

How are Technical Barriers to Trade treated in EU Trade Arrangements?

Recommendations for the Development Friendly Design of EPA Negotiations related to Technical Barriers to Trade

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Imprint

Published by: Physikalisch-Technische Bundesanstalt
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Layout: Jenko Sternberg Design GmbH
 (www.jenko-sternberg.de)

As of: February 2011

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Braunschweig 2007

Discussion Paper 1/2007

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Content

- Abbreviations..... 1
- Introduction..... 1
- 1 Background: WTO Technical Barriers to Trade Agreement..... 1
 - 1.1 The Agreement 1
 - 1.2 Difference between the SPS measures and the TBT agreement within the WTO legal framework..... 5
- 2 Comparison of EU trade agreements concerning TBT arrangements 6
 - 2.1 Euro-Mediterranean Association Agreements 6
 - 2.2 Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and the United Mexican States 7
 - 2.3 EU-Chile Association Agreement 8
 - 2.4 Trade Agreement between South Africa and EC 10
 - 2.5 Mutual Recognition Agreements (MRA) in EU Trade Agreements 10
- 3 Economic Partnership Agreements (EPAs) between EU and ACP countries 12
 - 3.1 TBTs in the Cotonou Agreement..... 12
 - 3.2 The Current State of Negotiations between EU and the ACP-Regions 13
- 4 Conclusions and Recommendations for the EPA Negotiations 14
- Annexes 17
- References 20

Abbreviations

ACP Countries	African, Caribbean and Pacific Countries
EPA	Economic Partnership Agreement
EU	European Union
MEDA Countries	Mediterranean Countries
MRA	Mutual Recognition Arrangement
MFN	Most Favoured Nation
SADC	Southern African Development Cooperation
SPS	Sanitary and Phytosanitary
TBT	Technical Barriers to Trade
TDCA	South African-EU Free Trade Agreement
WTO	World Trade Organisation

Introduction

This document deals with technical barriers to trade (TBT) in trade agreements between the EU and other countries or alliances. The paper starts with an overview on the World Trade Organisation (WTO) TBT agreement explaining the difference between the TBT agreement and Sanitary and Phytosanitary (SPS) measures. Afterwards we analyse the EU trade agreements concerning TBTs and we finish by discussing the current negotiations on TBT issues in the European Partnership Agreements (EPA). In the annexes you find an overview on the TBT issues in the different trade agreements.

1 Background: WTO Technical Barriers to Trade Agreement

1.1 The Agreement

The TBT agreement generally treats the reduction of technical barriers to trade by the usage of international standards, more transparency and bilateral negotiations. The following four items represent the main points of the WTO TBT agreement:

WTO members are obliged:

- to ensure that products imported from another WTO member are accorded to the same treatment as products produced locally or by any other member (**Non-Discrimination**).
- not to implement technical regulations that create unnecessary obstacles to trade (**Unnecessary Obstacles to Trade**).
- to harmonise technical regulations as widely as possible. International standards are to be used as the basis for such technical regulations (**Harmonisation**).
- to guarantee transparency by notifying draft technical regulations and conformity assessment procedures to the TBT Committee as well as by the establishment of national enquiry points (**Transparency**).

Source: WTO-Homepage [http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm#TRS]

1.1.1 Non-Discrimination

Non-Discrimination means that WTO members have to respect the Most Favoured Nation (MFN) principle as well as the national treatment obligations. The Most Favoured Nation principle obliges WTO members to use those rules that are the most favourable for one member country also for all others. According to the national treatment obligations imported products must be treated equally to national ones with respect to any fees charged to assess their conformity with regulations.

Original Text of WTO TBT

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

Source: WTO TBT Agreement [http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm]

1.1.2 Unnecessary Obstacles to Trade

This paragraph clarifies the difference between a necessary and an unnecessary technical regulation.

Technical barriers to trade are allowed as long as they aim at one of the following goals:

- protection of human safety and health
- protection of animal and plant life or health
- protection of the environment
- prevention of deceptive practices
 - to protect consumers through information (labelling requirements)
 - classification and definition, packaging requirements and measurements
- other objectives
 - quality, technical harmonisation, trade facilitation
- national security requirements

Unnecessary obstacles to trade are:

- a regulation that is more restrictive than necessary to achieve a given policy objective
- a regulation that does not fulfil a legitimate objective

These rules refer also to procedures of conformity assessment. They should not be stricter or more time-consuming than necessary to assess that a product complies with domestic laws and regulations of the importing country.

