developing (lower-income) countries often have difficulties in complying and implementing the bilateral or regional TBT provisions they committed to, and do not always manage to achieve the regulatory co-operation they initially planned to complete.

## Key policy recommendations

12. To alleviate such capacity problems, ensure that RTAs strengthen the multilateral trading system and encourage greater consistency across TBT chapters of different agreements, RTA Parties could:

- Provide ***effective assistance to lower-income countries***: Besides supporting their participation in regional and international trade negotiations and standard-setting policy processes, RTAs should encourage Parties, where there is a demand, to provide training to less developed Parties' officials and industry associations to improve their awareness and understanding of TBT-related matters and increase their capacity to assess the costs and benefits of different policy options to reduce TBT. In addition, regional consultation and monitoring mechanisms should be reinforced where needed, in view of improving the implementation of regional TBT commitments. Finally, essential TBT-related infrastructure and institutions should be strengthened to build trust in developing country procedures and systems and facilitate the reduction of TBT regionally and multilaterally.
- Enhance ***the transparency and public availability of information regarding bilateral and regional TBT-related efforts*** and mandatory and voluntary standard-related measures in application among RTA members, to avoid duplicative efforts and inform third parties. RTA Parties should seek to improve the reporting of compliance with RTA obligations. Furthermore, enquiry points should be encouraged to consolidate and disseminate (free of charge) any relevant bilateral or regional TBT-related information, for example through a website. Alongside that, international efforts to improve data collection and transparency of TBT measures under negotiation or in application in different countries/regions should be pursued (e.g., through the WTO TBT Committee and the Committee on Regional Trade Agreements).
- Encourage the adoption of ***key "model provisions" for TBT chapters in RTAs to avoid inconsistencies across RTAs and ensure convergence with the multilateral trading system***. APEC's recent efforts with the rationalisation and simplification of TBT-related rules across bilateral and regional trade agreements provide a good case in point. Ideally, TBT Chapters in RTAs should be prepared through ***close domestic co-ordination*** and dialogue between RTA negotiators, WTO experts, regulators and industry associations working on the development, implementation and enforcement of technical regulations, conformity assessments and voluntary standards at the national, regional and international levels. To ensure convergence, RTAs should consistently:
  1. Re-affirm Parties' rights and obligations under the WTO TBT Agreement, as well as the objectives of the WTO Agreement;
  2. Require the use of international standards and guides (where they exist) as a basis for setting national and regional regulations and conformity assessment procedures. RTAs could provide useful guidance to their Parties as to how best apply these international standards;
  3. Encourage the alignment of RTA Parties' views on international TBT matters in view of increasing their "voice" and bargaining power in international fora.
  4. Effectively support more intense regulatory co-ordination and co-operation among RTA Parties, in view of facilitating TBT reduction regionally and multilaterally and encouraging the introduction of "good regulatory practice" in RTA Parties.
- ***Seek to "internationalise" successful regional initiatives*** in specific priority sectors. In globally integrated sectors with high shares of intra-industry trade, such as the telecommunications and IT equipment industries, ideally MRAs should not just be regional but international where possible. Furthermore, voluntary multilateral arrangements between conformity assessment bodies in the private sector should be encouraged.

## I. INTRODUCTION

### 1.1 Background

13. While most-favoured-nation tariff barriers have been substantially reduced during successive GATT and WTO negotiations, various measures such as technical regulations, standards and related conformity assessment procedures continue to represent potentially important obstacles to trade. Such measures are referred to as “technical barriers to trade” (TBT, see Box 1). As regulatory measures, they aim to achieve legitimate public policy objectives, including national security, public health and safety and environmental protection. In addition, they govern the inter-linkage of product parts vital for the functioning of the global manufacturing chain and provide product information to consumers. The World Bank (2004), for example, notes that emerging public and private regulations and standards may provide both a stimulus and guide for investments in firm and supply chain modernisation, and provide increased incentives for the adoption of improved farming and manufacturing practices.

#### Box 1. Definitions of key TBT-related terms

**Technical regulations and standards** define specific *product characteristics*, such as size, shape, design, functions, performance, labelling or packaging, as well as related *process and production standards*. Technical regulations are set by the government, conformity with these is mandatory and they are enforced by official agencies. In contrast, standards are often set by nongovernmental bodies and associations (e.g., standard-setting bodies and industry associations), compliance is voluntary, and they are enforced by the market.

**Conformity assessment procedures** confirm that a product or production process fulfils the technical requirements or standards applied in the destination country. Such procedures include, inter alia, sampling, testing, inspection, verification, and certification of products, and registration and accreditation of conformity assessment bodies. Accreditation of a conformity assessment institution refers to an attestation of the institution’s competence to carry out specific conformity assessment tasks.

**Legal metrology** concerns regulatory requirements for measurements and measuring instruments. It aims to ensure the appropriate quality and credibility of measurements related to official controls in the areas of health, safety and the environment.

**Standards-related measures** refer to all the above terms.

Source: WTO Regional Gateway; <http://www.oiml.org>

14. However, these measures may explicitly or implicitly discriminate against imports, unnecessarily restrict trade, introduce market distortions and sustain rent-seeking behaviour. This may occur when technical regulations and standards of an importing country are not well-targeted to the specific objective they aim to fulfil, are implemented arbitrarily or are enforced through testing and certification requirements that are unclear, not well-publicised or difficult or expensive for foreign manufacturers or producers to access (Kotschwar, 2001). More generally, differences in technical regulations standards, and associated conformity assessment procedures from market to market raise compliance costs for companies operating in multiple markets. Such costs are particularly daunting for small-and medium-size enterprises (SMEs). While it is difficult to estimate the precise costs involved, the need to comply with technical regulations, standards and conformity assessment procedures that differ across markets involves *direct and indirect costs* for producers and exporters.<sup>1</sup> SMEs in developing countries, in particular, face considerable problems

1. OECD (1996) finds that differing standards and technical regulations, combined with the cost of testing and compliance certification, could constitute between 2 and 10% of overall production costs. Direct costs comprise the hiring of technical consultants to interpret foreign regulations, increased investment in production facilities and the undertaking of additional certification procedures. Indirect costs comprise

overcoming TBTs, as the institutional and technical infrastructure and the capacities to comply with the emerging technical regulations and standards and to prove conformity with these, are often weak. In addition, many developing country exporters are often not aware of the standards-related measures they must satisfy to access foreign markets (OECD, 2005a, Wilson 2004 and ECDPM, forthcoming).

15. The *WTO Agreement on Technical Barriers to Trade* (“WTO TBT Agreement”) aims to ensure that technical regulations, standards and conformity assessment procedures do not constitute unnecessary barriers to trade, by providing disciplines for the elaboration, application, notification and review of such measures in WTO Members. In parallel, WTO Members have increasingly engaged in bilateral, regional and plurilateral free trade agreements and custom unions (referred to in this paper as regional trade agreements, or “RTAs”) which often include TBT provisions too. To the extent that RTAs are signed among similar countries, they could *in principle* include TBT rules that go beyond WTO disciplines.

## 1.2 Objective and structure of the paper

16. While there is considerable literature on the pros and cons of RTAs in terms of their impact on economic welfare, and their effect on trade creation and diversion, there is less discussion of the substance of these agreements and their convergence or divergence from rule-making at the multilateral level. Work carried out by OECD to date compares rule-making provisions in RTAs with those in the WTO in a number of issue areas.<sup>2</sup> This paper aims to complement this work, by examining legal TBT provisions in selected RTAs and their degree of similarity and convergence with the WTO TBT Agreement, and with each other. The paper analyses and compares rule-making provisions, yet does not quantify their effect on global and regional trade flows.<sup>3</sup>

17. This paper is structured as follows:

- Chapter II briefly explains the key principles and approaches for reducing TBT and outlines the main disciplines of the WTO TBT Agreement.
- Chapter III examines TBT provisions included in selected RTAs, and indicates when such provisions go beyond the WTO TBT rules. It then distinguishes between different factors influencing the approach used to reduce TBT, and analyses whether such provisions generally complement or compete with the multilateral trading system.
- Chapter IV includes three case studies of countries at different levels of development, which are engaged in RTAs with TBT provisions with major trading partners, as well as with neighbouring countries. *Chile*, an upper-middle-income country, *Singapore*, a high-income country, and *Morocco*, a lower-middle income country are reviewed.<sup>4</sup> The case studies examine selected TBT provisions the country committed to, and the institutional infrastructure put in place to deal with TBT matters.
- Chapter V provides key conclusions and policy recommendations.

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higher inventory and procurement expenses. In addition, different regulations and standards reduce the ability of companies to increase productivity through economies of scale.

2. OECD (2003) for example examines provisions for services, labour mobility, investment, competition policies, trade facilitation, government procurement, intellectual property rights, contingency protection, environment and rules of origin.
3. The reason for this is that many examined agreements, particularly those displaying “WTO plus” TBT-related characteristics, have only recently been implemented. Furthermore, the impact on trade flows is best assessed by taking account of *all* RTA provisions, not just those pertaining to TBT.
4. Country classification is based on World Bank data. In the WTO, these countries are developing countries.

- Annex I contains information regarding the sample of reviewed RTAs.
- Annex II includes background information concerning the case studies.

### 1.3 Scope and methodology

18. The paper offers a qualitative assessment of the TBT coverage in RTAs affecting trade in goods, on the basis of a sample of 82 agreements undertaken in Asia, the Americas, Africa and Europe, as well as across regions. The reviewed RTAs involve both developed and developing countries and cover different types of agreements (free trade agreements, custom unions, preferential arrangements). The RTAs are assessed against the WTO TBT agreement and compared to each other, by examining 7 broad categories (Analytical framework, Table 1). The analysis draws on the legal text of 24 selected RTAs (examined in the framework of country case studies) and on recent reviews of RTAs undertaken by other organisations.<sup>5</sup> The country case studies examine and compare the TBT provisions included in different RTAs and rely on a literature review and on input from officials and experts from the examined countries.

**Table 1. Analytical framework for examining TBT provisions in RTAs**

Category	Questions
<b>1. Reference to the WTO TBT Agreement</b>	<ul style="list-style-type: none"> <li>• Does the agreement make reference to the WTO agreement (i.e., its objectives, rules and/or provisions)?</li> <li>• Does the TBT chapter in the agreement have more far-reaching goals?</li> </ul>
<b>2. Harmonisation</b>	<ul style="list-style-type: none"> <li>• Does the agreement require or encourage Parties to harmonise their technical regulations, standards and conformity assessment procedures?</li> <li>• Does the agreement promote the use of international <i>and/or</i> regional standards and guidelines as a basis for setting national regulations, standards and conformity assessment procedures?</li> </ul>
<b>3. Acceptance of technical regulations as equivalent</b>	<ul style="list-style-type: none"> <li>• Does the agreement require or encourage Parties to accept as equivalent other Parties' technical regulations and standards?</li> <li>• Does the agreement call Parties to explain the reasons for not accepting the other Party's technical regulations as equivalent?</li> </ul>
<b>4. (Mutual) recognition of conformity assessments</b>	<ul style="list-style-type: none"> <li>• Does the agreement call for a (mutual) recognition of conformity assessment results?</li> <li>• Does the agreement require that the Parties explain the reasons for non-recognition?</li> <li>• Is the agreement accompanied by a (separate) mutual recognition arrangement or does it promote the conclusion of such arrangements?</li> </ul>
<b>5. Transparency</b>	<ul style="list-style-type: none"> <li>• Does the agreement include transparency provisions?</li> <li>• Does the agreement require members to hold consultations and notify regulations and procedures at the bilateral or regional level before they are adopted?</li> <li>• Is a time period for the receipt of comments by other Parties defined? Is it longer than 60 days?</li> <li>• Does the agreement require the establishment of a (separate) regional enquiry point?</li> </ul>
<b>6. Enforcement and dispute settlement</b>	<ul style="list-style-type: none"> <li>• Does the agreement call for the establishment of, and participation in, a regional TBT body (e.g. committee) to monitor and review the TBT commitments and process)?</li> <li>• Does the agreement include specific provisions for the resolution of regional TBT-related disputes?</li> <li>• Does the agreement foresee consultations and recommendations, or a more formal mechanism at the regional level to resolve disputes?</li> </ul>
<b>7. Further co-operation</b>	<ul style="list-style-type: none"> <li>• Does the agreement include specific provisions on technical assistance?</li> <li>• Does the agreement foresee co-operation in the area of metrology?</li> </ul>

Source: The analytical framework is adapted from Sampson and Woolcock, 2003 and Piermartini and Budetta, 2006.

5. Piermartini and Budetta (2006) review 58 RTAs with TBT provisions, covering all geographical areas and types of countries; Kotschwar (2001) reviews 15 RTAs in the Americas; and ECDPM (forthcoming) reviews 4 EU FTAs. This paper does not analyse in depth NAFTA and the EU Single Market because they have been the subject of extensive analysis in the existing literature.

## II. APPROACHES FOR ADDRESSING TECHNICAL BARRIERS TO TRADE

19. In order to address TBT, countries have included provisions in international trade agreements that attempt to strike a balance between legitimate public policy objectives and increased international trade flows. These agreements or provisions regarding TBT rely on a number of (compatible) core principles or options to “liberalise” TBT, though the scope adopted vis-à-vis each of those principles can vary. This Chapter briefly explains the approaches policymakers and regulators have adopted to reduce technical barriers to trade, and outlines the obligations and recommendations which have been included in the WTO TBT Agreement. This section is not meant to provide an in-depth analysis of the benefits and challenges of each approach, but rather to provide some background information in view of assessing the approaches and policy options used in bilateral, regional and plurilateral free trade agreements and custom unions.<sup>6</sup>

### 2.1 Key policy options

Table 2. Key policy options for addressing TBT<sup>7</sup>

Core principle	Scope	Key benefits for the Parties' traders
<b>Harmonisation of technical regulations, standards and conformity assessment procedures</b>	<ul style="list-style-type: none"> <li>• Harmonisation of standard-related measures may imply the unilateral adoption by one Party of another Party's set of measures and guides; negotiation by both Parties of a common set of (international or regional) measures and guides, or approximation towards existing international or regional measures and guides.</li> <li>• In the case of the 2<sup>nd</sup> and 3<sup>rd</sup> option, harmonisation often implies participation in international and/or regional standardisation bodies.</li> <li>• Harmonisation of regulations and standards can be full (i.e., done on a “product by product” basis and implying harmonisation of detailed product characteristics) or limited to “essential characteristics” (i.e., the product needs to comply with essential safety requirements only, cf. EU Single Market).</li> </ul>	<ul style="list-style-type: none"> <li>• Firms only need to comply with one set of regulations, standards and conformity assessment procedures. In addition, harmonisation enhances the compatibility between imported and domestically produced goods, thus further encouraging international trade.</li> </ul>
<b>Mutual recognition or equivalence of technical regulations and standards</b>	<ul style="list-style-type: none"> <li>• Recognition as equivalent of technical regulations and standards applied by another Party, when these differ in terms of their technical specifications yet are recognized by the Parties as meeting the same regulatory objectives. (“Equivalence” refers to unilateral recognition; “mutual recognition” to reciprocal recognition).</li> <li>• Mutual recognition grants products that meet any of the Parties' regulations and standards unrestricted access to other Parties' markets.</li> </ul>	<ul style="list-style-type: none"> <li>• Firms can access other Parties' markets without having to comply with the other Parties' regulations and standards. They can comply just with one set of regulations and standards to enter all Parties' markets.</li> </ul>

6. For a detailed discussion of policy options, see Chen and Mattoo, 2004, Baller, 2007, Hoekman and Kostecki, 2001 and EC, 2001.

7. The explanations provided in Table 2 are indicative and do not represent universally accepted definitions.

<p><b>(Mutual) recognition of conformity assessment results</b></p>	<ul style="list-style-type: none"> <li>• Parties' regulatory authorities recognise test reports and/or certificates issued by conformity assessment bodies in other Parties. (In the absence of recognition of technical regulations, products are assessed against the regulations of the importing country).</li> <li>• A broad range of mechanisms exists to facilitate the acceptance of some or all aspects of another Party's conformity assessment results, including: <ul style="list-style-type: none"> <li>• Reliance on a suppliers' declaration of conformity (i.e., the supplier makes a self-declaration of conformity, as such avoiding the costs of third-party assessment);<sup>1</sup></li> <li>• Voluntary arrangements between conformity assessment bodies from each Party's territory (i.e., "technical" mutual recognition arrangements);</li> <li>• Agreements for the mutual acceptance of the results of conformity assessment procedures undertaken by conformity assessment bodies in the other Parties (i.e., mandatory "governmental" mutual recognition arrangements);</li> </ul> </li> <li>• Accreditation procedures for qualifying conformity assessment bodies.</li> <li>• Government designation of conformity assessment bodies.</li> </ul>	<ul style="list-style-type: none"> <li>• Firms do not need to test and certify products several times. Products are tested and certified <i>before export</i>, and can thus enter the other Parties' markets directly without having to undergo duplicative conformity assessments.</li> </ul>
<p><b>Transparency</b></p>	<ul style="list-style-type: none"> <li>• Notification before their adoption of technical regulations, standards and conformity assessment procedures (to allow for comments by the other Parties or traders).</li> <li>• Publication of adopted technical regulations, standards and conformity assessment procedures.</li> <li>• Set up of national/regional enquiry points for traders.</li> <li>• Request for the notifying Party to provide an explanation as to why international standards have not been used where existent.</li> <li>• Participation by legal persons of other Parties in the elaboration of regulations and standards.</li> </ul>	<ul style="list-style-type: none"> <li>• Firms are aware of the regulations, standards and conformity assessment procedures they need to comply with in order to enter other Parties' markets and in some cases, can comment on or participate in the elaboration of other Parties' regulations and standards.</li> </ul>

1. A supplier may take this option if it enjoys a sufficiently high market reputation for it to dispense with independent confirmation of conformity. Such declarations may however not be appropriate where the health, safety or environmental risks of the product concerned are higher. A self-declaration does not exempt the supplier from its responsibility to meet relevant technical regulations and such declarations generally need to be accompanied by effective post-market surveillance.

Source: ECDPM (forthcoming), Baller, 2007 and <http://www.iso.org>.

## 2.1 The WTO Agreement on Technical Barriers to Trade

20. The potential of technical regulations and standards to act as barriers to trade was first formally recognised at the multilateral level during the Tokyo Round, with the negotiation of the Agreement on Technical Barriers to Trade, also known as the *Standards Code*, which came into effect in 1980. This was a voluntary, plurilateral agreement, with obligations applying only to members who chose to sign on (Kotschwar, 2001).

21. The *WTO Agreement on TBT* expands and strengthens the scope and coverage of international disciplines on technical regulations and standards and provides a comprehensive set of guidelines for the regulation of TBT.<sup>8</sup> Because the WTO requires all its Members to adhere to the WTO TBT Agreement, a much larger number of countries are bound by its obligations than those that committed to the Standards Code (Kotschwar, 2001). The WTO TBT Agreement aims to ensure that both product and processing-related technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade, while recognising countries' rights to adopt product standards and regulations they consider appropriate. The key principles and provisions of the Agreement are explained below (Box 2).

### Box 2. Key principles and provisions of the WTO Agreement on Technical Barriers to Trade<sup>1</sup>

**Non-discrimination and national treatment:** Article 2.1 of the Agreement states that “in respect of their technical regulations, products imported from the territory of any Member be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country”. The same principle applies to conformity assessment procedures and related fees and information requirements, which must not discriminate against imported products. Members must respect the confidentiality of information about the results of conformity assessment procedures for imported products in the same way as for domestic products (Art. 5.2.4 and 5.2.5).

**Avoidance of unnecessary obstacles to trade:** When a government is preparing a technical regulation to achieve a certain policy objective, the regulation should not be more trade-restrictive than necessary to fulfil the legitimate objective. According to the Agreement, specifying, whenever appropriate, product regulations in terms of *performance* rather than design or descriptive characteristics, helps in avoiding unnecessary obstacles to international trade (Art. 2.8). The obligation to avoid unnecessary obstacles to trade applies also to conformity assessment procedures. Thus such procedures should not be stricter or more time-consuming than what is necessary to assess the compliance of a product with domestic laws and regulations.

**Harmonisation of technical regulations, standards and conformity assessment procedures:** The Agreement calls governments to use existing international standards, or the relevant parts of them, as a basis for setting national technical regulations and to follow international recommendations and guides, or relevant parts thereof, when setting conformity assessment procedures. The Agreement however allows for exceptions when international standards, guides and recommendations are ineffective or inappropriate to fulfil a country's “legitimate objectives” (Art. 2.4 and 5.4). In addition, governments should participate, “within the limits of their resources”, in the preparation by international standardisation bodies, of international standards for products for which they either have adopted, or expect to adopt, technical regulation, and in the elaboration of international guides and recommendations for conformity assessment procedures.

**Acceptance of technical regulations as equivalent:** Alongside harmonisation, the Agreement encourages Members to accept “equivalent” technical regulations of other Members if these regulations adequately fulfil the objectives of their own domestic regulations (Art. 2.7).

8. Other WTO agreements that deal with standards and regulations include the WTO SPS Agreement, which focuses on sanitary and phytosanitary measures, and the GATS, which includes standard-related provisions for services.



**Mutual recognition of conformity assessment:** Furthermore, the Agreement encourages Members to recognise “whenever possible” the results of each other’s procedures for assessing whether a product conforms to mandatory technical regulations. Without such recognition, products might have to be tested twice, first by the exporting country and then by the importing country. The agreement also encourages Members to enter into negotiations for the conclusion of agreements for the mutual recognition of conformity assessment results (i.e., mutual recognition agreements, MRA, Art. 6.3). Yet MRAs requires confidence in the competence of other Members’ conformity assessment bodies and procedures. The WTO agreement therefore recognises that prior consultations may be necessary to arrive at a mutually satisfactory understanding regarding the competences of conformity assessment bodies (Art. 6.1).

**Transparency:** To help ensure transparency, all WTO Members are required to establish *national enquiry points* (Art. 10) and to *notify* to the WTO Secretariat, discuss and publish technical regulations and conformity assessment procedures which do not exist, which differ from existing international standards, recommendations or guides, or which may have a significant effect on trade of other Members, before they are adopted (Art. 2.9 and 5.6). Members must publish a notice in a publication at an early stage and notify other Members through the WTO Secretariat, giving a brief indication of the purpose of the new technical regulation or conformity assessment procedures. Finally, they should allow “reasonable time” for other Members to comment on proposed technical regulations before their entry into force, which the TBT Committee has recommended to be “at least 60 days”. The Code of Good Practice applicable to (voluntary) standards states explicitly that a standardising body must give interested Parties at least 60 days for the submission of comments on a draft standard.<sup>2</sup>

**Technical assistance:** The Agreement calls on Members to provide technical assistance to other Members (Art. 11). Technical assistance can be targeted to, e.g., the preparation of technical regulations, the establishment of national standardising bodies, the participation in international standardisation bodies and the provision or strengthening of adequate equipment and capacities for testing and certification.

**Special and differential treatment:** Members shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing countries. In addition, developing countries are not expected to use international standards which are not appropriate to their development, financial and trade needs. Finally, the Committee on TBT can grant developing countries specified, time-limited exceptions in whole or in part from the obligations of the Agreement (Art.12)

**Enforcement and dispute settlement:** The *WTO Technical Barriers to Trade Committee* is the major forum to consult on matters pertaining to the operation of the agreement and discuss concerns about the regulations and their implementation (Art. 13). In order to resolve concerns between countries on TBT matters, the TBT Agreement explicitly refers to the WTO Dispute Settlement Body for consultations and solutions of disputes (Art. 14).

**Other:** The Agreement also sets out a “code of good practice” for the preparation, adoption and application of voluntary standards, which is open to acceptance by private sector bodies as well as the public sector (in annex to the Agreement).

1. All obligations pertain to central governments only.
2. “The Committee has recommended a normal time limit for comments on notifications of 60 days. Any Member which is able to provide a time limit beyond 60 days is encouraged to do so”. *Decisions and recommendations adopted by the Committee since 1 January 1995. Note by the Secretariat. G/TBT/1/Rev.8, WTO, 23 May 2002.*

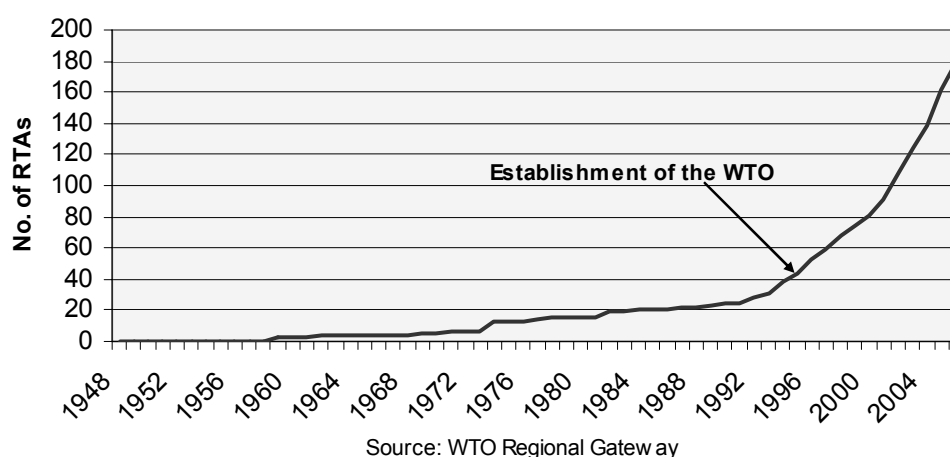
Source: WTO TBT Agreement, WTO Regional Trade Gateway and WTO TBT Committee.

### III. REGIONAL TBT RULES: CONVERGING OR DIVERGING FROM THE MULTILATERAL TRADING SYSTEM?

#### 3.1 Introduction

22. Parallel to commitments made pursuant to the WTO TBT Agreement, nearly all WTO members are engaged in preferential trade agreements (WTO Regional Trade Gateway).<sup>9</sup> In the last ten years, the number of RTA has increased significantly and this trend is expected to continue (Figure 1).<sup>10</sup> Some experts suggest that if one takes into account the RTAs that are currently being negotiated or in the process of ratification, their number is likely to reach 300 in 2008 (Crawford and Fiorentino, 2005).

Figure 1. Number of notified RTAs in force, up to March 2007



23. Given the growing number of RTAs, their role in disciplining TBT is likely to increase, potentially creating overlaps (or contradictions) with multilateral efforts. A recent study by the WTO and IDB secretariats, for example, found that out of 70 surveyed RTAs --covering approximately 1/3 of total RTAs notified to the WTO-- 58, or over **80%**, contained TBT provisions (Piermartini and Budetta, 2006).

24. Yet, the increase in RTAs has produced the phenomenon of overlapping membership. Because each RTA tends to develop its own mini-trade regime, the coexistence in a single country of differing trade rules applying to different RTA partners has become a frequent feature. This can hamper trade flows merely by the costs involved for traders in meeting multiple sets of trade rules, including differing product standards, technical regulations and conformity assessment procedures. The proliferation of RTAs thus increases the risks of inconsistencies in the rules and procedures *among RTAs* themselves, and *between RTAs and the multilateral framework* (World Bank, 2005). In addition to entering RTAs, some countries

9. WTO Members are permitted to enter into such arrangements under specific conditions. GATT Article XXIV provide for the formation and operation of customs unions and free-trade areas covering trade in goods; the Enabling Clause refers to preferential trade arrangements in trade in goods between developing country Members; and Article V of GATS governs the conclusion of RTAs in the area of trade in services.

10. The number of RTAs has increased from 53 notified agreements in 1996 to 178 in 2006, representing an increase of 236%.

also engage in regulatory co-operation through mutual *recognition arrangements* (MRAs) in order to avoid double testing and certification of products.

25. In order to assess whether there are any inconsistencies amongst regional and multilateral TBT rules, this chapter examines TBT provisions included in selected RTAs according to 7 categories outlined in Table 1 and points out when such provisions go beyond WTO rules (section 3.2). It then identifies factors likely to influence the approach chosen to remove TBTs (section 3.3) and analyses the RTA provisions' degree of convergence (or divergence) with the multilateral system (section 3.4).

### 3.2 Overview of TBT provisions in selected agreements<sup>11</sup>

#### 3.2.1 Reference to the WTO TBT Agreement

26. TBT chapters in RTAs concluded after the establishment of the WTO generally echo the core objectives of the WTO TBT Agreement, stressing that the legitimate objectives of TBT are to protect public security, health, and the environment. Some TBT chapters also make explicit reference to more far-reaching goals, such as the promotion of investment between Parties (e.g. EC-Chile agreement), the improvement of the business climate (e.g., Singapore-Korea agreement) and of the quality and efficiency of production (e.g. CARICOM). In such cases, the objectives of TBT provisions are often "to increase and facilitate trade through furthering the implementation of the WTO TBT Agreement". Furthermore, most of these RTAs re-affirm Parties' rights and obligations under the WTO TBT Agreement.<sup>12</sup> The US-Morocco free trade agreement, for example, call Parties to "affirm their existing rights and obligations with respect to each other under the [WTO] TBT Agreement" (Article 7.2).

#### 3.2.2 Harmonisation of technical regulations, standards and conformity assessment procedures

27. Almost half of all reviewed RTAs call for or encourage a harmonisation of technical regulations, standards and conformity assessment procedures. The vast majority of such RTAs promote the use of *international* standards and guides for setting technical regulations, conformity assessment procedures and standards, except when such international standards are deemed ineffective or inappropriate to fulfil legitimate objectives.<sup>13</sup> ASEAN, for example, calls its Members to harmonise product standards through alignment with international practices (OECD, 2005). In addition, some RTAs involve provisions on mutual consultation in order to better align views on *international* TBT matters (e.g., ALADI, CARICOM and MERCOSUR, Box 7, below).

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11. The RTAs analysed in this chapter include the 24 agreements reviewed in the case studies, as well as additional agreements reviewed by other experts, e.g., Piermartini and Budetta, 2006, Kotschwar, 2001 and ECDPM, forthcoming. The list of examined RTAs is provided in Annex I. The summary of results emerging from the case studies is provided in Annex II.

12. The case studies point to an average 86% of RTAs make reference to the WTO TBT Agreement (its objectives, rules and/or provisions), and an average 40% to more far-reaching goals. Similarly, Piermartini and Budetta (2006) find that over 50% of reviewed RTAs refer to the WTO Agreement on TBT, and 36% reaffirm their rights and obligations with respect to each other under the WTO Agreement.

13. The case studies find that an average 47% of RTAs require or encourage Parties to harmonise their regulations, standards and conformity assessment procedures. Piermartini and Budetta (2006) find that an average 46% include similar provisions. Both reviews pinpoint that approx. 60% to 70% of the harmonisation provisions promote the use of international standards and guides.

28. Alongside that, approximately a third of all reviewed RTAs promote harmonisation through the use or elaboration of *regional* regulations, standards and guidelines for conformity assessment.<sup>14</sup> In fact, regional standards and recommendations are sometimes promoted alongside international ones. The Trans-Pacific Strategic Economic Partnership Agreement concluded between Chile, Singapore, New Zealand and Brunei, for example, require Parties to use existing international standards as a basis for setting technical regulations and related conformity assessment procedures and recommends Parties to build on, and participate in, the regional work of APEC on standards and conformance (Art. 8). Similarly, the Andean Community calls its Members to work on the basis of international standards (or pertinent elements thereof) when elaborating technical regulations, “except in the case where such international standards or pertinent elements are an ineffective or inappropriate mean for the achievement of the legitimate objectives pursued”. In this case, national technical regulations are based on Andean sub-regional, regional and/or national regulations (Decision 562). Likewise, with regard to voluntary standards, COMESA encourages the establishment of African Regional Standards where international standards do not exist or appear inappropriate.

29. A number of EC economic association agreements with candidate countries for accession to the EU (e.g. Central and Eastern European countries) or with “neighbouring countries” (e.g. European Economic Area, Mediterranean, North African and South Eastern European countries) call Parties to cooperate to promote the use of *Community* technical regulations and European standards, tests and conformity assessment procedures. In effect, such countries are required to unilaterally adopt EU rules (e.g., EC-Morocco EUROMED agreement). The EC nevertheless highlights that its technical regulations, standards and conformity assessment procedures rely on international standards and guides whenever they exist (Jenkinson in OECD, 2005).<sup>15</sup> In this regard, Shortall (2006) notes that, as of end 2006, approximately 30 percent of European standards were based on international ones.

### 3.2.3 *Acceptance of technical regulations as equivalent*

30. In contrast to the common requirement to harmonise technical regulations and standards, relatively fewer reviewed RTAs require or encourage members to consider the technical regulations and standards of other Parties as *equivalent*. Interestingly, in approximately 40% of those RTAs, Parties need to give an explanation when not applying the principle of equivalence to the technical regulations of the other parties to an RTA, hence going beyond WTO rules (e.g., many RTAs involving the US).<sup>16</sup> The Central America-Dominican Republic-US free trade agreement, for example, notes that “*Where a Party provides that foreign technical regulations may be accepted as equivalent to a specific technical regulation of its own, and the Party does not accept a technical regulation of another Party as equivalent to that technical regulation, it shall, at the request of that other Party, explain the reasons for its decision. Where a Party does not provide that foreign technical regulations may be accepted as equivalent to its own, it may, at the request of another Party, explain its reasons for not accepting that other Party’s technical regulations as equivalent.*” (Art. 7.6).

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14. The case studies show that an average 34% of RTAs promote the use of regional regulations, standards and CA procedures. Piermartini and Budetta (2006) find that an average 45% include similar measures.

15. The EC notes that the international standardisation process can be painfully slow. As a result, the EU, which is the leading participant in international standardisation, and has a strong commitment to it, has made relatively limited use of *new* international standards as the basis for technical legislation and the opening of trade. *Source:* <http://trade-info.cec.eu.int/tbt/index.cfm>

16. The case studies find that an average 33% of all reviewed RTAs encourage the acceptance of technical regulations (and standards) as equivalent. 33% of the RTAs reviewed in the case studies require Parties to explain the reasons for not accepting regulations as equivalent. Piermartini and Budetta (2006) find that 26% of RTAs encourage equivalence of technical regulations, and 47% require Parties to explain the reasons for non-equivalence.

31. Finally, a small share of reviewed RTAs does not specify explicitly which approach (harmonisation or equivalence of technical regulations and standards) should be adopted by the Parties. Some of the RTAs Chile concluded with its Latin American neighbours, for example require Parties to achieve “compatibility” of standard-related measures (e.g., Chile-Mexico, Chile-El Salvador, and Chile-Costa Rica). Likewise, some RTAs encourage “greater co-operation” in the field of technical regulations, standards and conformity assessment, without specifying what form such co-operation should take (e.g., Morocco-EFTA, Chile-EFTA, Morocco-Turkey).

### 3.2.4 *(Mutual) recognition of conformity assessments*

32. Provisions to mutually recognise technical regulations and standards of other Parties are currently only applied in the EU (Baller, 2007, see Box 8). However, approximately 70% of reviewed RTAs do encourage Parties to (mutually) recognise the results of their conformity assessment procedures. Approximately a quarter of these agreements go beyond the WTO rule in this regard, by specifying that where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons.<sup>17</sup>

33. In addition, some of these agreements call each Party to recognise conformity assessment bodies in the territory of the other Party “*on terms no less favourable than those it accords to conformity assessment bodies in its territory*” and require Parties to provide an explanation, upon request, if they refuse to accredit, approve, license or recognise such a body (e.g., the Transpacific Strategic Economic Partnership Agreement and several agreements to which the US is a Party). The US-Chile Free Trade Agreement for example states that “[...] *If a Party accredits, approves, licenses, or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request, explain the reasons for its refusal*” (US-Chile, Art. 7.6). Such provisions clearly go beyond the WTO commitments which only encourage Members to permit the participation of conformity assessment bodies located in the territories of other Members (Art. 6.4, WTO TBT Agreement). Furthermore, in line with the decision of the WTO TBT Committee in 2000, several RTAs (e.g., CAFTA-DR) encourage the recognition of conformity assessment results through a broad range of mechanisms, including the recognition of suppliers’ declarations of conformity --which do not require a third party to assess whether a product conforms to technical regulations and standards-- and the conclusion of voluntary arrangements between conformity assessment bodies from each Party.

34. Finally, in the case of several reviewed RTAs, Parties have also concluded *Mutual Recognition Arrangements* (MRAs) with other Parties to the agreement. Through such agreements, products that are tested and certified before export and can enter the importing country directly without having to undergo similar conformity assessment procedures in the importing country (see Box 3). MRAs are often concluded separately from general RTAs and applied on a sectoral basis (e.g., telecommunications equipment, electric and electronic equipment, and medical devices).<sup>18</sup> Such agreements are often perceived as less intrusive and less costly than direct harmonisation of regulations, standards and conformity assessment procedures, as they do not require countries to change their domestic regulations (Baller, 2007 and EC, 2001). Yet, they require a high degree of mutual confidence regarding the effectiveness of conformity assessment

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17. The case studies find that an average 77% include provisions for the mutual recognition of conformity assessment results provisions, with 34% going beyond the WTO rule. Piermartini and Budetta (2006) find that 67% of the reviewed RTAs include such provisions, of which 15% are more stringent than the WTO rule. In Kotschwar (2001), “nearly all” of the reviewed RTAs include provisions for the mutual recognition of conformity assessment procedures.

18. The EU has generally adopted a multisector approach to MRAs (Baller, 2007).

procedures and competence of conformity assessment bodies of the Parties to the arrangement, as well as sufficient administrative resources and capacities to be negotiated and implemented (APEC, 2006). To date, most governmental MRAs have therefore been concluded and effectively implemented between developed (high and upper middle income) countries that possess the appropriate conformity assessment infrastructure (e.g. between the EC and other OECD countries, between developed ASEAN members, and between developed APEC members. Cf. Singapore case study). A number of RTAs between developed and developing countries however encourage the conclusion of separate MRAs and include provisions for the delivery of technical assistance to poorer Parties, aimed at strengthening their legal, regulatory and infrastructure capacities in view of doing so (e.g. US-Morocco free trade agreement, ASEAN and APEC).

### Box 3. Types of MRAs for conformity assessment

Experts distinguish between technical and governmental MRAs. Technical MRAs are concluded between technical bodies (testing laboratories, inspection bodies, certification bodies, accreditation bodies). While they are voluntary initiatives, they often facilitate the conclusion of agreements at the government level. Governmental MRAs are generally concluded for specific product sectors under government regulation.

Baller (2007) distinguishes 3 different types of governmental MRAs:

- Full harmonisation of conformity assessment, e.g., the EU's Single Market framework.
- Equivalence of compliance (a unilateral recognition of compliance), e.g., the Trans-Tasman MRA between Australia and New Zealand.
- Full recognition of conformity assessment: the majority of government MRAs relies on this category of full recognition of conformity assessment results. It implies that partners are testing and certifying products according to the standards and requirements of the importing country; subsequently, a certificate indicating full compliance with those requirements is issued by the exporting country and must be accepted by the importing country.

MRAs do generally not provide for equivalence of technical regulations. The EC-US MRA on marine equipments stands out in this respect, as it deepens co-operation beyond accepting conformity assessment results and certificates, recognising equivalence of Members' respective technical regulations. (Such MRAs are sometimes referred to as "enhanced" EU MRAs).

Source: Baller, 2007, APEC, 2006 and Poncin, 2002.

### 3.2.5 Transparency

35. The majority of reviewed RTAs contain transparency provisions which urge members to notify each other about new technical regulations and conformity assessment procedures or modification to existing regulations and procedures when these differ from international standards or are likely to affect trade.<sup>19</sup> Almost a third of the reviewed RTAs require the establishment of a system for the exchange of information regarding technical regulations and conformity assessment procedures *within* the RTA (e.g., regional enquiry points). A minority of RTAs (i.e., less than 10%) go beyond the WTO rules, by specifying that members should give other Parties a time period for comments *longer than 60 days* prior to the adoption or modification of a technical regulation or conformity assessment procedure.<sup>20</sup> The Andean Community, for example, require member countries to notify other member countries of the draft technical

19. The case studies find that an average 80% of RTAs contain commitments on transparency. Piermartini and Budetta (2006) find 52%, Kotschwar (2001), 66%.