Source: WTO-Homepage [http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm]

Original Text of WTO TBT agreement

Recognizing that no country should be prevented from taking measures necessary to ensure the quality of its exports, or for the protection of human, animal or plant life or health, of the environment, or for the prevention of deceptive practices, at the levels it considers appropriate, subject to the requirement that they are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail or a disguised restriction on international trade, and are otherwise in accordance with the provisions of this Agreement;

(Introduction of the Agreement)

- 2.2 Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information related processing technology or intended end-uses of products.

Source: WTO TBT Agreement [http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm]

1.1.3 Harmonisation

The TBT agreement encourages members to use existing international standards for their national regulations unless “their use would be ineffective or inappropriate” to fulfil a given policy objective. Furthermore, they animate members to participate actively in the work of international bodies in the limit of their national resources.

(http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm)

Possible reasons for diverging national technical regulations are:

- national security requirements,
- prevention of deceptive practices,
- protection of human health or safety,
- protection of animal and plant life or health or the environment,
- fundamental climatic or other geographical factors,
- fundamental technological or infrastructural problems.

Source: Article 5.4 WTO TBT agreement

Additionally, members should accept technical regulations different from their own which fulfil the same policy objectives even if through different means (*mentioned within the TBT agreement as equivalence*).

Source: WTO TBT-agreement (http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm)

Original Text of WTO TBT

5.4 In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardizing bodies exist or their completion is imminent, Members shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such guides or recommendations or relevant parts are inappropriate for the Members concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.

Source: WTO TBT-agreement (http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm)

Mutual recognition

Countries agree to accept the results of one another's conformity assessment procedures, although these procedures might be different. The TBT agreement encourages members in Article 6.3 to enter into negotiations with other members for the mutual acceptance of conformity assessment results via Mutual Recognition Agreements (MRA).

Source: WTO-homepage (http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm)

Original Text of WTO TBT

6.3 Members are encouraged, at the request of other Members, to be willing to enter into negotiations for the conclusion of agreements for the mutual recognition of results of each other's conformity assessment procedures. Members may require that such agreements fulfil the criteria of paragraph 1 and give mutual satisfaction regarding their potential for facilitating trade in the products concerned.

Source: WTO TBT agreement [http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm]

1.1.4 Transparency

Notification of technical regulations is obligatory if the following two conditions apply:

- (1) non-existence of a relevant international standard, or the technical content of the technical regulation disaccords with the technical content of relevant international standard
- (2) the technical regulation or conformity assessment procedure may have a significant effect on the trade of other members (Articles 2.9 and 5.6).

In order to realise this transparency for every country each WTO member is obliged to set up a national **enquiry point**. This enquiry point should serve as a focal point at which WTO members can request and obtain information and documentation on a member's technical regulation, standards and test procedures.

Source: WTO-Homepage [http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm]

Original Text of WTO TBT Agreement about the Notification of Technical Regulations

2.9 Whenever a relevant international standard does not exist or the technical content of a proposed technical regulation is not in accordance with the technical content of relevant international standards, and if the technical regulation may have a significant effect on trade of other Members, Members shall:

2.9.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular technical regulation;

2.9.2 notify other Members through the Secretariat of the products to be covered by the proposed technical regulation, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

2.9.3 upon request, provide to other Members particulars or copies of the proposed technical regulation and, whenever possible, identify the parts which in substance deviate from relevant international standards;

2.9.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

Source: WTO TBT Agreement [http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm]

Original Text of WTO TBT Agreement about the Assessment Procedures for Products Originating in other Member Countries

5.6 Whenever a relevant guide or recommendation issued by an international standardizing body does not exist or the technical content of a proposed conformity assessment procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies, and if the conformity assessment procedure may have a significant effect on trade of other Members, Members shall:

5.6.1 publish a notice in a publication at an early appropriate stage, in such a manner as to enable interested parties in other Members to become acquainted with it, that they propose to introduce a particular conformity assessment procedure;

5.6.2 notify other Members through the Secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale. Such notifications shall take place at an early appropriate stage, when amendments can still be introduced and comments taken into account;

5.6.3 upon request, provide to other Members particulars or copies of the proposed procedure and, whenever possible, identify the parts which in substance deviate from relevant guides or recommendations issued by international standardizing bodies;

5.6.4 without discrimination, allow reasonable time for other Members to make comments in writing, discuss these comments upon request, and take these written comments and the results of these discussions into account.