20. In the case studies, an average 60% of RTAs define a time period for the receipt of comments yet none of the agreements go beyond the WTO recommendation by specifying a timeline *longer* than 60 days. Piermartini and Budetta (2006) find that 16% of RTAs go beyond the WTO rules in this regard.

regulations they are planning on adopting, at least *ninety* calendar days prior to official publication thereof, to allow for the receipt and incorporation of comments (Decision 562).

### 3.2.6 *Enforcement and dispute settlement*

#### *Institutions*

36. The majority of reviewed RTAs call for the establishment of a joint committee, body or network.<sup>21</sup> Such institutions generally monitor the implementation of the provisions of the agreement, develop proposals for future improvements of the TBT chapter, facilitate the exchange of information, and serve as consultative forums on TBT issues. In addition, such institutions sometimes also co-ordinate harmonisation initiatives and manage further co-operation among Parties, such as MRAs (e.g. ASEAN's Consultative Committee on Standards and Quality, Box 4), provide advice to Parties, or assist in the provision of technical assistance (e.g., Chile-EC Special Committee on Technical Regulations, Standards and Conformity Assessment). Alternatively, a few agreements require that Parties consult each other and monitor the implementation of the TBT chapter through the appointment of "co-ordinators" in each Party (e.g. Singapore-Panama agreement and some bilateral agreements to which the US is a party). Other RTAs establish *sector-specific TBT committees*, either because a sectoral approach towards TBT is taken or because of the scope of the agreement is limited (e.g., Chile-Canada agreement, which contains TBT provisions for the telecommunications sector only).

37. Finally, in cases where a committee for standards-related matters is not established and coordinators not appointed, some agreements provide for co-operation between Parties in order to provide organisational support to foster the establishment of regional bodies and networks (e.g., EC-Morocco EUROMED agreement).

#### **Box 4. ASEAN Consultative Committee on Standards and Quality (ACCSQ)**

The ASEAN Consultative Committee on Standards and Quality (ACCSQ) has endeavoured to harmonise national standards with *international* standards (e.g., ISO, IEC and ITU International Standards) and implement mutual recognition arrangements on conformity assessment to achieve its end-goal of "One Standard, One Test, and Accepted Everywhere".

ACCSQ either implements or monitors the implementation by its Working Groups and Product Working Groups in the several areas:

- *Harmonisation of standards:* The Committee has overseen the harmonisation of standards for 20 priority products (was completed in 2003), identifies and endorses new areas for harmonisation of standards, and co-operation for international standardisation activities. As of November 2005, 140 standards had been harmonised on the basis of international standards, and national standardisation institutes of many ASEAN Members had been involved in the work of international standardisation bodies.
- *Harmonisation of technical regulations and conformity assessment:* The Committee has worked on the harmonisation of technical regulations and conformity assessment regimes in four selected sectors (Electrical and electronic; Cosmetics; Pharmaceuticals; and Prepared Foodstuff). ASEAN aims to develop a fully harmonised regulatory regime for Electrical and Electronic Equipment by 2010. Working groups also exist for Automotives, Traditional Medicines and Health Supplements, Wood, Rubber, Medical devices.
- *Preparation and implementation of sectoral MRAs:* The Committee was the driving force behind 1998 ASEAN Framework Agreement on Mutual Recognition Arrangements which lays down the basic principles for the development and conclusion of sectoral MRAs. Since then, three sectoral MRAs have been concluded and work is progress in two other areas: for Telecommunication Equipment (signed in 2001), Electrical and Electronic Equipment (signed in 2002 and expected to be fully implemented in 2005),

21. The case studies find that 80% of the reviewed RTAs include such obligations, while Piermartini and Budetta (2006) find that 62% of its reviewed RTAs contain such commitments.

Cosmetics (signed in 2003 and expected to be fully implemented in 2008), Pharmaceuticals (work in progress) and Prepared Foodstuff (work in progress).

- *Accreditation and conformity assessment*: The Committee examines the international and regional accreditation bodies' recognition requirements and assist member countries in meeting these requirements; strengthen the competence of ASEAN laboratories and product and quality system certification bodies.
- *Legal metrology*: The Committee is involved in the harmonisation of legal metrology legislation and administration.
- *Transparency*: e.g., The ASEAN Standards and Quality Bulletin is regularly published with a view to ensure dissemination of information and promote transparency on standards, technical regulations and conformity assessment procedures in ASEAN member countries.
- *Enhancement of technical infrastructure*: particularly for developing countries.

Experts acknowledge that ACCSQ has made significant progress in moving forward the regional co-operation on standards and conformity assessment in the last few years.

Source: <http://www.aseansec.org>, ASEAN, 2003 and OECD, 2005.

38. With the intent of deepening integration and harmonisation, customs unions and agreements which ultimately aim to establish a common market often set up regional standardisation bodies (e.g., EU Single Market, ASEAN, and APEC). COMESA, for example, established a common standardisation body, the *African Regional Organisation for Standardisation (ARSO)*, to which all consultations on TBT issues are referred. However, financial constraints and low acceptance rates by its members have restrained the progress of the Organisation's work. An internal study in fact shows that the African Regional Organisation received little political support from its members and is poorly perceived by stakeholders. By 2003, the Organisation had published about 733 African Regional product standards (mainly based on international standards), most of which its members have adopted only partly (ARSO, 2003). Similarly, CARICOM's standardisation body, The *CARICOM Regional Organisation for Standards and Quality (CROSQ)*, seems to fall short of the sufficient staff needed to promote regional standardisation efforts.<sup>22</sup>

#### *Dispute settlement*

39. Over half of the reviewed RTAs contain provisions for the resolution of TBT-related disputes among members. Most provisions call for discussions and consultations in regional committees in case of disagreements.<sup>23</sup> Some agreements also envisage recourse to regional *technical sub-groups* or *ad-hoc working groups* that can provide non-binding recommendations (e.g. ALADI, Mexico-Nicaragua, Mexico-Costa Rica and Mexico and Bolivia).

40. Finally, relatively few RTAs with TBT provisions set up a more formal system for the resolution of standards-related disputes (mainly through arbitration), going beyond the WTO TBT Agreement. In the case of the Andean Community, for example, a Board is established which may order the revocation of a technical regulation, standard, or conformity assessment procedure if it finds that it constitutes a technical barrier to trade (OAS, 1998, Box 5). In contrast, some RTAs explicitly *exclude* TBT from regional dispute settlement procedures (e.g., agreements between Chile-Korea, Singapore-Panama and Mexico-Singapore).

22. See <http://www.crosq.org/>.

23. The case studies find that 87% of the reviewed RTAs specify procedures for dispute settlement. Piermartini and Budetta (2006) find that approx. 50% of RTAs include such provisions. In all of these cases, the provisions call Parties to hold consultations.



### Box 5. Dispute settlement in the Andean Community

If a Member Country considers that the national standards, technical regulations, or the conformity assessment procedures of another Member Country constitute technical barriers to trade, it may hold consultations with the Member Country that adopts the measure, solicit the technical intervention of the *Sub-regional Committee for Standardization, Accreditation, Testing, Certification, Technical Regulations and Metrology*, or approach the Board so that it can pronounce conformity with the dispositions of the Agreement.

If the Board finds that a barrier exists, it may order the revocation of the measure. The holding of consultations, the technical intervention of the sub-regional committee or the pronouncements of the Board may not exceed thirty calendar days from the date of receiving the corresponding petition. The Board, in considering the case, may request the technical opinion of the sub-regional Committee members or of the corresponding Ad Hoc committee members (Decision 376).

Between 1997 and 2004, three legal cases regarding TBT were initiated among Members of the Andean Community.

Source: OAS, 1998 and OECD, 2005a, <http://www.comunidadandina.org/ingles/regulations.htm> and the Integrated Database of Trade Disputes for Latin America and the Caribbean

### 3.2.7 Further co-operation

#### Technical assistance

41. Approximately 40% of all reviewed RTAs include provisions on technical assistance.<sup>24</sup> Often, more developed Parties, e.g. the US (see Box 6) and the EC (see Chile case study) commit to provide assistance to poorer Parties by delivering training to officials and traders, and strengthening institutions and physical infrastructure for testing and certification of products and accreditation of conformity assessment bodies.<sup>25</sup>

### Box 6. TBT- related assistance under the Central America-Dominican Republic-US Free Trade Agreement

The agreement establishes a Joint Committee on TBT matters, which is, inter alia, responsible for designing and proposing mechanisms for technical assistance, in collaboration with *Committee on Trade Capacity Building*, also established under this free trade agreement.

The Trade Capacity Building Committee aims to:

- Prioritise trade capacity building projects at the national or regional level.
- Invite other donor institutions, private sector entities, and nongovernmental organizations to assist in the development and implementation of trade capacity building projects.
- Work with other committees or working groups established under the Agreement, in support of the development and implementation of trade capacity building projects in accordance with the priorities set out in each national trade capacity building strategy.

24. The cases studies find that an average 47% include provisions on technical assistance while Piermartini and Budetta (2006) find that approximately 38% of all reviewed RTAs include such provisions.

25. Between 2001 and 2005, Official Development Assistance for addressing TBT (at the multilateral, regional and bilateral levels) amounted to an annual average of USD 42.2 million. The EC, Japan and the US were the biggest donors during that period, providing an annual average support of a value of respectively USD29 million, USD 9.6 million and USD 3.4 million. Source: <http://tcbdb.wto.org>

- Monitor and assess progress in implementing trade capacity building projects.

The United States Agency for International Development (USAID) has provided training on TBT matters to officials from the Dominican Republic, Costa Rica, Guatemala, El Salvador, Honduras and Nicaragua even before the entry into force of the Agreement in March 2006. Between 2001 and 2005, these countries benefited (individually or collectively) from US-funded TBT-related assistance of a total value of approximately USD 1.3 million.

Source: <http://www.ustr.gov>. <http://tcdb.wto.org>

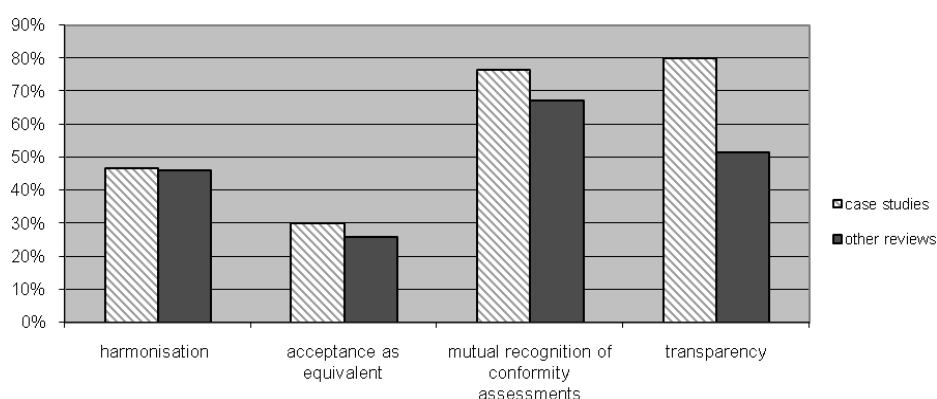
### *Metrology*

42. In contrast, fewer RTAs encourage an enhanced co-operation in metrology, in order to facilitate mutual accreditation of standardisation bodies and laboratories.<sup>26</sup> In some cases, these provisions invoke use of the *International System of Units* as a basis for metrology measures (e.g. Andean Community, ALADI and COMESA). Other agreements call Members to make their national metrological patterns compatible to the greatest extent possible with existing international metrological patterns. The free trade agreement between Chile and Costa Rica for example, requires that Parties “ensure, as far as practicable, the traceability of [their] metrological standards in accordance with the recommendations of the International Bureau of Weights and Measures (BIPM) and the International Organization of Legal Metrology (OIML)” (Article 9.09). Finally, several provisions also contain recommendations for co-operation and co-ordination in metrological infrastructure (e.g. CARICOM).

### **3.2.8 Conclusion**

43. The most common approaches RTAs pursue for addressing TBT are the mutual recognition of conformity assessment results, and transparency of standard-related measures, followed by harmonisation of technical regulations and standards, and acceptance of regulations as equivalent (Figure 2). Such policy options are compatible with each other, so that one same agreement sometimes includes provisions pertaining to several of these options. As noted above, none of the reviewed agreements include provisions for the mutual recognition of technical regulations and standards, which only prevail in the EU Single Market. Furthermore, the majority of reviewed RTAs establish dedicated committees on TBT matters to monitor implementation and act as a forum for consultation among Parties on TBT matters.

**Figure 2. Bilateral and regional approaches for addressing TBT**



Note: "Other reviews" refers to Piermartini and Budetta (2006) and Kotschwar (2001)

26. The case studies only find 14% of agreements which include provisions for further co-operation in the area of metrology. Piermartini and Budetta (2006) find that 29% of the RTAs with TBT rules it reviewed contain a provision on metrology. Similarly, Kotschwar (2001) found that some of the reviewed RTAs in the Americas concluded after the NAFTA contain metrology-related provisions.

44. The analysis shows that while the majority of reviewed agreements do not include provisions that are more stringent than the WTO TBT Agreement as a whole, several RTAs display “WTO plus” characteristics. More far-reaching provisions are mostly found in relation to obligations regarding acceptance of technical regulations as equivalent (approx. 40% of all RTAs with such provisions) and (mutual) recognition of conformity assessment results and bodies (approx. 25% of RTAs with such provisions), where Parties need to give an explanation, upon request, for non-equivalence or non-recognition.<sup>27</sup> In addition, a few (mainly developed country) Parties have, in parallel to RTAs, concluded mutual recognition arrangements (MRAs) for particular sectors, such as telecom, electric, electronic and medical equipment, which go beyond the WTO TBT Agreement. Finally, when an RTA establishes a customs union or is considered to be the first step towards the establishment of a common market, regional TBT committees or related standardisation bodies often also manage further co-operation among Parties which is not prescribed by the WTO.

45. It is unfortunately difficult to gauge the overall progress achieved in the actual implementation of these provisions (and to compare it to the implementation of the WTO TBT Agreement), due to limited literature and reports available on the subject, particularly in the case of bilateral free trade agreements.<sup>28</sup> While these agreements set up joint committees to monitor implementation, mostly on an annual basis, relatively few make status reports regarding compliance publicly available. Such reports are however publicly available for most of the regional groupings and customs unions reviewed. Anecdotal evidence suggests that the most notable progress in regards to the actual removal of TBT seem to have been achieved among Members of the EU, the Economic European Area, ASEAN and APEC (see Chapter IV).

### 3.3 Factors influencing the approach adopted for TBT "liberalisation"

46. Baldwin (2000) emphasises that the extent of liberalisation and harmonisation of TBT measures is likely to depend on the level of development of countries engaged in the RTA. He notes that “such liberalisation will almost surely entail preferential arrangements among rich nations, creating, in essence, a two-tier system of market access with developing nations in the second tier”. In fact, the approach used to reduce TBT barriers, and the degree of “TBT liberalisation” in RTAs, seem to be influenced by three key factors (Piermartini and Budetta, 2006 and Kotschwar, 2001):

- The level of development of the engaged Parties
- The degree of integration the RTA seeks to achieve.
- The involvement of the EU or the US in the RTA.

#### 3.3.1 Level of development of the Parties

47. Harmonisation of technical regulations and standards and, more importantly, mutual recognition of conformity assessment results are more likely to occur among *similar countries*, with comparable levels of development. Mutual recognition of conformity assessments, is in particular more probable among countries with similar technological capacities that trust each other’s regulatory procedures, institutions and infrastructure.<sup>29</sup> The econometric analysis run by Piermartini and Budetta (2006), for example, shows

27. See footnotes 16 and 17.

28. Information on progress regarding the implementation of the WTO TBT Agreement is available in the latest Review of the WTO Committee on TBT, G/TBT/21/Rev.1, of 4 April 2007. Hoekman and Kostecki (2001) note that the WTO TBT Committee has held regular meetings, and there have been few disputes under the WTO TBT Agreement.

29. 67% of the reviewed RTAs have been concluded among countries with similar levels of development: 47% have been concluded between developing countries, and 20% between developed countries. See Annex 1.

that the inclusion of provisions encouraging *harmonisation* of technical regulations is positively correlated with similarities in terms of level of development (i.e., average GNI per capita), the degree of integration (i.e., share of trade among the Parties) and if the RTA belongs to a family of RTAs to which the EU is a partner. The inclusion of provisions regarding the *mutual recognition* of conformity assessment is in turn only positively correlated with the similarity in terms levels of development of Parties. Singapore is a good case in point: so far, all of its bilateral agreements were concluded with countries at a similar level of development (i.e., high income countries, except for Panama, which is an upper middle income country) and include provisions for the mutual recognition of conformity assessment results. In addition, Singapore has concluded complementary MRAs with most of its RTA partners.

48. Yet, such liberalisation efforts are more likely to be *effectively implemented* among more developed countries (high income or upper-middle income economies), since poorer countries often lack the necessary domestic institutions and capacities to enforce provisions related to harmonisation and mutual recognition. As mentioned in the previous section, these countries' monitoring mechanisms and standardisation bodies often lack human and financial resources or do not receive the sustained high-level political attention necessary to drive institutional improvements. In the case of Morocco (reviewed in the next Chapter), many of the RTAs in fact do not require the set up of separate TBT body to manage and oversee the implementation of TBT provisions. In contrast, in Chile, all reviewed RTAs call for the establishment of separate TBT-related monitoring mechanisms. In addition, Chile has set up a National Committee on TBT which, inter alia, monitors compliance of all of Chile's multilateral, regional and bilateral TBT obligations.

49. Finally, the majority of reviewed agreements involving developed and developing countries include provisions on technical assistance, with a view to strengthening poorer countries' capacities, institutions and physical infrastructure for standardisation, conformity assessments, accreditation, metrology and notification (e.g. US-Morocco and EC-Morocco EUROMED agreements).

### **3.3.2 Degree of integration**

50. An additional distinction can be made within RTAs, based on the degree of integration the agreement aims to achieve. RTAs that strive for deeper economic (and political) integration -- such as custom unions, agreements that aim at establishing a single market and economic association agreements-- usually aim towards a (gradual) harmonisation of technical regulations, standards and conformity assessment procedures, and to some extent, of metrology measures. Furthermore, such agreements in most cases involve the establishment of joint enforcement mechanisms (committees) and co-operation mechanisms that go beyond WTO disciplines, such as joint standardisation and/or accreditation bodies and networks (e.g., MERCOSUR, see Box 7, ASEAN, CARICOM, Andean Community, and Singapore's economic co-operation agreements). This can be explained by the fact that such agreements usually aim at a further harmonisation and integration of the Parties' trade policies and regulatory regimes (hence having more-far-reaching goals than the WTO TBT Agreement). In contrast, "simple" free trade agreements, which require a lower level of policy co-ordination among Parties, often only promote the "compatibility" or equivalence of technical regulations and standards, and usually do not involve such a high degree of institutionalisation in regards to TBT (e.g. free trade agreements conducted between Latin American countries, reviewed in Kotschwar, 2001).

### Box 7. MERCOSUR's standardisation policy

The MERCOSUR agreement explicitly aims to identify “offending” technical regulations and to eliminate the obstacles they create through regional harmonisation, to make national conformity assessment structures compatible (through mutual recognition), and to develop a common methodology for elaborating a common MERCOSUR voluntary standards regime.

The Agreement states that “in the process of preparing and reviewing [mandatory] technical regulations, MERCOSUR must use as a basis the general principles and guidelines established in the World Trade Organization Agreement on Technical Barriers to Trade, particularly with respect to transparency, information and notification” (GMC Resolution 152/96). MERCOSUR has set up an ad-hoc group to work on the harmonisation of technical regulations and mutual recognition of conformity assessment procedures.

For voluntary standards, the Agreement establishes a *MERCOSUR Standardisation Committee*. The Committee has a Governing Board made up of representatives from the standardization bodies of Argentina, Paraguay, Brazil, Uruguay and Chile (an associate member), and sets up *Sectoral Standardisation Committees* to carry out its work in specific areas of interest. There are at present 16 sectoral committees at work under the MERCOSUR Standardisation Committee in the following areas: electrical power, steel, electronics and telecommunications, toys, cement and concrete, machines and equipment, automobiles, tires, rings and valves, plastics, information technology, dentistry, medicine and hospital care, paper and cellulose, welding, and furniture.

The main objectives of the MERCOSUR Standardisation Committee are to:

- Elaborate *voluntary* regional standards.
- Promote co-operation among members to facilitate the harmonisation of their standards.
- Harmonise the political and technical positions of its members on *international* standardisation and related activities.
- Promote training in standardisation and quality control.
- Encourage the development of certification systems and mutual recognition.

Source: Kotschwar, 2001, OAS, 1998

### 3.3.3 *US versus EC approaches*

51. Several RTAs conducted between the US and other Parties aim to establish a process of enhanced co-operation and co-ordination in the fields of technical regulations, standards and conformity assessment, by promoting transparency, accountability and regulatory co-operation between the Parties. Policy options to reduce TBT among Parties include acceptance of technical regulations of the other Party as equivalent, alignment towards international standards<sup>30</sup> and recognition of conformity assessment results, through a broad range of mechanisms (including the importing Party's reliance on a supplier's declaration of conformity, voluntary arrangements between conformity assessment bodies, and acceptance of the results of conformity assessment procedures performed in another Party's territory).<sup>31</sup> Interestingly, many US RTAs call on Parties to provide the reasons for not accepting a technical regulation as equivalent or not

30. In many recent free trade agreements, the US and its partners have agreed to apply six principles (transparency, openness, impartiality and consensus, relevance and effectiveness, coherence and taking account of developing country interests) in determining whether an international standard, guide, or recommendation exists within the meaning of the TBT Agreement, as such applying the 2002 “Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3” (WTO, 2002)

31. Sampson and Woolcock (2003) note that in practice, some of these provisions have however led to an approximation to US regulations and standards.

accepting the results of a conformity assessment procedure conducted in the territory of another Party, upon request of the other Party.

52. In contrast, the preferred option in the majority of the reviewed RTAs to which the EU is a party, is harmonisation of technical regulations and standards. Harmonisation towards regional, EU regulations and standards is favoured in RTAs with accession and “neighbouring” countries (e.g., EUROMED countries and South Eastern European countries), with which a deeper political and economic integration is sought.<sup>32</sup> The EC-Morocco EUROMED agreement, for example, calls the Parties to “take appropriate steps to promote the use by Morocco of Community technical rules and European standards for industrial and agro-food products and certification procedures” (Art. 40). Yet, the EC favours convergence towards *international* standards in agreements with more remote countries that are not affected by the EU enlargement or neighbourhood policy (e.g., Mexico and Chile). The EC has also concluded *Protocols to the Europe Agreements on Conformity Assessment and Acceptance of Industrial Products* (commonly referred to as “PECA agreements”) with accession countries, by which mutual recognition operates on the basis of the “*acquis communautaire*”.<sup>33</sup>

53. The difference in liberalisation approach between the EC and the US can in part be explained by the fact that the EU has developed a strong institutional framework for the harmonisation of technical regulations and standards, in the first place to reinforce co-operation and harmonisation among its own Member States, in view of strengthening the EU Single Market (OECD, 2005). ECDPM (forthcoming) notes that the EU “has developed the most sophisticated (and complex) policy measures to deal with TBT anywhere” (Box 8).

**Box 8. The EC approach to technical regulations, standards and conformity assessment procedures**

The EU “New Approach” on technical harmonisation and standards was launched by the European Council resolution in 1985. It was designed to provide fresh impetus to the development of European product legislation. The New Approach is a method whereby product legislation is restricted to the adoption of “essential requirements” necessary to protect the public goals of human health, safety or the environment. The detailed technical requirements are usually addressed by means of voluntary European standards. This approach implies that a wide field of products can be covered by one piece of legislation. The “Global Approach to certification and testing” outlines the guidelines and procedures for conformity assessments that are to be used under the New Approach.

Alongside mandatory regulations and conformity assessment procedures, the EU also developed European standardisation policies. Standardisation inside the EU is a voluntary process involving different economic actors (public authorities, enterprises, consumers, NGOs) and is managed by independent standardisation bodies:

- The European Committee for Standardisation (CEN).
- The European Committee for Electrotechnical Standardisation (CENELEC).
- The European Telecommunications Standards Institute (ETSI).

The EU regulatory model mainly rests on the “precautionary principle”. This means that if, after a scientific assessment, there are concerns that a product might cause harm but scientific uncertainty persists, provisional risk management measures and pre-emptive action may be adopted.

Source: Jenkinson in OECD, 2005 and EC, 2001.

32. “EUROMED countries” refers to 12 Mediterranean countries which signed the 1995 Barcelona Declaration to strengthen Euro-Mediterranean relations, in view of establishing a Euro-Mediterranean free trade area by 2010. The EU has also engaged in a process of *Stabilisation and Association* with South Eastern European countries. More generally, the *European Neighbourhood Policy* offers a deeper political relationship and economic integration to the EU's immediate neighbours.

33. PECA agreements differ from MRAs in that they make use of *common, EU* technical rules and standards.

### 3.4 Degree of convergence with the multilateral trading system

54. RTA provisions can be said to reinforce or *converge* with the multilateral trading system when regional provisions draw on, or replicate underlying WTO approaches, draw on other existing international agreements, or help forge model approaches for possible subsequent adoption in the WTO setting. In addition, RTAs can complement the goals of the multilateral trading system by fostering co-operation and technical assistance among regional partners. In contrast, divergence can be characterised by increased transaction costs for businesses, frictions with the WTO rules, or systemic overload due to the proliferation of disputes arising from RTAs (OECD, 2003).

55. The analysis conducted in this paper seems to indicate that in most cases TBT provisions included in RTAs converge towards the multilateral system and complement WTO TBT rules:

- *First*, the majority of RTAs concluded after 1995 (which represent approximately 70% of the reviewed agreements) make a direct reference to the objectives, rights and obligations of the WTO TBT Agreement. The agreements that have more-far reaching goals do not contradict the WTO TBT Agreement, but rather aim to advance it, by encouraging greater (economic and regulatory) co-operation among Parties.
- *Second*, RTAs that call on Parties to harmonise their technical regulations, standards and conformity assessment procedures, encourage in their majority convergence of national technical regulations and conformity assessment procedures towards international standards and guides, as required by the WTO TBT Agreement.
- *Third*, the majority of reviewed RTAs encourage Parties to mutually recognise the results of conformity assessments conducted in other Parties. Approximately a quarter of those RTAs go beyond the obligations of the WTO agreement by requiring Parties to explain, upon request, the reasons for non-equivalence of conformity assessment procedures or for non-recognition of conformity assessment bodies. Such provisions, which aim to further facilitate trade and avoid discriminatory practices, can be seen as complementing the WTO TBT agreement.
- *Fourth*, the majority of reviewed RTAs include provisions on transparency which are similar in nature to the ones included in the WTO TBT Agreement. Only a few of the reviewed RTAs go beyond the WTO TBT Agreement by specifying a timeline for notification of a technical regulation or conformity assessment procedure which is more stringent than the one recommended by the WTO TBT Committee. Such provisions can actually be seen as complementing existing multilateral disciplines.
- *Finally*, the majority of reviewed RTAs call for the establishment of regional TBT committees to monitor implementation and act as a forum for consultations and exchange of information on TBT matters among Parties. In some cases, particularly when the RTA is considered to be the first step towards the establishment of a common market or seeks to establish deeper economic collaboration, such committees also manage further regulatory co-operation among Parties, which is not prescribed by the WTO (e.g., joint standardisation activities at regional *and* international levels and co-ordination in the area of metrology). In addition, a number of RTAs include specific provisions on technical assistance. RTAs that call for more intense TBT-related co-operation among Parties have the potential to facilitate and strengthen the implementation of the WTO TBT Agreement.

56. *Divergence* from the multilateral trading system might however occur if harmonisation toward (more stringent) *regional* regulations, standards and conformity assessment procedures is promoted

alongside international standards. While regional regulations, standards and procedures often aim to fill the gap where there are no international standards yet (or where they are considered inappropriate)<sup>34</sup>, the existence of different criteria for harmonisation could complicate international trading relationships. Discussions at the 2005 *OECD Workshop on Standards and Conformity Assessment in Trade*, for example highlighted the experience of Mexico -- which is a member of NAFTA and has free trade agreements with the EU, Japan and several Central and South American countries— and the difficulties it faced with the escalation of RTAs with different conditions (OECD, 2005). In the case of Morocco, the process of alignment towards EU standard-related measures (as required by the EUROMED agreement) could conceivably be complicated if US legal persons are allowed to participate in the development of Morocco's standards, technical regulations, and conformity assessments (cf. US-Morocco agreement).

57. Furthermore, while MRAs are encouraged by, and build on, the WTO TBT Agreement, they can, in a few cases, harm third country exports and therefore diverge from the spirit of non-discrimination promoted by the multilateral system (Amurgo Pacheco, 2006, and Chen and Mattoo, 2004).<sup>35</sup> Obligations for greater transparency and use of MRAs, and, more importantly, facilitated accession for third parties could however counter some of these negative effects.

58. The greatest potential threat RTAs might pose to the multilateral trading system however lies in that human and institutional capacities might be diverted away from multilateral efforts, and mainly focus on regional efforts (Fiorentino and Crawford, 2005). Shortage of human and financial resources in the public and private sectors and associated lack of capacity to participate actively in both WTO discussions and international standardisation activities on the one hand, and regional negotiations and liberalisation activities on the other, is a concern particularly for developing countries. As seen in the previous sections, regional efforts to reduce TBT often imply participation in numerous (mandatory and voluntary) institutions.

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34. The *EC Communication on Community External Trade Policy in the Field of Standards and Conformity Assessment*, for example, mentions that the EC regime “offers a good model of compliance with the [WTO] TBT Agreement. Harmonised Directives satisfy its key requirements. Standards - largely based on *international* ones – are mostly voluntary, and regulatory requirements set only where necessary on health, safety or other legitimate grounds” (EC, 1996).

35. Chen and Mattoo, 2004, for example find that MRAs of conformity assessment procedures may hurt third countries if the extent of their application is limited by rules of origin.



## IV. CASE STUDIES

59. RTAs are often one component of a larger political effort to deepen economic relations with neighbouring countries. As agreements proliferate, a country often becomes a member of several different agreements. According to the World Bank (2005), the average African country belongs to four different agreements, and the average Latin America country belongs to seven agreements. The proliferation of agreements can cause regulatory overlaps and increase administrative costs. At the same time, RTAs might enhance administrative knowledge regarding negotiations and the supervision of TBT provisions.

60. This Chapter analyses in more depth ratified RTAs involving, respectively, Chile, Singapore and Morocco. Each case study examines TBT provisions included in selected RTAs the country has undertaken, considering in particular their degree of consistency amongst each other and with WTO disciplines, and the institutional infrastructure put in place to deal with the wide range of TBT provisions.

### 4.1 Chile<sup>36</sup>

#### 4.1.1 Introduction

61. Until 1990, Chile's trade policy was mainly based on *unilateral* liberalisation. Yet, as of the mid-1990s, Chile increasingly sought to open its trade and investment regimes through the conclusion of bilateral, regional and plurilateral preferential trade agreements, alongside unilateral liberalisation and participation in the multilateral trading system (WTO, 2003). It first concluded RTAs with its neighbouring countries in Latin and Central America (mid- to late 1990s), then with the major trading blocs (EC, US and EFTA, 2003/4), and most recently with countries in the Asia-Pacific region (Korea, China, and New Zealand, Singapore, Brunei Darussalam, 2004/6). In addition, it is currently negotiating bilateral protocols with Guatemala, Honduras and Nicaragua, which are members of the Central America Common Market (Direcon, 2007).

62. The increasing number of RTAs which Chile has concluded has required the development of dedicated institutions for the implementation and administration of such agreements. The tasks of such institutions include putting RTAs into full effect, monitoring compliance of mutual commitments, managing the RTAs to ensure the effective operation of their respective institutional structure, and maximizing the use of the advantages and opportunities generated by the agreements. In addition, the proliferation of RTAs also requires co-ordination with all the actors involved: public sector, the legislative power, the private sector and civil society (Direcon, 2007).

#### 4.1.2 A comparative analysis of regional TBT provisions

63. Chile attaches a high importance to the removal of TBT, both at the multilateral and regional and bilateral levels. It has been involved in three regional groupings which work, on the removal of TBT – APEC (as a member), MERCOSUR (as an associate country), and the Latin American Integration Association (as a member). In addition, as of April 2007, Chile had concluded 17 free trade and economic complementation agreements which contain TBT provisions and which have entered into force (Table 3). By that time, it had also concluded two MRAs regarding oenological practices (see below). This section analyses the text of 10 selected agreements with TBT provisions (see Table 3, highlighted rows).<sup>37</sup>

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36. This case study was reviewed by Ana Maria Vallina, Head of the Foreign Trade Department, Ministry of Economy of Chile. Ms. Vallina provided valuable material regarding Chile's legal and institutional setting.

37. APEC's approach to the removal of TBT is analysed in the next section (Singapore case study).

Table 3. Overview of Chile's RTAs, as of 2 April 2007

No.	Agreement	Entry into force	Type of agreement	WTO notification	TBT provisions
1	Chile-Canada	05-Jul-97	Free trade agreement	yes	Telecom sector
2	Chile-Mexico	01-Aug-99	Free trade agreement	yes	yes
3	Chile-Costa Rica**	14 Feb- 02	Free trade agreement	yes	yes
4	Chile-El Salvador**	3-Jun-02	Free trade agreement	yes	yes
5	Chile-EC*	01-Feb-03	Free trade agreement	yes	yes
6	Chile-US	01-Jan-04	Free trade agreement	yes	yes
7	Chile-Republic of Korea	01-Apr-04	Free trade agreement	yes	yes
8	Chile-EFTA	01-Dec-04	Free trade agreement	yes	yes
9	Chile-China	01-Oct-06	Free trade agreement	no	yes
10	<b>Trans-Pacific Strategic Economic Partnership Agreement*</b> (Chile, New Zealand, Singapore, Brunei Darussalam)	08-Nov-06	Free trade agreement	no	yes
11	<b>Latin American Integration Association</b>	18-Mar-81	Preferential arrangement	yes	yes
12	<b>Central America</b>	(signed on 18-Oct-99)	Free trade agreement	no	yes
13	<b>Chile-Argentina***</b>	02-Aug-91	Economic complementation	no	yes
14	<b>Chile-Venezuela***</b>	01-Jul-93	Economic complementation	no	yes
15	<b>Chile-Bolivia***</b>	07-Jul-93	Economic complementation	no	yes
16	<b>Chile-Colombia***</b>	01-Jan-94	Economic complementation	no	yes
17	<b>Chile-Ecuador***</b>	01-Jan-95	Economic complementation	no	yes
18	<b>MERCOSUR</b>	01-Oct-96	Economic complementation	no	yes
19	<b>Chile-Peru***</b>	01-Jul-98	Economic complementation	no	yes
20	<b>Chile-India</b>	(signed on 8 Mar-06)	Partial scope agreement	no	yes
21	<b>Chile-Panama</b>	(signed on 27-Jun-06)	Free trade agreement	no	n/a
22	<b>Chile-Japan</b>	(signed on 27-Mar-07)	Free trade agreement	no	<u>yes</u>
23	<b>Chile-Cuba</b>	Parliamentary proceeding pending	Partial scope agreement	no	n/a

Source: [http://www.direcon.cl/cuadro\\_resumen\\_en.html](http://www.direcon.cl/cuadro_resumen_en.html)

\* Economic association agreement

\*\* Bilateral Protocol to the Central America Free Trade Agreement

\*\*\* Free trade agreement concluded to complement the Latin American Integration Association.

1. *Reference to the WTO TBT Agreement*

64. All of the ten reviewed RTAs make a direct reference to the WTO TBT Agreement and re-affirm Parties' rights and obligations with respect to each other under the TBT Agreement. The RTAs all reiterate the need to avoid unnecessary obstacles to trade and discrimination amongst Parties. Some RTAs seek to facilitate trade beyond the WTO provisions through enhanced regulatory co-operation (e.g., the Trans-Pacific Strategic Economic Partnership Agreement and the EC-Chile association agreement). Similarly, the Chile-US agreement calls the Parties to identify further collaborative initiatives that are appropriate for particular issues or sectors.

2. *Harmonisation, compatibility and acceptance of technical regulations as equivalent*

65. The most recently concluded agreements (with the EC, Korea, China, and the Trans-Pacific Strategic Economic Partnership Agreement) specifically require Parties to harmonise their technical regulations and related conformity assessment procedures on the basis of *international standards* when they exist or their completion is imminent, except when such standards are "ineffective or inappropriate to fulfil legitimate objectives". Alongside harmonisation, these agreements also encourage the equivalence and compatibility of technical regulations. The Economic Association agreement with the EC, for example, calls Parties to work towards "compatibility and/or equivalence of their respective technical regulations, standards and conformity assessment procedures (Art. 87), while the Trans-Pacific Strategic Economic Partnership Agreement calls Parties to "give positive consideration to accepting as equivalent, technical regulations of another Party" (Art. 8.7). Interestingly, over half of the reviewed agreements require Parties to explain the reasons for not accepting the other Parties' technical regulations as equivalent, hence going beyond the WTO TBT Agreement.

66. In contrast, the earlier RTAs, concluded mainly with Latin American neighbours (Mexico, Costa Rica and El Salvador) require Parties to achieve "compatibility" of standard-related measures, without specifying whether the preferred liberalisation approach would be harmonisation or equivalence (both are consistent with the WTO TBT Agreement). The RTA with Mexico, for example, state that "Parties shall, to the greatest extent practicable, make compatible their respective standards-related measures without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers [...] and taking into account international standardization activities" (Art. 8).<sup>38</sup>

3. *Mutual recognition of conformity assessments*

67. All reviewed RTAs except the Chile-EFTA Agreement include provisions for the mutual recognition of the results of conformity assessments. Chile's free trade agreements usually encourage Parties to negotiate mutual recognition arrangements, to rely on suppliers' declaration of conformity, and to accredit conformity assessment bodies in other Parties. Finally, over half of the reviewed RTAs go beyond WTO disciplines in that the Parties have to explain the reasons for non-recognition (agreements with Costa Rica, El Salvador, Korea, the US, China and Trans-Pacific Strategic Economic Partnership Agreement).

68. In addition, Chile is since 2003 a member of the plurilateral *Agreement on Mutual Acceptance of Oenological Practices* (other members include Argentina, Australia, Canada, New Zealand and the US),

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38. There is no formal definition of "compatibility". In several of the reviewed RTAs, it is defined as follows: "[...] bringing different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical, equivalent or have the effect of permitting goods or services to be used in place of one another or fulfil the same purpose (e.g., Chile-Costa-Rica).

which mutually recognises laws, regulations and requirements relating to oenological practices of other Parties and provides for a dispute settlement mechanism via a council and an expert committee. The Agreement call Parties shall accept each other's and the mechanisms to regulate them on a bilateral basis, Chile concluded an MRA with the EU (2003) regarding oenological practices and wine labelling, which allows Parties to import wine produced and labelled in the other Party in accordance with reciprocally accepted wine-making practices.

#### 4. *Transparency*

69. The majority of Chile's reviewed RTAs (8 out of 10) include transparency provisions which require Parties to notify newly adopted or modified technical regulations and conformity assessment procedures to other Parties, when these differ from international standards or are likely to affect trade, though no agreement requires the set up of separate enquiry points. Such provisions converge towards WTO disciplines, by specifying that each Party shall notify technical regulations and conformity assessment procedures to the other Parties at least 60 days in advance of their adoption, "to enable interested Parties to submit comments and consultations during that period and permit the notifying Party to take them into account" (i.e. agreements with Mexico, Costa Rica, El Salvador, US, Korea, China and the Trans-Pacific Economic Partnership Agreement). In addition, three agreements (with Korea, Mexico and the US respectively) allow persons from one Party (public or private sector) to participate in the elaboration of standards, technical regulations and conformity assessment procedures of the other Party.