Source: WTO TBT agreement [http://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm]

1.2 Difference between the SPS measures and the TBT agreement within the WTO legal framework

The TBT agreement covers all technical regulations, voluntary standards and the procedures to ensure that these are met, except of sanitary and phytosanitary measures.

Under the SPS agreement fall all regulations which address microbiological contamination of food, or set allowable levels of pesticide or veterinary drug residues, or identify permitted food additives. In addition to that, packaging and labelling requirements belong to the SPS agreement if they are directly related to food safety.

While SPS measures may be imposed only to the extent necessary to protect human, animal or plant health, governments may introduce TBT regulations to meet objectives such as national security or the prevention of deceptive practices.

Source: WTO-Homepage [http://www.wto.org/english/tratop_e/sps_e/spsund_e.htm]

2 Comparison of EU trade agreements concerning TBT arrangements

2.1 Euro-Mediterranean Association Agreements

In the EU-MEDA trade agreements Technical Barriers to Trade are pointed out in the paragraphs "Public Morality, Public Policy and Security, Protection of Health" and "Standards and Conformity Assessment".

Public Morality, Public Policy and Security, Protection of Health

Prohibitions or restrictions on imports or exports in the context of "Public Morality, Public Policy and Security, Protection of Health" are generally allowed, as long as they do not discriminate or disguise restrictions on trade between parties. These rules do not differ between the MEDA countries except for the inclusion of national sensitive products.

Standards and Conformity Assessment

Generally, the agreements encourage the adoption of European standards and conformity assessment procedures and techniques. In order to upgrade the national quality infrastructure and organisations for intellectual property as well as to improve the adaptation to EU standards, the EU provides the MEDA countries with the respective assistance.

The degree of pressure to adapt to EU rules and the support by EU to upgrade the quality infrastructure differs between the MEDA countries. While in the agreements of EU with Algeria, Morocco, Tunisia, Palestine and Jordan the adaptation to EU standards is planned, the agreements with Egypt and Lebanon just note the cooperation in mutual acceptance and upgrading of national institutions. The treaty with Israel mentions only the reduction of differences in standardisation and conformity assessment.

The following table summarises which TBT issues are treated how in which agreement:

Cooperation in/ Country	Reduction of differences in standardisation and conformity assessment	Promotion of community rules	Upgrading of laboratories/ conformity assessment bodies		Establishment of MRAs, where (as soon as) appropriate
Egypt	X			X	X
Israel	X				X
Jordan	X	X		X	X
Lebanon	X		X		X
Palestine	X	X		X	Discussion on..
Algeria	X	X		X	X
Morocco		X	X		X
Tunisia		X	X		X

Source: EURO-MED Association Agreements Implementation Guide
http://europa.eu.int/comm/external_relations/euromed/asso_agree_guide_en.pdf

2.2 Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and the United Mexican States

Technical barriers to trade are stated in article 19 (Standards, Technical Regulations and Conformity Assessment Procedures) of the "Decision no 2/2000 of the EC/Mexico Joint Council of 23 March 2000" based on the EU-Mexico trade agreement. This article generally refers to the WTO TBT agreement. It encourages the harmonisation of standards, technical regulations and conformity assessment procedures via exchange of information and the use of international standards. Furthermore, the bilateral cooperation should be enforced and technical advice should be provided. In addition to that, a joint committee will be established to monitor and to enhance the process of harmonisation.