#### 5. *Enforcement and dispute settlement*

70. All of Chile's reviewed RTAs provide for the establishment of a joint committee to monitor the implementation of the agreement and enable Parties to consult each other on issues related to TBT. Some RTAs set up institutions to manage more advanced co-operation efforts in the area of harmonisation, equivalence and accreditation, e.g., *Chile-EC Special Committee on Technical Regulations, Standards and Conformity Assessment* (Box 9) or the Committee established through the Trans-Pacific Strategic Economic Partnership Agreement. Two agreements in particular establish sector-specific bodies to deal with telecom standards (agreements with Canada and Mexico). Furthermore, the majority of Chile's reviewed RTAs include provisions for the resolution of disputes among members through consultations.

#### **Box 9. Chile-EC Special Committee on Technical Regulations, Standards and Conformity Assessment**

The Committee is co-chaired by Chile and the EU. It has established a work programme to carry out the RTAs goals in regards to enhanced co-operation, namely:

- Monitoring and reviewing the implementation and administration of the TBT Chapter.
- Providing a forum for discussion and exchanging information on any matter related to the TBT Chapter and in particular as it relates to the Parties' systems for technical regulations, standards and conformity assessment procedures, as well as developments in related international organisations;
- Providing a forum for consultation and prompt resolution of issues that act or can act as unnecessary barriers to trade, within the scope and meaning of this section, between the Parties;
- Encouraging, promoting and otherwise facilitating co-operation between the Parties' organisations, public and/or private, for metrology, standardisation, testing, certification, inspection and accreditation; and
- Exploring any means aimed at improving access to the Parties' respective markets and enhancing the functioning of this Chapter.

The Committee also identified and launched an important technical assistance programme financed by the EC (see below).

Source: <http://www.direcon.cl>

6. *Further co-operation*

71. Most reviewed agreements (except those with EFTA, Canada and the Trans-Pacific Strategic Economic Partnership Agreement), include provisions regarding technical assistance. Four agreements go beyond WTO provisions, by encouraging collaboration in the area of metrology, on the basis of recommendations and guides of the International Organisation of Legal Metrology (agreements with the EC, Mexico, Costa Rica, and El Salvador).

7. *Conclusion*

72. All reviewed agreements reaffirm Parties' rights and obligations under the WTO TBT Agreement. Some TBT provisions in Chile's RTAs go beyond WTO disciplines, particularly in regards to the acceptance of technical regulations as equivalent and the mutual recognition of conformity assessment procedures, where Parties in most cases need to explain the reasons for non-equivalence or non-recognition upon request. Such provisions can be seen as converging towards the multilateral trading system since they seek to further enhance transparency and non-discrimination.

73. Furthermore, a number of Chile's RTAs aim at more far-reaching regulatory co-operation and establish joint committees that deal not only with monitoring, administration and consultations regarding the TBT Chapter, but also with further collaborative initiatives in the area of harmonisation, equivalence, accreditation, and technical assistance (e.g., association agreements with the EC and Trans-Pacific Strategic Economic Partnership Agreement) or in the area of metrology (agreements with Mexico, Costa Rica, and El Salvador). Such provisions, while going beyond multilateral disciplines, can be perceived as complementing the WTO Agreement.

74. Finally, there seems to be a high degree of consistency across the TBT Chapters included in the different RTAs Chile entered. First, almost all reviewed agreements call for the mutual recognition of conformity assessment procedures. This can be explained by the fact that most agreements have been concluded with countries that are either at a similar or higher level of development than Chile, thus being likely to have conformity assessment procedures and infrastructure which Chile can trust and rely on. Second, the majority of RTAs also contain identical provisions in regards to transparency of standards-related measures. Lastly, most RTAs promote "compatibility" of standard-related measures, or a combination of harmonisation towards international standards and equivalence of technical regulations.

**4.1.3 *Institutional setting for managing TBT***

75. Chile has put in place a sound institutional structure to deal with TBT at the multilateral, regional and bilateral levels. In May 1995, the WTO TBT Agreement came into force as law of the Chilean Republic, after having been approved by the National Congress. Responsibility for implementing and administering the WTO TBT Agreement lies with the Ministry of the Economy, Development and Reconstruction, and more specifically with its Department of Foreign Trade. The Department acts as Chile's *National Enquiry Point* for technical regulations and conformity assessment procedures, set up in the framework of its WTO commitments (WTO, 2003).

76. Chile's laws in regard to the notification, preparation, adoption and implementation of technical regulations and conformity assessment procedures reflect WTO disciplines (WTO, 2006). Law 19.912 on TBT matters (2003) and the related *Decree on Good Regulatory Practices*, for example, call for:

- The use of international standards as a basis for setting national regulations and standards;
- Avoidance of unnecessary barriers to trade;

- Respect of national and most-favoured-nation treatment;
- A public consultations period on draft technical regulations of *at least 60 days* and the provision of information to the Ministry of the Economy so that it can notify them to the WTO; and
- A period of minimum 6 months between the adoption and publication of technical regulations and their entry into force, in order to give economic operators time to adapt to the new provisions. In special circumstances, this period may be shorter (WTO, 2006 and Ms. Vallina, Ministry of Economy, Chile).

77. The Decree, which was elaborated by the *National Committee on Technical Barriers to Trade*, provides clear and uniform rules to all relevant public agencies on the elaboration, adoption and implementation of technical regulations and conformity assessment procedures (WTO, 2003).

78. Furthermore, a *National Committee on Technical Barriers to Trade* was established in 1997. It is headed by the Ministry of Economy and comprises representatives from all Ministries and public agencies involved in the preparation, adoption, implementation and enforcement of technical regulations (e.g. Ministries of Health, and Agriculture, and Subsecretary for Telecommunications), as well as representatives from the National Institute of Standardisation, responsible for the development and implementation of voluntary standards, and the Ministry of Foreign Affairs, responsible for Chile's export promotion authority. This Commission, inter alia, co-ordinates Chile's position on TBT issues in preferential agreements and in the WTO. As such, it helps avoid inconsistencies between TBT provisions of different RTAs, as well as avoiding divergences with WTO disciplines (Box 10).

#### **Box 10. Core responsibilities of Chile's National Committee on Technical Barriers to Trade**

The National Committee aims to:

- Co-ordinate and secure consistency between the efforts of the various bodies involved in standards-related matters in the country. Co-ordination is ensured through contact points in each of the regulatory agencies represented in the Commission.
- Take measures to strengthen market surveillance and ensure that products placed on the Chilean market comply with mandatory regulations.
- Ensure compliance with the WTO TBT obligations and provide periodic updates to Chile's regulatory agencies on WTO/TBT activities.
- Participate in, and inform regulatory agencies about the work of the APEC Subcommittee on Standards and Conformance.
- Co-ordinate the country's position on TBT matters in bilateral, regional and plurilateral trade negotiations and follow up and administer the TBT Chapters in Chile's RTAs, and support their implementation.
- Co-ordinate the country's position on any other international TBT issue (e.g. the new European Chemicals regulation REACH).
- Address the issue of standardisation as an instrument to support the country's process of technological modernisation
- Identify capacity building requirements and provide training to relevant regulatory agencies and businesses.

Source : WTO, 2006 and information provided by Ms. Ana Maria Vallina

79. Furthermore, in order to improve transparency and public availability of technical regulations, a *website*<sup>39</sup> featuring all Chilean and EU technical regulations has been established, under the authority of the Ministry of Economy and *ProChile*, the government's export promotion agency, with the participation of all agencies involved in the National TBT Commission. This website has been financed by the EC in the context of an EU co-operation programme undertaken as part of the EC-Chile association agreement.<sup>40</sup>

80. Finally, standards are elaborated by Chile's *National Standardisation Institute (INNO)*, which adopted the (voluntary) *WTO Code of Good Practice for the Preparation, Adoption and Implementation of Standards*. The Institute promotes and facilitates the use of international standards at the national level<sup>41</sup> and acts as the *National Enquiry Point for Standards*. Standards are assessed against internationally accepted ISO and IEC criteria, and emerge through a process of consultations among representatives from the public sector and from private sectors (the public consultation process is open for 60 days). The *National Standardisation Institute* also accredits organisations that issue conformity assessment certificates for export products (WTO, 2006 and WTO, 2003). In addition, Chile is also a member of the Pan-American Standards Commission (COPANT), the International Organisation for Standardisation (ISO), the Inter-American Metrology System and the Inter-American Accreditation Cooperation (WTO, 2003).

## 4.2 Singapore<sup>42</sup>

### 4.2.1 Introduction

81. Singapore is a highly trade dependent country that has been pursuing a three-pronged trade policy at the multilateral, regional and bilateral levels.<sup>43</sup> It has traditionally been a strong supporter of the multilateral trading system and provides most-favoured-nation (MFN) treatment to all Members of the WTO. It is also a member of ASEAN, APEC, and the Asia Europe Meetings (ASEM). Since 2000, it has pursued bilateral free trade agreements more vigorously, first with its Asia-Pacific neighbouring countries (2001/3), then with two major trading blocs (EFTA and the US, 2003/4), and most recently with countries in other regions (Jordan, 2005, Panama, 2006 and Chile, through the Trans-Pacific Strategic Economic Partnership Agreement, 2006). As of April 2007, it was engaged in bilateral free trade talks with Canada, China, the Gulf Co-operation Council, Pakistan and Peru, and in multilateral talks, together with other ASEAN members, with Australia and New Zealand, India, Japan, and most recently with the EU (International Enterprise Singapore, 2007).

### 4.2.2 A comparative analysis of regional TBT provisions

82. Beyond its multilateral obligations, Singapore is committed to numerous bilateral and regional TBT-related obligations. It belongs to three regional trade groupings, ASEAN, APEC and ASEM, which work on TBT matters. By April 2007, the country had concluded 10 bilateral and plurilateral free trade agreements which had entered into force and which contained TBT provisions (Table 4).

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39. <http://www.reglamentostecnicos.cl/>

40. Information provided by Ms. Vallina

41. According to the Chilean authorities, 70% of all elaborated national standards are based on international standards (WTO, 2003).

42. This case study was reviewed by Mr. Sze Gin LOW, Senior Assistant Director, WTO and International Trade Negotiations, Singapore Ministry of Trade and Industry. Mr. Low and his colleagues from SPRING Singapore and the Infocomm Development Authority provided valuable input for the study.

43. In 2004, Singapore's merchandise trade was three times its GDP. It is highly dependent on external markets for economic growth (WTO, 2004).

**Table 4. Overview of Singapore's RTAs, as of 2 April 2007**

No.	Agreement	Entry into force	Type of agreement	WTO Notification	TBT provisions
1	<b>ASEAN FTA (AFTA)**</b>	28-Jan-92	Preferential arrangement	yes	yes
2	<b>Singapore- New Zealand*</b>	1-Jan-01	Free trade agreement	yes	yes
3	<b>Singapore- Japan*</b>	30-Nov-02	Free trade agreement	yes	yes
4	<b>Singapore-EFTA</b>	1-Jan-03	Free trade agreement	yes	yes
5	<b>Singapore - Australia*</b>	28-Jul-03	Free trade agreement	yes	yes
6	<b>Singapore- US*</b>	1-Jan-04	Free trade agreement	yes	yes
7	<b>Singapore-Korea*</b>	2-Mar-06	Free trade agreement	yes	yes
8	<b>Singapore-Panama</b>	24-Jul-06	Free trade agreement	no	yes
9	<b>Trans-Pacific Strategic Economic Partnership Agreement*</b>	08-Nov-06	Free trade agreement	no	yes
10	<b>Singapore-India*</b>	1-Aug-2005	Free trade agreement	no	yes
11	<b>Singapore- Jordan</b>	22-Aug-05	Free trade agreement	yes	no
12	<b>ASEAN - China</b>	1-Jul-03	Preferential arrangement	no	yes
13	<b>ASEAN-Korea</b>	(Trade in Goods Chapter signed in 2005)	Preferential arrangement	no	yes

Source: <http://www.iesingapore.gov.sg/> and WTO Regional Gateway

\* Comprehensive economic partnership or economic co-operation agreements

83. Singapore has also concluded several Mutual Recognition Arrangements (MRAs) – either as part of its RTAs or as “stand-alone” agreements with Parties with which it has no RTA yet (e.g., Canada and Hong-Kong). This section analyses the text of 10 RTAs with TBT provisions (Table 4, highlighted rows) and selected governmental MRAs (Table 5), as well as APEC’s (voluntary) approach to the removal of TBT.

#### 1. *Reference to the WTO TBT Agreement*

84. All reviewed agreements re-affirm multilateral TBT objectives, as well as the Parties’ rights and obligations under the WTO TBT Agreement. Furthermore, half of the reviewed agreements also make reference to more far-reaching goals, such as the improvement of the business climate (Singapore-Korea agreement), the facilitation of investment (Singapore-Australia agreement) or further regulatory co-operation, a goal mainly built into more recent RTAs (e.g. the Trans-Pacific Strategic Economic Partnership Agreement and agreements with Korea and with Panama).

#### 2. *Harmonisation of technical regulations, standards and conformity assessments*

85. The majority of Singapore’s reviewed RTAs encourage Parties to harmonise their technical regulations and standards towards international standards where they exist and are considered appropriate (e.g., agreements among ASEAN, and with New Zealand, Australia, Korea, Panama, India and Trans-Pacific Strategic Economic Partnership Agreement). In ASEAN, harmonisation of mandatory technical regulations is progressing at a different speed in four sectors (electrical and electronic goods, and cosmetics, for which agreements have been reached; pharmaceuticals, for which Common Technical Requirements and a Common Technical Dossier have been completed<sup>44</sup>; and for prepared foodstuffs, for

44. It is up to each member country to implement the requirements related to Pharmaceutical goods.



which there is no formal agreement yet). Furthermore, harmonisation of voluntary standards has been achieved in 20 products (OECD, 2005 and information provided by Mr. Low).

86. Alongside international standards, ASEAN, the Trans-Pacific agreement and the agreement with Australia also promote the use of regional guides for setting conformity assessment procedures (e.g., ASEAN and APEC Guides). The latter agreement for example calls Parties to “affirm their intention to adopt and apply the principles set out in the APEC Information Notes on Good Regulatory Practice for Technical Regulation with respect to conformity assessment and approval procedures, in meeting their international obligations under the WTO” (Art. 7.3, Singapore-Australia agreement). The ASEAN agreements and the agreement with the US also encourage participation in the work of regional standard-setting bodies, such as the ASEAN Consultative Committee on Standards and Quality (Box 4) and the APEC Work Program on Standards and Conformance (Box 11).

### 3. *Acceptance of technical regulations as equivalent*

87. Four agreements (with New Zealand, Australia, India, Panama and Trans-Pacific Strategic Economic Partnership Agreement) encourage Parties to consider as equivalent other Parties’ technical regulations and standards. Such a provision also features in agreements that promote harmonisation of regulations and standards towards international standards (agreement with New Zealand, India and Panama, and the Trans-Pacific Strategic Economic Partnership Agreement). Furthermore, three agreements require Members to explain upon request the reason for non-equivalence to the other Party/ies, hence going beyond the WTO TBT agreement.

#### **Box 11. APEC’s approach to the removal of TBT**

The Asia-Pacific Economic Co-operation (APEC) is forum for facilitating economic growth, co-operation, trade and investment in the Asia-Pacific region. It aims to establish free trade and investment in the region by 2010 for industrialised economies and by 2020 for developing economies (these targets are commonly known as the “Bogor Goals”).<sup>1</sup> APEC operates on the basis of non-binding commitments and open dialogue among its Members. Decisions made within APEC are reached by consensus and commitments are undertaken on a voluntary basis. *APEC’s Sub-Committee on Standards and Conformance*, established in November 1994, promotes co-operation among members on standards and conformance to facilitate trade in the region.

The Sub-Committee is implementing a work plan which relies on four pillars:

- Standards alignment on the basis of *international standards*;
- Recognition of conformity assessments in regulated and voluntary sectors;
- Transparency of standards and conformity assessment in APEC economies; and
- The development of technical infrastructure.

APEC’s harmonisation work is currently conducted in 7 priority areas (i.e., Electrical and Electronic Appliances and Equipment, IT equipment, Food Labelling, Rubber Products, Machinery, and standards and guides for conformity assessments). By 2005, 16 members out of 21 had achieved full alignment in four priority areas, while Singapore had achieved complete alignment in all of the identified priority areas. In addition, two voluntary “Pathfinder Initiatives”<sup>2</sup> MRAs have been concluded: the APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment (APEC TEL MRA, 1998) and the APEC Mutual Recognition Arrangement for Conformity Assessment of Electrical and Electronic Equipment (APEC EE MRA, 1999). Singapore adopted both agreements.

Finally, in November 2006, APEC Ministers adopted five sets of “Model Measures for RTAs/FTAs”, including one for TBT. The model measures are non-binding and aim to help ensure greater consistency across overlapping RTAs involving APEC Members.

(1) 21 Members: Australia, Brunei Darussalam, Canada, Chile, People's Republic of China, Hong Kong, China, Indonesia, Japan, Republic of Korea, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, Chinese Taipei,

Thailand, United States, Viet Nam

(2) "Pathfinder Initiatives" enable members to pilot the implementation of cooperative initiatives prior to their adoption by all APEC Member Economies.

Source: WTO(2006a), <http://www.apec.org>

#### 4. *Mutual recognition of conformity assessments*

88. All reviewed agreements call Parties to (mutually) recognise the results of conformity assessments conducted by other Parties. Three agreements in particular (with Korea, Panama and Trans-Pacific Strategic Economic Partnership Agreement) specify that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results, including:

- Reliance on a supplier's declaration of conformity.
- Unilateral recognition of conformity assessment results performed in another Party's territory.
- Co-operative (voluntary) arrangements among conformity assessment bodies from each other's territory.
- Mutual recognition of conformity assessment procedures conducted by bodies located in the territory of another Party.
- Accreditation procedures for qualifying conformity assessment bodies.
- Government designation of conformity assessment bodies.

89. These three agreements also include provisions for the registration, verification and monitoring of conformity assessment bodies in each Party, hence going beyond WTO provisions. Furthermore, the majority of reviewed RTAs are accompanied by, or promote the conclusion of, separate agreements for the mutual recognition of conformity assessment procedures (Table 5). These provisions can be said to reinforce the WTO TBT Agreement which encourages further consultations on these matters (Article 6, WTO TBT Agreement). ASEAN members, for example, concluded in 1998 a *Framework Agreement for Sectoral MRAs* and have since then concluded three sectoral MRAs, namely for telecommunication equipment (signed in 2001), electrical and electronic equipment (signed in 2002) and cosmetics (signed in 2003). Additional MRAs are planned for pharmaceuticals goods and prepared foodstuff (OECD, 2005). Alongside that, agreements with respectively the US and Korea, call Parties to implement Phase I and Phase II of the *APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment* with respect to each other.<sup>45</sup> Singapore has in fact several MRAs in the area of electrical and electronic equipment and telecom equipment, most of which have been concluded with other APEC members (the exception being India, see Table 5).

90. Finally, only 2 out of 10 reviewed agreements require Parties to provide an explanation for non-recognition of conformity assessment results or bodies, thus going beyond the WTO Agreement (agreement with Panama, and the Trans-Pacific Strategic Economic Partnership Agreement).

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45. Phase I refers to the mutual recognition of test reports and Phase II to the mutual recognition of certificates.

**Table 5. Overview of Singapore's mutual recognition arrangements, as of April 2007**

Agreement	Electrical and Electronic equipment	Cosmetics	Telecom equipment	Food & Horticultural Goods	Pharmaceutical Products
ASEAN	1	1	1**		
APEC	1		1**		
Singapore- New Zealand	1				
Singapore- Japan	1				
Singapore-Australia	1		1	1	1
Singapore- US			1 (APEC)		
Singapore-Canada*			1 (APEC)		
Singapore-Chinese Taipei*			1 (APEC)		
Singapore-Hong Kong			1 (APEC)		
Singapore-Malaysia			1 (ASEAN)		
Singapore-India	1(not in operation yet)		1(not in operation yet)		

Source: <http://www.iesingapore.gov.sg/> , OECD, 2005 and Mr. Low, Ministry of Trade and Industry, Singapore

\* No separate free trade agreement exists with this Party.

ASEAN and APEC Telecom MRAs are framework agreements, which countries can adopt bilaterally.

## 5. *Transparency*

91. All reviewed RTAs contain transparency provisions which require Parties to exchange information and hold consultations at the bilateral or regional level and to notify regulations and conformity assessment procedures which did not exist, differ from international standards or may hinder trade. Half of the agreements explicitly call for the establishment of a bilateral or regional system for the exchange of information (e.g. a contact or enquiry point in each Party), while the remaining agreements rely on National TBT Enquiry Points created through the WTO Agreement, joint committees (see below) or secretariats of regional groupings (e.g. ASEAN secretariat). None of the agreements though specify a time line for comments that is more stringent than the WTO discipline of "at least 60 days".

## 6. *Enforcement and dispute settlement*

92. All of the reviewed agreements call for the establishment of a joint committee on TBT, to monitor and review implementation of the TBT provisions, suggest modifications, provide a forum for consultations and dispute settlement or help identify sectors for further co-operation. ASEAN members have, for example, established joint *sectoral* committees for MRAs. Alternatively, the agreements with the US and Panama do not require to set up a separate TBT Committee yet call Parties to appoint co-ordinators "responsible for coordinating with interested Parties in all matters pertaining to enhanced co-operation under the [TBT] Chapter" (Article 2, Singapore-US agreement). A number of committees or bodies are also tasked with managing further co-operation such as the accreditation and registration of conformity assessment bodies (e.g. Singapore-Korea committee) or harmonisation of standards (e.g., ASEAN Consultative Committee on Standards and Quality, and APEC's Sub-Committee on Standards and Conformance).

93. All of reviewed agreements specify how TBT-related disputes among Parties should be resolved. In most cases, these should be settled through consultations in the Joint TBT Committee.<sup>46</sup> If no solution

46. The Singapore-Japan agreement for example notes that the Joint TBT Committee "shall discuss contestations within 20 days" following their notification. Similarly, the Singapore-EFTA TBT Committee aims "to work out an appropriate solution in conformity with the WTO TBT Agreement"

can be found, a few RTAs recommend submitting the dispute to a formal regional dispute settlement mechanism (e.g. ASEAN and Australia agreements). In contrast, the agreement with Panama excludes the TBT chapter from the regional dispute settlement procedure, though the agreement allows for regional consultations and recommendations through ad hoc working groups and coordinators.

#### 7. *Further co-operation*

94. Finally, three RTAs out of ten include specific provisions regarding technical assistance to members (agreements with Australia, India and between ASEAN members). The *ASEAN Framework Agreement for Sectoral MRAs*, for example, aims to provide training for developing countries, improve their infrastructure for calibration, testing, certification and accreditation, in view of meeting relevant international requirements, and provide support for the establishment of the institutions and the legal framework to comply with the Framework Agreement (Article 5, Framework Agreement). Similarly, out of the 10 reviewed agreements, only ASEAN provides for co-operation in the area of metrology, e.g. through collaboration of members' national metrology institutes and Members' active participation in arrangements undertaken by regional and international bodies, such as the Asia-Pacific Metrology Programme, the Asia Pacific Legal Metrology Forum, the International Bureau of Weights and Measures, and the International Organisation of Legal Metrology.

#### 8. *Conclusion*

95. All reviewed agreements strengthen and complement the WTO TBT Agreement. All examined RTAs re-affirm Parties' rights and obligations under the WTO TBT Agreement, the majority call for a harmonisation of the Parties' technical regulations and conformity assessment procedures toward international standards and require Parties to mutually recognise each others' conformity assessment results, as is encouraged by the WTO TBT Agreement. This can in most cases be explained by the Parties' similar levels of development and their desire to engage in comprehensive economic partnerships (i.e., agreements with New Zealand, Japan, Australia, US, Korea, and the Transpacific Economic Partnership). In the case of ASEAN and APEC, the degree of TBT liberalisation can mainly be imputed to the degree of integration those arrangements seek to foster. Two agreements also promote the use of regional guides for setting conformity assessment procedures (e.g. APEC recommendations), yet such guidance is said to help Parties fulfil their international obligations under the WTO, thus not conflicting with multilateral rules.

96. Furthermore, some reviewed RTAs include provisions that go beyond multilateral disciplines. Approximately a third of the reviewed agreements, for example, require Parties to explain the reasons for non-equivalence of technical regulations, and for non-recognition of conformity assessment results to the other Parties. A similar share includes provisions for the registration, verification and monitoring of conformity assessment bodies in each Party. Such commitments, which have mostly been included in recent agreements (with India, Korea, Panama, and the Trans-Pacific Strategic Economic Partnership Agreement) can be seen as reinforcing transparency, on the one hand, and enhancing co-operation for the mutual recognition of assessment results, on the other, thus converging towards, and complementing the WTO TBT agreement. Similarly, Singapore has concluded numerous agreements for the mutual recognition of conformity assessment results (MRAs) alongside its RTAs, particularly for electrical, electronic and telecoms equipment. Such agreements go beyond multilateral disciplines yet reinforce the WTO TBT Agreement which encourages further consultations on these matters.

#### 4.2.4 Institutional setting for managing TBT

97. The *Standards, Productivity and Innovation Board* (SPRING), a statutory board established under the Ministry of Trade and Industry, is the main body co-ordinating the development and implementation of national standards, mandatory technical regulations and conformity assessment procedures. Other agencies that administer mandatory technical regulations include the Department of Industrial Safety (DIS), the Infocomm Development Authority of Singapore (iDA), the Ministries of Health and Environment, and the Public Utilities Board (WTO, 2004).

98. SPRING co-ordinates Singapore's standardisation efforts and administers the *Consumer Protection (Safety Requirements) Registration Scheme* under which 45 categories of household electrical, electronic and gas appliances and accessories are registered (registration is mandatory and conditional upon certification by a designated conformity assessment body). It also acts as the national authority on metrology, weights and measures, and is responsible for the accreditation of conformity assessment bodies.<sup>47</sup> SPRING is managed by a Board of Directors representing industry, trade unions and government, and its Standardisation Department works under the guidance of an industry-led national *Standards Council*, which in turn heads ten standards committees responsible for formulating and establishing national standards in nine identified areas (electrical and electronic, building and construction, IT, services, chemicals, medical technology, general engineering and safety, food, management systems) (SPRING website).<sup>48</sup>

99. Standards are voluntary except when referred to by regulatory bodies in legislation, at which point they become mandatory technical regulations (e.g., Consumer Protection (Safety Requirements) Registration Scheme). They are prepared by relevant Standards Committees when deemed necessary to improve trade, competitiveness, interoperability, productivity, quality, environment, safety and health.<sup>49</sup> In principle, *international standards* are used as a basis for preparing Singapore's product standards. SPRING indicates that "the international standard shall be adopted in full and any deviations shall be appropriately justified. In the absence of an international standard, the standards may be aligned with a relevant overseas national standard". Draft standards are then released for public comments for a period of 60 days before being approved and published in the National Gazette (WTO, 2004).

100. By 2005, approximately 83% of Singapore's national standards were aligned with international standards (OECD, 2005). SPRING is also a member of the *International Organization for Standardization* (ISO) and the *International Electrotechnical Commission* (IEC) and actively participates in regional standards and conformance fora such the ASEAN Consultative Committee on Standards and Quality (ACCSQ); the Pacific Area Standards Congress (PASC); the APEC Sub-Committee for Standards and Conformance (SCSC) and the Asia-Europe Meeting (ASEM) Group on Standards and Conformance. Furthermore, SPRING has accepted the *WTO Code of Good Practice for the Preparation, Adoption and Application of Standards* and publishes the status of its standardisation programme at intervals of six months as required under the Code (SPRING website).

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47. SPRING's mandate is in fact relatively broad and includes improving Singapore's business environment, enhancing businesses' competitiveness, upgrading their capabilities and improving their access to foreign markets and opportunities.

48. <http://www.spring.gov.sg> and <http://www.standards.org.sg/>.

49. Alongside standards, SPRING also develops "technical references", which are fast track documents developed to meet industry demands for specifications or requirements on a particular product or process when a standard does not exist. Unlike a standard, a technical reference is issued without having it go through the full consensus process. It is usually assessed after a period of two years; SPRING then decides whether the technical reference should be adopted as a standard, withdrawn or retained as a technical reference, based on the feedback from industry.

101. Finally, in contrast to Chile where all the information is centralised, Singapore has two enquiry points for technical regulations and standards (Mr. Low, Ministry of Trade and Industry, Singapore):

- *SPRING*: for national standards and technical regulations relating to specific household electrical, electronic and gas appliances and products, and accessories designated at controlled goods. Recently adopted standards are published on its website and a full list is provided in its Standards Catalogue.<sup>50</sup>
- The *Food Control Division in the Agro-Food and Veterinary Authority*: deals with technical regulations relating to processed food.

### 4.3 Morocco<sup>51</sup>

#### 4.3.1 Introduction

102. Morocco has pursued RTAs since the end 1980s. It first concluded regional trade agreements with its neighbouring countries, becoming a member of the Arab Maghreb Union in 1989, and almost ten years later of the Pan-Arab Free Trade Area (1998). It also entered into bilateral free trade agreements with Tunisia, Egypt, and Jordan (1999), with which it recently engaged to establish a “Free Trade Zone between the Arabic Mediterranean Nations” (through the Agadir Agreement). Morocco subsequently concluded free trade agreements with European countries (EFTA in 1999 and an economic association agreement with the EU in 2000), the United Arab Emirates (2003) and more recently with Turkey and the US (2006). The latest *WTO Trade Policy Review* of Morocco however notes that “belonging to several trade agreements whose geographical scope, liberalization programmes, and provisions on rules of origin (inter alia) differ, is not only difficult to manage, but also makes Morocco's trade regime more complex” (WTO, 2003).

#### 4.3.2 A comparative analysis of regional TBT provisions

103. Morocco has TBT-related commitments under the WTO TBT Agreement, as well as under five RTAs which are reviewed in this section (i.e., agreements with EFTA, EC, US, and Turkey, and the Agadir Agreement, see Table 6, highlighted rows). As of April 2007, a separate MRA, the *Agreement on Conformity Assessment and Acceptance of Industrial Products*, was under negotiation with the EU. The electrical sector, machinery and construction products have been identified as priority sectors so far (EC, 2006).

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50. For details of controlled products, see [www.spring.gov.sg/safety](http://www.spring.gov.sg/safety). SPRING's website: <http://www.standards.org.sg/>.

51. Ms. Zitouni, Head of Section at the Department for Standardisation and the Promotion of Quality, Ministry of Industry, Commerce and Economy of Morocco, provided valuable information for this case study.

Table 6. Overview of Morocco's RTAs, as of April 2007

No.	Agreement	Entry into force	Type of agreement	WTO notification	TBT provisions
1	Morocco-EFTA	1-Dec-99	Free trade agreement	yes	yes
2	Morocco-EC*	1-Mar-00	Free trade agreement	yes	yes
3	Morocco- US***	1-Jan-06	Free trade agreement	yes	yes
4	Morocco- Turkey	1-Jan-06	Free trade agreement	yes	yes
5	Agadir Agreement (Morocco, Tunisia, Egypt, Jordan)	27-Mar-07	Free trade agreement	no	yes
6	Arab Maghreb Union** (Algeria, Libya, Mauritania, Morocco, Tunisia)	17-Feb-89	Free trade agreement	no	n/a
7	Pan-Arab Free Trade Area (22 Arab League members)	1-Jan-98	Free trade agreement	yes	no
8	Morocco-Tunisia	16-Mar-99	Free trade agreement	no	no
9	Morocco-Egypt	29-Apr-99	Free trade agreement	no	no
10	Morocco-Jordan	21-Oct-99	Free trade agreement	no	no
11	Morocco-United Arab Emirates**	9-Jul-03	Free trade agreement	no	n/a

Source: Ministry of Foreign Trade and Customs Administration of the Kingdom of Morocco. [Http://www.ustr.gov](http://www.ustr.gov)

\* EUROMED economic association agreement

\*\*Faces important implementation problems (Oxford Business Group, 2005)

\*\*\* Related document on TBT Technical Assistance is also analysed.

### 1. *Reference to the WTO TBT Agreement*

104. Three agreements reaffirm Parties' rights and obligations under the WTO TBT Agreement (agreements with EFTA, the US, and Turkey). The recent agreements concluded with the EC and the US aim at further regulatory co-operation, e.g., Parties are called "to identify trade facilitating bilateral initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors" (Art. 7.4, US-Morocco agreement).

### 2. *Harmonisation of technical regulations, standards and conformity assessments*

105. The only reviewed agreement which specifically requires Parties to harmonise their technical regulations and conformity assessment procedures is the EUROMED agreement. Through this agreement, Morocco is expected to align its standard-related measures with EU regulations, standards and conformity assessment procedures for industrial and agro-food products and certification procedures (Art. 40). The agreement also specifies that co-operation between the two Parties "shall be aimed at helping Morocco to bring its legislation closer to that of the Community" and develop the "use of Community rules in standardisation, metrology, quality control and conformity assessment" (Art. 51 and 52). The remaining reviewed agreements encourage "greater co-operation" in the field of technical regulations, standards and conformity assessment, without specifying what form such co-operation should take (harmonisation, equivalence, mutual recognition, etc.). The agreements with EFTA and Turkey however both promote co-operation through the use of "European-wide solutions" (since their regulations, standards and conformity

assessment procedures are also meant to be aligned with EU regulations), while the Agadir Agreement and the US-Morocco agreement encourage co-operation on the basis of international standards. None of the reviewed agreements require members to accept as equivalent other members' technical regulations and standards (though such an option is encouraged in the US-Morocco Agreement, alongside other options).

### 3. *Mutual recognition of conformity assessments*

106. The agreements with the EC and US encourage the (mutual) recognition of conformity assessment results through the conclusion of MRAs. Morocco has engaged in discussions with the EC in this regard, but, to date, has not yet concluded any MRA.<sup>52</sup> Recognition provisions in the agreement with the US go beyond WTO disciplines, by requiring Parties to provide an explanation, upon request, for the non-recognition of conformity assessment results and for non-accreditation of conformity assessment bodies. Furthermore, the US-Morocco free trade agreement states that where a Party declines a request to engage in negotiations or conclude an MRA, "it shall, on request of the other Party, explain the reasons for its decision" (Article 7.5).

### 5. *Transparency*

107. Three out of the five reviewed RTAs (agreements with EFTA, the US and Turkey) include transparency provisions which require Parties to exchange information, hold consultations and notify and publish technical regulations and conformity assessment procedures, following the WTO TBT Agreement rules. None of these agreements require Parties to set up separate enquiry points at the bilateral or regional level, nor to provide a time period for comments that is longer than what is stipulated by the WTO TBT Committee ("at least 60 days"). In addition, the US-Morocco agreement requires that each Party allows persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures on terms no less favourable than those accorded to its own persons (Art. 4.6; cf. US-Chile Agreement). Such a provision goes beyond the WTO TBT Agreement which only "encourages" such co-operation.

### 6. *Enforcement and dispute settlement*

108. All reviewed agreements (except EUROMED) foresee consultations and recommendations between Parties to resolve TBT-related disputes. The Agadir Agreement for example stipulates that "if one of the Member States resorts to procedures that create [...] technical trade obstacles, the member states shall hold immediate deliberations with the goal of finding appropriate solutions" (Art. 23) However, none of the RTAs, except the one with the US, call Parties to establish a dedicated TBT body, or appoint a coordinator at the bilateral or regional level, in charge of monitoring the implementation of TBT provisions and managing consultations. The US-Morocco Agreement requires that the Parties' TBT Co-ordinators monitor the implementation of provisions, manage further co-operation and help conduct consultations and resolve disputes in relation to TBT matters. Where no solution is found, the Agreement allows Parties to have recourse to the dispute settlement procedure established under the agreement (similar provisions on dispute settlement are included in the agreements with EFTA and Turkey).

### 7. *Further co-operation*

109. Finally, the agreements with the US and the EC contain specific provisions on technical assistance, aimed at strengthening Morocco's institutional, legal and physical infrastructure for TBT-related matters, in view of facilitating Morocco's compliance with the TBT provisions contained in the

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52. An MRA with the EC would be based on the adoption of EU technical regulations and conformity assessment procedures in selected sectors. Source: information provided by Ms. Zitouni, Ministry of Industry and Commerce of Morocco.



EUROMED and US-Morocco free trade agreements (Box 12). In addition, the EUROMED Agreement also commits Parties to cooperate in the area of metrology.

**Box 12. TBT-related assistance under the US-Morocco Free Trade Agreement**

In the framework of the US-Morocco Free Trade Agreement, the US committed to help Morocco implement the TBT Chapter of this Agreement and improve its capacity to elaborate, implement and publicise technical regulations, standards and conformity assessment procedures. A letter attached to the Agreement contains specific TA/CB commitments, as follows:

- Assist Morocco to strengthen its regulatory system and improve the regulatory capabilities of entities that develop, notify and address public enquiries regarding technical regulations.
- Provide training to Moroccan officials to improve the process of developing standards and of certifying and accrediting conformity assessment bodies, and to increase key officials' understanding of the US system in export sectors of interest to Morocco.
- Encourage linkages and cooperative relationships between governmental and nongovernmental bodies that develop standards and assess conformity with standards.
- Educate the companies of each of the Parties with respect to the technical regulations, standards, and conformity assessment procedures of the other country, through seminars and the use of internet resources.
- Educate Moroccan companies from particular sectors of interest, such as textiles and leather, automobile parts, electronics, and food processing, concerning U.S. regulatory approaches in these sectors and methods of meeting the requirements of U.S. technical regulations.

Source: USTR, 2004.

8. *Conclusion*

110. The majority of Morocco's RTAs reaffirm Parties' rights and obligations under the WTO TBT Agreement and require Parties to "co-operate" in the field of technical regulations, standards and conformity assessment. Yet, the mode in which such co-operation should take place often remains vague (the text is often less precise than the WTO TBT Agreement). While three agreements favour harmonisation toward *EU* standards, the two other reviewed RTAs encourage alignment towards *international* standards. Contradictions in Morocco's harmonisation strategy could in principle arise in cases where EU standards diverge substantially from international norms and practices. Moreover, under the US-Morocco agreement, US legal persons are allowed to participate in the development of Morocco's standards, technical regulations, and conformity assessment, which could conceivably complicate the process of alignment towards EU standards.

111. In terms of transparency and (mutual) recognition of conformity assessment procedures too, none of the RTAs, except the agreement with the US, go beyond WTO provisions. Furthermore, while the majority of RTAs foresee consultations in case a Party considers that the other Party has taken measures which are likely to create, or have created, a technical obstacle to trade, only one agreement (with the US) establishes a separate mechanism to monitor the implementation of bilateral TBT obligations.

112. The lack of precise obligations to liberalise TBT (whether through harmonisation, equivalence or mutual recognition of technical regulations, standards and conformity assessment procedures) which prevails in the majority of reviewed RTAs, the absence of MRAs and the low level of "institutionalisation" (i.e., few monitoring mechanisms) can be explained by Morocco's relatively low institutional and infrastructure capacities. Morocco has however engaged in a comprehensive reform of its regulatory system for standardisation and accreditation, and benefits from technical assistance from the EC and the US to upgrade its standard-related systems and infrastructure.

#### 4.3.4 Institutional setting for managing TBT

113. Standards and technical specifications are drawn up by technical committees established by the Ministries responsible for the products to which the standards are to apply. They are in principle based on *international* standards, including those of the International Organisation for Standardization (ISO), the French standardisation association (AFNOR) and the WHO and FAO Codex Alimentarius for food products (WTO, 2003). Once approved, they are published in the Official Journal.

114. Moroccan standards and technical specifications are generally optional, yet approval orders may make them mandatory for reasons mainly of health, security, hygiene and environmental protection. In such cases, they become mandatory and apply without discrimination to imported and locally-produced goods. Technical regulations currently apply to some iron and steel products, gas products, electrical equipment, textile products, domestic appliances, and toys (WTO, 2003). The *Moroccan Industrial Standardisation Service* (SNIMA), attached to the Ministry of Industry and Trade, publishes and promotes Moroccan standards and technical regulations, and serves as Morocco's *Enquiry Point* (<http://www.mcinet.gov.ma/snima/>). In July 1997, the SNIMA formally subscribed to the WTO Code of Good Practice for the elaboration, adoption and application of standards (WTO, 2003). Morocco has also set up a system for certifying enterprises based on the ISO 9000 and ISO 14000 standards, and a system for accrediting testing and calibration laboratories managed in accordance with the criteria in the international guide ISO/IEC 58. Accreditations are granted on the basis of Moroccan standards.