ARTICLE 19

Standards, Technical Regulations and Conformity Assessment Procedures

1. This Article applies to standards, technical regulations and conformity assessment procedures as defined in the WTO Agreement on Technical Barriers to Trade (hereinafter "the TBT Agreement") that may directly or indirectly affect trade in products. It does not apply to sanitary and phytosanitary measures, which are covered by Article 20 of this Decision.
2. The Parties confirm their rights and obligations relating to standards, technical regulations and conformity assessment procedures under the TBT Agreement.
3. The Parties shall intensify their bilateral cooperation in this field in light of their mutual interest to facilitate access to both Parties markets and to increase mutual understanding and awareness of their respective systems.
4. To this end, the Parties shall work towards:
 - (a) exchanging information on standards, technical regulations and conformity assessment procedures;
 - (b) holding bilateral consultations concerning specific technical barriers to trade;
 - (c) promoting the use of international standards, technical regulations and conformity assessment procedures; and
 - (d) facilitating the adoption of their respective standards, technical regulations and conformity assessment procedures on the basis of international requirements.
5. Each Party shall, on request of the other Party, provide to that Party technical advice and assistance on mutually agreed terms and conditions to enhance that Party's standards, technical regulations or conformity assessment procedures, and related activities, processes and systems.
6. In order to achieve the objectives set out in paragraph 4, the Joint Council hereby establishes a Special Committee on Standards and Technical Regulations. The Special Committee shall be comprised of representatives of the Parties. The Special Committee shall meet once a year on a date and with an agenda agreed in advance by the Parties. The office of chairman of the Special Committee shall be held alternatively by each of the Parties. The Special Committee shall report annually to the Joint Committee.
7. The Special Committee's functions shall include:
 - (a) monitoring the implementation and administration of this Article;
 - (b) providing a forum to consult and discuss on issues relating to standards, technical regulations and conformity assessment procedures;
 - (c) working towards the approximation and simplification of labelling requirements, including voluntary schemes, the use of pictograms and symbols, and the convergence of the terms applied to leather products with international practices; and

(d) enhancing cooperation on the development, application and enforcement of standards, technical regulations and conformity assessment procedures.

Source: Decision no 2/2000 of the EC/Mexico Joint Council of 23 March 2000

[http://trade-info.cec.eu.int/doclib/docs/2004/october/tradoc_111722.pdf]

2.3 EU-Chile Association Agreement

Section 4, Articles 83 to 88, of the EU-Chile Association Agreement refers to TBT matters. As all other mentioned treaties this one refers to the rules laid down in the WTO agreement.

The treaty animates both parties to cooperate via the development of common views on good regulatory practices, information exchange, experience and data exchange as well as scientific and technical cooperation. Furthermore, the contract encourages compatibility and equivalence of their respective technical regulations, standards and conformity assessment procedures, promotion of full participation in international standard setting bodies and reinforcement of the role of international standards as a basis for technical regulation and finally the increase of bilateral cooperation in the relevant international organisations.

As in the Mexican treaty, the EC proposes the establishment of a “Committee on Standards, Technical Regulations and Conformity Assessment” as a sub organisation of the “Association Committee” to facilitate the harmonisation process.

EU-Chile Association Agreement

Section 4

Standards, Technical Regulations and Conformity Assessment Procedures

Article 83

Objectives

The objective of this section is to facilitate and increase trade in goods by eliminating and preventing unnecessary barriers to trade while taking into account the legitimate objectives of the Parties and the principle of non-discrimination, within the meaning of the WTO Agreement on Technical Barriers to Trade (“the TBT Agreement”).

Article 84

Scope and coverage

The provisions of this section apply to trade in goods in the area of standards, technical regulations and conformity assessment procedures, as defined in the TBT Agreement. It does not apply to measures covered by section 5 of this Chapter. Technical specifications prepared by governmental bodies for public procurement purposes are not subject to the provisions of this section but are addressed in Title IV of this Part of the Agreement.

Article 85

Definitions

For the purpose of this section, the definitions of Annex I of the TBT Agreement shall apply. In this respect, the Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement, of the WTO Committee on Technical Barriers to Trade, shall also apply.

Article 86

Basic rights and obligations

The Parties confirm their rights and obligations under the TBT Agreement and their commitment to its comprehensive implementation. In this respect and in line with the objective of this section, cooperation activities and measures pursued under this section shall be conducted with a view to enhancing and reinforcing the implementation of those rights and obligations.