115. Morocco is currently revising its regulatory framework for standardisation, certification and accreditation (Box 13). The reform aims to lead to:

- A greater involvement of the private sector in the development and application of standard-related measures.
- Increased support to conformity assessment bodies in view of promoting the negotiation of international MRAs.
- Improved management of harmonisation, certification and accreditation activities including greater transparency and communication of standards-related matters (SNIMA, 2007).

#### **Box 13. Reform of Morocco's Standardisation System**

Morocco plans to establish three new institutions for standard-related matters:

- *The Moroccan Accreditation Committee* (CMA): will be in charge of assessing the competences of conformity assessment bodies.
- *The Moroccan Institute for Harmonisation* (IMANOR): will be established under the authority of the Ministry of Industry and composed of several technical sub-commissions responsible for developing standards and technical regulations in their relevant area of expertise. The Institute for Harmonisation will be coordinating the activities related to the elaboration and publication of standards and technical regulations, and issuance of conformity certificates. The Institute will also help align Moroccan standards and regulations to international and regional standards when required, support the conclusion of MRAs and represent Morocco in regional and international standardisation work.
- *The High-Level Council for Harmonisation, Certification and Accreditation* (CSNCA), established under the authority of the Prime Minister, will be made of public and private sector representatives. It will define the strategic orientations Morocco's standard-related work, and will work in close co-ordination with the *Moroccan Institute for Harmonisation*.

Source : SNIMA 2007

## V. KEY CONCLUSIONS AND POLICY RECOMMENDATIONS

116. To conclude, most bilateral and regional TBT rules tend to converge with, and support, the multilateral trading system. Agreements seeking deeper economic integration (beyond free trade) and displaying “WTO plus” TBT-related characteristics, in particular, can further strengthen and complement the WTO TBT Agreement. When implemented effectively, these agreements can facilitate regulatory co-operation among Parties and enable them to achieve closer and faster co-ordination on standard-related measures than what would be feasible at the multilateral level. Moreover, increased harmonisation and transparency of standard-related measures among RTA parties can facilitate market access for third parties (which only have to comply with one set of measures when entering RTA markets) and enable them benefit from better information on regulatory requirements. Finally, the successful implementation of such RTAs can improve the regulatory practices and infrastructure of (developing country) Parties, encourage a better alignment of RTA Parties’ views on international TBT-related matters and improve their collective bargaining power in international fora. These elements can in turn further enhance the implementation of the WTO TBT Agreement and encourage progress in reducing TBT multilaterally.

117. Yet RTAs and MRAs are discriminatory by nature and can, in some cases, be stumbling blocks to the multilateral trading system. Where regional regulations, procedures and standards in application in a country/region diverge substantially from international ones or when bilateral or regional initiatives are conducted in isolation from international efforts and divert attention from multilateral negotiations, obstacles arise both for regulators, who need to more invest time and resources in a multitude of parallel policy processes, and for businesses, which have to comply with different sets of product norms and conformity assessment procedures. Such constraints are further magnified for poor countries afflicted by administrative and technical capacity-related problems.

118. A number of approaches could be followed by RTAs in order to address such problems, ensure that such agreements further strengthen the multilateral trading system and encourage greater consistency between bilateral, regional and international rules to remove TBT:

- *Recommendation 1: Provide **effective assistance to lower-income countries***: Besides supporting their participation in regional and international trade negotiations and standard-setting policy processes, RTAs should encourage Parties, where there is a demand, to provide training to less developed Parties’ policymakers, regulators and industry associations to improve their awareness and understanding of TBT-related matters at regional at international levels and increase their capacity to assess the costs and benefits of different policy options to reduce TBT. In addition, regional consultation and monitoring mechanisms should be reinforced where needed, in view of improving the implementation of regional TBT commitments. Finally, essential TBT-related infrastructure and institutions should be strengthened to build trust in developing country procedures and systems and facilitate the reduction of TBT regionally and multilaterally (e.g., testing, quality control, conformity assessment and accreditation bodies).
- *Recommendation 2: Enhance **the transparency and public availability of information regarding regional TBT-related efforts*** and mandatory and voluntary standard-related measures in application among RTA members, to avoid duplicative efforts and inform third parties. RTA Parties should seek to improve the reporting of compliance with RTA obligations. Furthermore, enquiry points should be encouraged to consolidate and disseminate (free of charge) any relevant bilateral or regional TBT-related information, for example through a website. Alongside that, international efforts to improve data collection and transparency of TBT measures under negotiation or in application in

different countries/regions should be pursued (e.g., through the WTO TBT Committee and the WTO Committee on Regional Trade Agreements).

- **Recommendation 3:** Encourage the adoption of **key “model provisions” for TBT chapters in RTAs to avoid inconsistencies across RTAs and ensure coherence with the multilateral trading system.** APEC’s recent efforts with the rationalisation and simplification of TBT-related rules across bilateral and regional trade agreements provide a good case in point. Ideally, TBT Chapters in RTAs should be prepared through **close domestic co-ordination** and dialogue between RTA negotiators, WTO experts, national regulators and private sector associations working on the development, implementation and enforcement of technical regulations, conformity assessments and voluntary standards at the national, regional and international levels. To ensure that RTAs converge towards, and strengthen the multilateral trading system, RTAs should consistently:
  1. Re-affirm Parties’ rights and obligations under the WTO TBT Agreement, as well as the objectives of the WTO Agreement;
  2. Require the use of *international* standards and guides (where they exist) as a basis for setting national and regional regulations and conformity assessment procedures. RTAs could provide useful guidance to their Parties as to how best apply international standards to national technical regulations and conformity assessment procedures (taking account of the level of development and the needs and priorities of Parties).
  3. Encourage the alignment of RTA Parties’ views on international TBT matters in view of increasing their “voice” and bargaining power in international fora.
  4. Effectively support more intense regulatory co-ordination and co-operation among RTA Parties, in view of facilitating TBT reduction regionally and multilaterally and encouraging the introduction of “good regulatory practices” in RTA Parties.
- **Recommendation 4:** **Seek to “internationalise” successful regional initiatives** in specific priority sectors. In globally integrated sectors with high shares of intra-industry trade, such as the telecommunications and IT equipment industries, ideally MRAs should not just be regional but international where possible. This might however be difficult to achieve in practice due to differing levels of development and capacities of countries. APEC (2006b) nevertheless highlights in this regard the positive impact and potential of multilateral arrangements between conformity assessment bodies in the *voluntary* (private) sector. It notes that such initiatives have been successful in reducing TBTs for regulated products thanks to Parties’ confidence in their peer evaluation processes.

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**Databases and websites containing the legal texts of bilateral and regional trade agreements:**

WTO RTA Gateway, [http://www.wto.org/english/tratop\\_e/region\\_e/region\\_e.htm](http://www.wto.org/english/tratop_e/region_e/region_e.htm)

SICE Foreign Trade Information System. TBT Portal: <http://www.sice.oas.org>

World Trade Law FTA Database, <http://www.worldtradelaw.net/fta/ftadatabase/ftas.asp>.

CIB Database, Tuck Business School,  
[http://cibresearch.tuck.dartmouth.edu/trade\\_agreements\\_db/database\\_home.php](http://cibresearch.tuck.dartmouth.edu/trade_agreements_db/database_home.php).

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## ANNEX I: OVERVIEW OF EXAMINED RTAS

Table 6. List of reviewed RTAs

Agreement	Date of entry into force	Members	Type	TBT chapter	Reviewed by
<b>ASEAN FTA (AFTA)</b>	28-Jan-92	Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam	Preferential arrangement	yes	author Piermartini and Budetta (2006)
<b>Andean Community (CAN)</b>	25-May-88	Bolivia, Colombia, Ecuador, Peru	Preferential arrangement	yes	Piermartini and Budetta (2006) Kotschwar (2001)
<b>Australia New Zealand Closer Economic Relations Trade Agreement (CER)</b>	1-Jan-83	Australia-New Zealand	Free trade agreement	yes	Piermartini and Budetta (2006)
<b>Australia-Thailand</b>	not ratified		Free trade agreement	yes	Piermartini and Budetta (2006)
<b>Australia-US</b>	1-Jan-05		Free trade agreement	yes	Piermartini and Budetta (2006)
<b>Central American Common Market (CACM)</b>	12-Oct-61	Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua	Customs union	yes	Piermartini and Budetta (2006) Kotschwar (2001)
<b>Canada — Costa Rica</b>	1-Nov-02		Free trade agreement	yes	Piermartini and Budetta (2006) Kotschwar (2001)
<b>Canada — Israel</b>	1-Jan-97		Free trade agreement	yes	Piermartini and Budetta (2006)
<b>Caribbean Community (CARICOM)</b>	1-Jul-97	Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica Grenada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, St. Kitts and Nevis, St. Vincent and the Grenadines, Suriname, Trinidad, Tobago	Customs union	yes	Piermartini and Budetta (2006) Kotschwar (2001)
<b>CARICOM-Dominican Republic*</b>	5-Feb-02	Suriname, Guyana, Dominican Republic, Barbados, Jamaica, Trinidad and Tobago	Free trade agreement	yes	Kotschwar (2001)
<b>Central America-Dominican Republic- United States (CAFTA-DR)</b>	01-Mar-06	United States, Costa Rica, Guatemala, El Salvador, Honduras, Nicaragua, Dominican Republic	Free trade agreement	yes	Piermartini and Budetta (2006)
<b>Central European Free Trade Agreement (CEFTA)</b>	1-Mar-93	Bulgaria, Czech Republic, Hungary, Poland, Romania, Slovakia, Slovenia	Free trade agreement	yes	Piermartini and Budetta (2006)

Agreement	Date of entry into force	Members	Type	TBT chapter	Reviewed by
<b>Communauté Économique et Monétaire de l'Afrique Centrale (CEMAC)</b>	24-Jun-99	Cameroon, Central Africa, Congo, Gabon, Equatorial Guinea, Chad	Preferential arrangement	no	Piermartini and Budetta (2006)
<b>Trans-Pacific Strategic Economic Partnership Agreement (P4)*</b>	8-Nov-06	New Zealand, Singapore, Brunei Darussalam, Chile	Free trade agreement	yes	author
<b>Chile-China*</b>	1-Oct-06		Free trade agreement	yes	author
<b>Chile-Costa Rica</b>	15-Feb-02	(in the framework of the Chile- Central America free trade agreement)	Free trade agreement	yes	author Kotschwar (2001)
<b>Chile-El Salvador</b>	15-Feb-02	(in the framework of the Chile- Central America free trade agreement)		yes	author Kotschwar (2001)
<b>Chile- Canada</b>	5-Jul-97		Free trade agreement	for telecom only	author Piermartini and Budetta (2006) Kotschwar (2001)
<b>Chile-EC</b>	1-Feb-03		Free trade agreement	yes	author Piermartini and Budetta (2006) ECDPM (forthcoming)
<b>Chile- EFTA</b>	1-Dec-04	Chile, Iceland, Liechtenstein, Norway, Switzerland	Free trade agreement	yes	author
<b>Chile — Mexico</b>	1-Aug-99		Free trade agreement	yes	author Piermartini and Budetta (2006) Kotschwar (2001)
<b>Chile-Republic of Korea</b>	1-Apr-04		Free trade agreement	yes	author
<b>Chile - United States</b>	1-Jan-04		Free trade agreement	yes	author Piermartini and Budetta (2006)
<b>Latin American Integration Association (LAIA)</b>	18-Mar-81	Argentina, Colombia, Paraguay, Boliva, Cuba, Peru, Brazil, Ecuador, Uruguay, Chile, Mexico, Venezuela	Preferential arrangement	yes	author Piermartini and Budetta (2006)
<b>China - Hong Kong, China</b>	1-Jan-04		Free trade agreement	no	Piermartini and Budetta (2006)
<b>China - Macao, China</b>	1-Jan-04		Free trade agreement	no	Piermartini and Budetta (2006)
<b>EC- Algeria</b>	1-Sep-05		Free trade agreement	yes	Piermartini and Budetta (2006)
<b>EC- Bulgaria</b>	31-Dec-93		Free trade agreement	yes	Piermartini and Budetta (2006)
<b>EC - Croatia</b>	1-Mar-02		Free trade agreement	no	Piermartini and Budetta (2006)

Agreement	Date of entry into force	Members	Type	TBT chapter	Reviewed by
EC- Jordan	1-May-02		Free trade agreement	yes	Piermartini and Budetta (2006)
EC - Egypt	1-Jun-04		Free trade agreement	yes	Piermartini and Budetta (2006)
EC- Israel	1-Jun-00		Free trade agreement	no	Piermartini and Budetta (2006)
EC - Lebanon	1-Mar-03		Free trade agreement	yes	Piermartini and Budetta (2006)
EC- Palestinian Authority	1-Jul-97		Free trade agreement	yes	Piermartini and Budetta (2006)
EC-Romania	1-May-93		Free trade agreement	yes	Piermartini and Budetta (2006)
EC - South Africa	1-Jan-00		Free trade agreement	yes	Piermartini and Budetta (2006) ECDPM (forthcoming)
EC - Switzerland and Liechtenstein	1-Jan-73		Free trade agreement	yes	Piermartini and Budetta (2006)
EC - Syria	1-Jul-77		Free trade agreement	no	Piermartini and Budetta (2006)
EC - Tunisia	1-Mar-98		Free trade agreement	yes	Piermartini and Budetta (2006) ECDPM (forthcoming)
EC - Turkey	1-Jan-96		Customs union	yes	Piermartini and Budetta (2006)
EC (Treaty of Rome)	1-Jan-58		Customs union	yes	Piermartini and Budetta (2006)
European Economic Area (EEA)	1-Jan-94	EC, Iceland, Liechtenstein, Norway	Customs union	yes	Piermartini and Budetta (2006)
European Free Trade Association (EFTA, Stockholm Convention)	3-May-60	Iceland, Liechtenstein, Norway, Switzerland	Free trade agreement	yes	Piermartini and Budetta (2006)
EFTA-Bulgaria	1-Jul-93		Free trade agreement	yes	Piermartini and Budetta (2006)
EFTA-Mexico	1-Jul-01		Free trade agreement	yes	Piermartini and Budetta (2006)
EFTA — Palestinian Authority	1-Jul-99		Free trade agreement	yes	Piermartini and Budetta (2006)
EFTA-Romania	1-May-93		Free trade agreement	yes	Piermartini and Budetta (2006)
EFTA — Turkey	1-Apr-92		Free trade agreement	yes	Piermartini and Budetta (2006)
Gulf Cooperation Council (GCC)	1-Jan-03	Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, UAE	Customs union	no	Piermartini and Budetta (2006)
EFTA — Israel	1-Jan-93		Free trade agreement	yes	Piermartini and Budetta (2006)

Agreement	Date of entry into force	Members	Type	TBT chapter	Reviewed by
<b>Group of Three*</b>	1-Jan-95	Colombia, Mexico, Venezuela	Free trade agreement	yes	Piermartini and Budetta (2006) Kotschwar (2001)
<b>Mexico-Bolivia</b>	1-Jan-95		Free trade agreement	yes	Kotschwar (2001)
<b>Mexico- Costa Rica</b>	1-Jan-95		Free trade agreement	yes	Kotschwar (2001)
<b>Mexico-EC</b>	1-Jul-00		Free trade agreement	yes	Piermartini and Budetta (2006) ECDPM (forthcoming)
<b>Mexico-Israel</b>	1-Jul-00		Free trade agreement	no	Piermartini and Budetta (2006)
<b>Mexico- Japan</b>	1-Apr-05		Free trade agreement	yes	Piermartini and Budetta (2006)
<b>Mexico - Nicaragua</b>	1-Jul-98		Free trade agreement	yes	Piermartini and Budetta (2006) Kotschwar (2001)
<b>Mexico-Northern Triangle</b>	14-Mar-01	El Salvador, Guatemala, Honduras, Mexico	Free trade agreement	yes	Piermartini and Budetta (2006) Kotschwar (2001)
<b>Mexico-Uruguay</b>	15-Jul-04		Free trade agreement	yes	Piermartini and Budetta (2006)
<b>NAFTA</b>	1-Jan-94	US, Mexico, Canada	Free trade agreement	yes	Piermartini and Budetta (2006) Kotschwar
<b>MERCOSUR</b>	29-Nov-91	Argentina, Brazil, Paraguay, Uruguay	Customs union	yes	Piermartini and Budetta (2006) Kotschwar (2001)
<b>Morocco-EC</b>	1-Mar-00		Free trade agreement	yes	author Piermartini and Budetta (2006)
<b>Morocco-EFTA</b>	1-Dec-99		Free trade agreement	yes	author Piermartini and Budetta (2006)
<b>Morocco-Turkey</b>	1-Jan-06		Free trade agreement	yes	author
<b>Morocco-United States</b>	1-Jan-06		Free trade agreement	yes	author Piermartini and Budetta (2006)
<b>Agadir Agreement*</b>	27-Mar-07	Morocco, Tunisia, Egypt, Jordan	Free trade agreement	yes	author
<b>Singapore-Korea*</b>	2-Mar-06		Free trade agreement	yes	author
<b>Singapore-Panama*</b>	24-Jul-06		Free trade agreement	yes	author

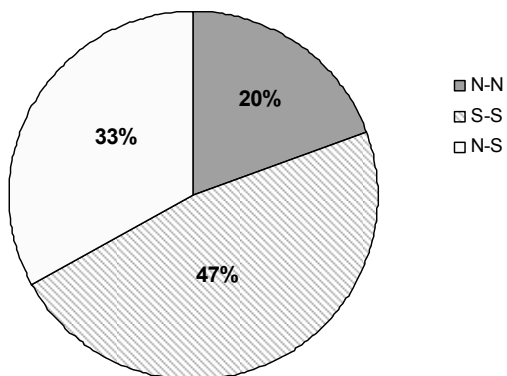
Agreement	Date of entry into force	Members	Type	TBT chapter	Reviewed by
<b>Singapore-United States</b>	1-Jan-04		Free trade agreement	yes	author Piermartini and Budetta (2006)
<b>Singapore - Australia (SAFTA)</b>	28-Jul-03		Free trade agreement	yes	author Piermartini and Budetta (2006)
<b>Singapore- New Zealand</b>	1-Jan-01		Free trade agreement	yes	author Piermartini and Budetta (2006)
<b>Singapore-Japan</b>	30-Nov-02		Free trade agreement	yes	author Piermartini and Budetta (2006)
<b>Singapore-Jordan</b>	22-Aug-05		Free trade agreement	no	author
<b>Singapore-EFTA</b>	1-Jan-03		Free trade agreement	yes	author Piermartini and Budetta (2006)
<b>Singapore-India*</b>	1-Aug-2005		Free trade agreement	yes	author
<b>Southern African Development Community (SADC)</b>	1-Sep-00	Angola, Botswana, the Democratic Republic of Congo, Lesotho, Madagascar, Malawi, Mauritius, Mozambique, Namibia, South Africa, Swaziland, United Republic of Tanzania, Zambia and Zimbabwe.	Free trade agreement	yes	Piermartini and Budetta (2006)
<b>South Asian Association for Regional Cooperation Preferential Trading Arrangement (SAPTA)</b>	7-Dec-95	Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka	Preferential arrangement	yes	Piermartini and Budetta (2006)
<b>South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA)</b>	1-Jan-81	Australia, Cook Island, Fiji, Kiribati, Nauru, New Zealand, Niue, Papua New Guinea, Solomon Island, Tonga, Tuvalu, Samoa	Preferential arrangement	no	Piermartini and Budetta (2006)
<b>Turkey - Israel</b>	1-May-97		Free trade agreement	yes	Piermartini and Budetta (2006)
<b>United States — Jordan</b>	17-Dec-01		Free trade agreement	no	Piermartini and Budetta (2006)
<b>United States — Israel</b>	19-Aug-85		Free trade agreement	no	Piermartini and Budetta (2006)
<b>West African Economic and Monetary Union</b>	1-Jan-00	Benin, Burkina Faso, Cote d'Ivoire, Guinea Bissau, Mali, Niger, Senegal, Togo	Preferential arrangement	no	Piermartini and Budetta (2006)

Source: WTO Regional Trade Gateway and CIB Database

Note: \* not notified to the WTO. Highlighted agreements have been reviewed by the author.

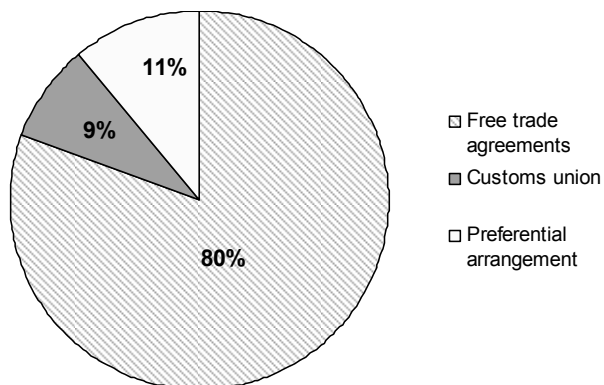
**Further information on the sample**

**Reviewed RTAs, by type of parties**



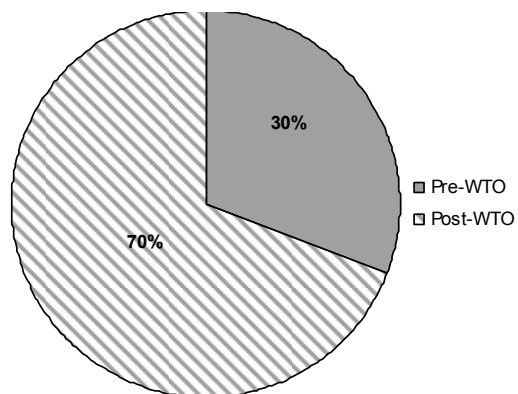
Source: WTO (2005). "North" refers to all high-income countries (World Bank classification)

**Reviewed RTAs, by type of agreement**



Source: WTO Regional Trade

**Reviewed RTAs, by date of entry into force**



Source: WTO Regional Trade Gateway

## ANNEX II. BACKGROUND INFORMATION PERTAINING TO THE CASE STUDIES

Table 7. Overview of the legal provisions in Chile's RTAs

Categories	Questions	Chile-Canada	Chile-Mexico	Chile-Costa Rica	Chile- El Salvador	Chile- EC	Chile- US	Chile- Korea	Chile- EFTA	Chile- China	Trans-Pacific Agreement	TOTAL
<b>1. Reference to the WTO TBT Agreement</b>	Does the agreement make reference to the WTO agreement (its objectives, rules and/or provisions)?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	10 out of 10
	Does the TBT chapter in the agreement have more far-reaching goals?	no	no	no	no	yes, enhanced trade and investment	yes, further trade facilitation	no	no	no	yes, further trade facilitation	3 out of 10
<b>2. Harmonisation</b>	Does the agreement require or encourage Parties to harmonise their technical regulations, standards and conformity assessment procedures?	no	compatibility	compatibility	compatibility	yes	yes (encouraged only)	yes	no	yes	yes	5 out of 10
	Does the agreement promote the use of <i>international</i> standards and guidelines?	no	yes	yes	yes	yes	yes	yes	no	yes	yes	8 out of 10
	Does the agreement promote the use of <i>regional</i> standards and guidelines?	no	no	no	no	no	no	no	no	no	no	0 out of 10
<b>3. Acceptance of technical regulations as equivalent</b>	Does the agreement require or encourage Parties to accept as equivalent other Parties' technical regulations and standards?	no	compatibility	compatibility	compatibility	yes (encouraged only)	yes (encouraged only for technical regulations)	compatibility	no	yes (encouraged only for technical regulations)	yes (encouraged only for technical regulations)	4 out of 10

Categories	Questions	Chile-Canada	Chile-Mexico	Chile-Costa Rica	Chile- El Salvador	Chile- EC	Chile- US	Chile-Korea	Chile-EFTA	Chile-China	Trans-Pacific Agreement	TOTAL
<b>3. Acceptance of technical regulations as equivalent (cont.)</b>	Does the agreement require that Parties explain the reasons for non-equivalence of technical regulations?	no	yes	yes	yes	no	yes	yes	no	yes	yes	7 out of 10
<b>4. (Mutual) recognition of conformity assessments</b>	Does the agreement call for mutual recognition of technical regulations and standards?	no	no	no	no	no	no	no	no	no	no	0 out of 10
	Does the agreement call for (mutual) recognition of conformity assessment procedures?	yes	yes	yes	yes	yes, through a broad range of mechanisms	yes, through a broad range of mechanisms	yes	no	yes	yes	9 out of 10
	Does the agreement require that the Parties explain the reasons for non-recognition?	no	no	yes	yes	no	yes	yes	no	yes	yes	6 out of 10
	Is the agreement accompanied by a separate MRA?	no	no	no	no	yes	no	no	no	no	no	1 out of 10
	Does the agreement promote the conclusion of a separate MRA?	no	yes	yes	yes	yes	yes	no	no	yes	yes	7 out of 10
<b>5. Transparency</b>	Does the agreement include transparency provisions?	no	yes	yes	yes	yes	yes	yes	no	yes	yes	8 out of 10



Categories	Questions	Chile-Canada	Chile-Mexico	Chile-Costa Rica	Chile- El Salvador	Chile- EC	Chile- US	Chile-Korea	Chile-EFTA	Chile-China	Trans-Pacific Agreement	TOTAL
<b>5. Transparency (cont.)</b>	Does the agreement require members to hold consultations and to notify regulations and procedures at the bilateral or regional level before they are adopted?	no	yes, and each Party shall allow persons of the other Party to participate in the development of standards-related measures	yes	yes	yes	yes, and each Party shall allow persons of the other Party to participate in the development of standards-related measures	yes, and each Party shall allow persons of the other Party to participate in the development of standards-related measures	no	yes	yes	8 out of 10
	Is a time period for the receipt of comments by other Parties defined?	no	yes	yes	yes	no	yes	yes	no	yes	yes	7 out of 10
	Is it specifically longer than 60 days?	no	no, "at least 60 days"	no, "at least 60 days"	no, "at least 60 days"	no	no, "at least 60 days"	no, "at least 60 days"	no	no, "at least 60 days"	no, "at least 60 days"	0 out of 10
	Does the agreement require the establishment of a (separate) enquiry point?	no	no	no	no	no	no	no	no	no	no	0 out of 10
<b>6. Enforcement and dispute settlement</b>	Does the agreement call for the establishment of, and participation in, a regional TBT institution, e.g. committee (to monitor and review the TBT commitments and process)?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	10 out of 10
	Does the agreement include provisions for the resolution of regional TBT-related disputes?	no	yes	yes	yes	yes	yes	yes	no	yes	yes	8 out of 10

Categories	Questions	Chile-Canada	Chile-Mexico	Chile-Costa Rica	Chile- El Salvador	Chile- EC	Chile- US	Chile-Korea	Chile-EFTA	Chile-China	Trans-Pacific Agreement	TOTAL
<b>6. Enforcement and dispute settlement (cont.)</b>	Does the agreement foresee consultations and recommendations?	no	yes	yes	yes	yes	yes	no	no	yes	yes	7 out of 10
	Does the agreement foresee a more formal mechanism at the regional level to resolve disputes?	no	no	no	no	yes	no	no	no	no	yes	2 out of 10
<b>7. Further co-operation</b>	Does the agreement include specific provisions on technical assistance?	no	yes	yes	yes	yes	yes	yes	no	yes	no	7 out of 10
	Does the agreement foresee cooperation in metrology?	no	yes	yes, based on international measures	yes, based on international measures	yes	no	no	no	no	no	4 out of 10

Table 8. Overview of the legal provisions in Singapore's RTAs

Categories	Questions	ASEAN	Singapore-New Zealand	Singapore-Japan	Singapore-EFTA	Singapore-Australia	Singapore-US	Singapore-Korea	Singapore-Panama	Trans-Pacific Agreement	Singapore-India	TOTAL
<b>1. Reference to the WTO TBT Agreement</b>	Does the agreement make reference to the WTO agreement (its objectives, rules and/or provisions)?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	10 out of 10
	Does the TBT chapter in the agreement have more far-reaching goals?	yes, further economic integration	no	no	no	yes, facilitate trade and investment	no	yes, improve the business climate	yes, further regulatory cooperation	yes, further regulatory cooperation	no	5 out of 10
<b>2. Harmonisation</b>	Does the agreement require or encourage Parties to harmonise their technical regulations, standards and conformity assessment procedures?	yes	yes	no	no	yes	no	yes	yes	yes	yes	7 out of 10
	Does the agreement promote the use of <i>international</i> standards and guidelines?	yes	yes	no	yes	yes	yes	yes	yes	yes	yes	9 out of 10
	Does the agreement promote the use of <i>regional</i> standards and guidelines?	yes (ASEAN)	no	no	no	yes (APEC)	no	no	no	yes (APEC)	no	3 out of 10

Categories	Questions	ASEAN	Singapore-New Zealand	Singapore-Japan	Singapore-EFTA	Singapore-Australia	Singapore-US	Singapore-Korea	Singapore-Panama	Trans-Pacific Agreement	Singapore-India	TOTAL
<b>3. Acceptance of technical regulations as equivalent</b>	Does the agreement require or encourage Parties to accept as equivalent other Parties' technical regulations and standards?	no	yes (encouraged only)	no	no	no	no	no	yes (encouraged only)	yes (encouraged only)	yes (encouraged only)	4 out of 10
	Does the agreement require that Parties explain the reasons for non-equivalence of technical regulations?	no	yes	no	no	no	no	no	yes	yes	no	3 out of 10
<b>4. (Mutual) recognition of conformity assessments</b>	Does the agreement call for mutual recognition of technical regulations and standards?	no	no	no	no	no	no	no	no	no	no	0 out of 10
	Does the agreement call for (mutual) recognition of conformity assessment procedures?	yes	yes	yes	yes	yes	yes (apply APEC TEL MRA)	yes, through a broad range of mechanisms (incl. APEC TEL MRA)	yes, through a broad range of mechanisms	yes, through a broad range of mechanisms	yes	10 out of 10
	Does the agreement require that the Parties explain the reasons for non-recognition?	no	no	no	no	no	no	no	yes, also in case of refusal to accredit a conformity assessment body	yes, also in case of refusal to accredit a conformity assessment body	no	2 out of 10

Categories	Questions	ASEAN	Singapore-New Zealand	Singapore-Japan	Singapore-EFTA	Singapore-Australia	Singapore-US	Singapore-Korea	Singapore-Panama	Trans-Pacific Agreement	Singapore-India	TOTAL
<b>4. (Mutual) recognition of conformity assessments (cont.)</b>	Is the agreement accompanied by a separate MRA?	yes, for cosmetics and electrical and electronic goods	yes, for electrical and electronic goods	yes, for electrical and electronic goods	no	yes, for food and horticultural, electrical and electronic, telecom and pharmaceutical goods	yes, for telecom equipment (APEC TEL MRA)	no	no	no	upcoming	6 out of 10
	Does the agreement promote the conclusion of a separate MRA?	yes	yes	yes	no	yes	yes	yes	no	no	yes	7 out of 10
<b>5. Transparency</b>	Does the agreement include transparency provisions?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	10 out of 10
	Does the agreement require members to hold consultations and to notify regulations and procedures at the bilateral or regional level before they are adopted?	yes	yes	yes	yes	yes	yes	yes	yes	yes		10 out of 10
	Is a time period for the receipt of comments by other Parties defined?	no	yes	yes	no	no	no	no	no	yes	yes	5 out of 10
	Is it specifically longer than 60 days?	no	no, "at least 60 days"	no, "time period does not exceed 60 days"	no	no	No	no	no	no, "at least 60 days"	no, "at least 60 days"	0 out of 10

Categories	Questions	ASEAN	Singapore-New Zealand	Singapore-Japan	Singapore-EFTA	Singapore-Australia	Singapore-US	Singapore-Korea	Singapore-Panama	Trans-Pacific Agreement	Singapore-India	TOTAL
<b>5. Transparency (cont.)</b>	Does the agreement require the establishment of a (separate) enquiry point?	yes	no	no	no	yes	yes	yes	no	no	yes	5 out of 10
<b>6. Enforcement and dispute settlement</b>	Does the agreement call for the establishment of, and participation in, a regional TBT institution, e.g. committee (to monitor and review the TBT commitments and process)?	yes	yes	yes	yes	yes	Yes (coordinators)	yes	Yes (coordinators)	yes	yes	10 out of 10
	Does the agreement include provisions for the resolution of regional TBT-related disputes?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	10 out of 10
	Does the agreement foresee consultations and recommendations?	yes	yes	yes	yes	yes	yes	yes	yes	yes	yes	10 out of 10
	Does the agreement foresee a more formal mechanism at the regional level to resolve disputes?	yes	no	no	no	yes	no	no	excluded from formal DSU	no	no	2 out of 10
<b>7. Further co-operation</b>	Does the agreement include specific provisions on technical assistance?	yes	no	no	no	yes	no	no	no	no	yes	3 out of 10

Categories	Questions	ASEAN	Singapore-New Zealand	Singapore-Japan	Singapore-EFTA	Singapore-Australia	Singapore-US	Singapore-Korea	Singapore-Panama	Trans-Pacific Agreement	Singapore-India	TOTAL
7. Further co-operation (cont.)	Does the agreement foresee cooperation in metrology?	yes, based on international measures	no	no	no	no	no	no	no	no	no	1 out of 10

Table 9. Overview of the legal provisions in Morocco's RTAs

Categories	Questions	Morocco-EC	Morocco-EFTA	Morocco-US	Morocco-Turkey	Agadir Agreement	TOTAL
<b>1. Reference to the WTO TBT Agreement</b>	Does the agreement make reference to the WTO agreement (its objectives, rules and/or provisions)?	no	yes	yes	yes	no	3 out of 5
	Does the TBT chapter in the agreement have more far-reaching goals?	yes, further trade facilitation	no	yes, further trade facilitation	no	no	2 out of 5
<b>2. Harmonisation</b>	Does the agreement require or encourage Parties to harmonise their technical regulations, standards and conformity assessment procedures?	yes	no (greater cooperation is encouraged only)	no (greater cooperation is encouraged only)	no (greater cooperation is encouraged only)	no (greater cooperation is encouraged only)	1 out of 5
	Does the agreement promote the use of <i>international</i> standards and guidelines?	no	no	yes	no	yes	2 out of 5
	Does the agreement promote the use of <i>regional</i> standards and guidelines?	yes (EU)	Yes (EU)	no	yes (EU)	no	3 out of 5
<b>3. Acceptance of technical regulations as equivalent</b>	Does the agreement require or encourage Parties to accept as equivalent other Parties' technical regulations and standards?	no	no	yes (encouraged only)	no	no	1 out of 5
	Does the agreement require that Parties explain the reasons for non-equivalence of technical regulations?	no	no	no	no	no	0 out of 5
<b>4. (Mutual) recognition of conformity assessments</b>	Does the agreement call for mutual recognition of technical regulations and standards?	no	no	no	no	no	0 out of 5
	Does the agreement call for (mutual) recognition of conformity assessment procedures?	yes	no	yes, through a broad range of mechanisms	no	no	2 out of 5
	Does the agreement require that the Parties explain the reasons for non-recognition?	no	no	yes	no	no	1 out of 5
	Is the agreement accompanied by a separate MRA?	no	no	no	no	no	0 out of 10



Categories	Questions	Morocco-EC	Morocco-EFTA	Morocco-US	Morocco-Turkey	Agadir Agreement	TOTAL
<b>4. (Mutual) recognition of conformity assessments</b>	Does the agreement promote the conclusion of a separate MRA?	yes	no	yes	no	no	2 out of 5
<b>5. Transparency</b>	Does the agreement include transparency provisions?	no	yes	yes	yes	no	3 out of 5
	Does the agreement require members to hold consultations and to notify regulations and procedures at the bilateral or regional level before they are adopted?	no	yes	yes	yes	no	3 out of 5
	Is a time period for the receipt of comments by other Parties defined?	no	yes	yes	yes	no	3 out of 5
	Is it specifically longer than 60 days?	no	no, "at least 60 days"	no, "at least 60 days"	no, "at least 60 days"	no	0 out of 5
	Does the agreement require the establishment of a (separate) enquiry point?	no	no	no	no	no	0 out of 5
<b>6. Enforcement and dispute settlement</b>	Does the agreement call for the establishment of, and participation in, a regional TBT institution, e.g. committee?	no	no	yes (coordinators)	no	no	1 out of 5
	Does the agreement include provisions for the resolution of regional TBT-related disputes?	no	yes	yes	yes	yes	4 out of 5
	Does the agreement foresee consultations and recommendations?	no	yes	yes	yes	yes	4 out of 5
	Does the agreement foresee a more formal regional mechanism to resolve disputes?	no	no	yes	no	no	1 out of 5
<b>7. Further co-operation</b>	Does the agreement include specific provisions on technical assistance?	yes	no	yes	no	no	2 out of 5
	Does the agreement foresee cooperation in metrology?	Yes	no	no	no	no	1 out of 5

Table 10. Overview of the aggregate results of individual reviews

Categories	Questions	Chile	Singapore	Morocco	Average case studies
<b>1. Reference to the WTO TBT Agreement</b>	Does the agreement make reference to the WTO agreement (its objectives, rules and/or provisions)?	100%	100%	60%	86%
	Does the TBT chapter in the agreement have more far-reaching goals?	30%	50%	40%	40%
<b>2. Harmonisation</b>	Does the agreement require or encourage Parties to harmonise their technical regulations, standards and conformity assessment procedures?	50%	70%	20%	47%
	Does the agreement promote the use of international standards and CA guidelines?	80%	90%	40%	70%
	Does the agreement promote the use of regional standards and guidelines?	0%	30%	60%	30%
<b>3. Acceptance of technical regulations as equivalent</b>	Does the agreement require or encourage Parties to accept as equivalent other Parties' technical regulations and standards?	40%	40%	20%	33%
	Does the agreement require that Parties explain the reasons for non-equivalence of technical regulations?	70%	30%	0%	33%
<b>4. (Mutual) recognition of conformity assessments</b>	Does the agreement call for mutual recognition of technical regulations and standards?	0%	0%	0%	0%
	Does the agreement call for (mutual) recognition of conformity assessment procedures?	90%	100%	40%	77%
	Does the agreement require that the Parties explain the reasons for non-recognition?	60%	20%	20%	33%
	Is the agreement accompanied by a separate MRA?	10%	60%	0%	23%
	Does the agreement promote the conclusion of a separate MRA?	70%	70%	40%	60%
<b>5. Transparency</b>	Does the agreement include transparency provisions?	80%	100%	60%	80%
	Does the agreement require members to hold consultations and to notify regulations and procedures at the bilateral or regional level before they are adopted?	80%	100%	60%	80%
	Is a time period for the receipt of comments by other Parties defined?	70%	50%	60%	60%

Categories	Questions	Chile	Singapore	Morocco	Average case studies
<b>5. Transparency (cont.)</b>	Is it specifically longer than 60 days? <sup>1</sup>	0%	0%	0%	0%
	Does the agreement require the establishment of a (separate) enquiry point?	0%	50%	0%	17%
<b>6. Enforcement and dispute settlement</b>	Does the agreement call for the establishment of, and participation in, a regional TBT institution, e.g. committee (to monitor and review the TBT commitments and process)? <sup>2</sup>	100%	100%	20%	73%
	Does the agreement include provisions for the resolution of regional TBT-related disputes?	80%	100%	80%	87%
	Does the agreement foresee consultations and recommendations?	70%	100%	80%	83%
	Does the agreement foresee a more formal mechanism at the regional level to resolve disputes?	20%	20%	20%	20%
<b>7. Further co-operation</b>	Does the agreement include specific provisions on technical assistance?	70%	30%	40%	47%
	Does the agreement foresee cooperation in the area of metrology?	40%	10%	20%	23%

Note 1. "At least 60 days" is here not considered as longer than 60 days.

Note: 2. "Co-ordinators" are here considered as a body established to monitor TBT provisions.