Article 87

Specific actions to be pursued under this Agreement

With a view to fulfilling the objective of this section:

1. The Parties shall intensify their bilateral cooperation in the field of standards, technical regulations and conformity assessment with a view to facilitating access to their respective markets, by increasing the mutual knowledge, understanding and compatibility of their respective systems.
2. In their bilateral cooperation the Parties shall aim at identifying which mechanisms or combination of mechanisms are the most appropriate for particular issues or sectors. Such mechanisms include aspects of regulatory co-operation, *inter alia* convergence and/or equivalence of technical regulations and standards, alignment to international standards, reliance on the supplier's declaration of conformity and use of accreditation to qualify conformity assessment bodies, and mutual recognition agreements.
3. Based on progress made in their bilateral cooperation, the Parties shall agree on what specific arrangements should be concluded with a view to implementing the mechanisms identified.
4. To this end, the Parties shall work towards:
 - (a) developing common views on good regulatory practices, including, but not limited to:
 - (b) transparency in the preparation, adoption and application of technical regulations, standards and conformity assessment procedures;
 - (i) necessity and proportionality of regulatory measures and related conformity assessment procedures, including the use of suppliers declaration of conformity;
 - (ii) use of international standards as a basis for technical regulations, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued;
 - (iii) enforcement of technical regulations and market surveillance activities;
 - (iv) the necessary technical infrastructure, in terms of metrology, standardisation, testing, certification and accreditation, to support technical regulations; and
 - (v) mechanisms and methods for reviewing technical regulations and conformity assessment procedures;

- (c) reinforcing regulatory co-operation through, for example, exchange of information, experiences and data, and through scientific and technical cooperation with a view to improving the quality and level of their technical regulations and making efficient use of regulatory resources;
- (d) compatibility and/or equivalence of their respective technical regulations, standards and conformity assessment procedures;
- (e) promoting and encouraging bilateral cooperation between their respective organisation, public and/or private, responsible for metrology, standardisation, testing, certification and accreditation;
- (f) promoting and encouraging full participation in international standard setting bodies, and reinforcing the role of international standards as a basis for technical regulations; and
- (g) increasing their bilateral cooperation in the relevant international organisations and fora dealing with the issues covered by this section.

Article 88

Committee on Standards, Technical Regulations and Conformity Assessment

1. The Parties hereby establish a Special Committee on Technical Regulations, Standards and Conformity Assessment in order to achieve the objectives set out in this section. The Committee, made up of representatives of the Parties, shall be co-chaired by a representative of each Party. The Committee shall meet at least once a year, unless otherwise agreed by the Parties. The Committee shall report to the Association Committee.
2. The Committee may address any matter related to the effective functioning of this section. In particular, it shall have the following responsibilities and functions:
 - (a) monitoring and reviewing the implementation and administration of this section. In this connection, the Committee shall draw up a work program aimed at achieving the objectives of the section and in particular those set out in Article 87;
 - (b) providing a forum for discussion and exchanging information on any matter related to this section 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;
 - (c) 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;
 - (d) encouraging, promoting and otherwise facilitating cooperation between the Parties' organisations, public and/or private, for metrology, standardisation, testing, certification, inspection and accreditation; and
 - (e) exploring any means aimed at improving access to the Parties' respective markets and enhancing the functioning of this section.

Source: EU-Chile Association Agreement

[http://europa.eu.int/comm/trade/issues/bilateral/countries/chile/euchlagr_en.htm]

2.4 Trade Agreement between South Africa and EC

In this agreement, Article 47 – Standardisation and conformity assessment – is the relevant one concerning TBT. In contrast to the above mentioned treaties this one is concentrated on “sectors of mutual economic interest” concerning mutual recognition of conformity assessment and on sectors of special importance to South Africa.

Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part

ARTICLE 47

Standardisation and conformity assessment

The Parties will cooperate in the field of standardisation, metrology, certification and quality assurance in order to reduce differences between the Parties in these areas, remove technical barriers and facilitate bilateral trade. This cooperation shall include:

- (a) measures, in accordance with the provisions of the WTO TBT Agreement, to promote greater use of international technical regulations, standards and conformity assessment procedures, including sector specific measures;
- (b) developing agreements on mutual recognition of conformity assessment in sectors of mutual economic interest;
- (c) cooperation in the area of quality management and assurance in selected sectors of importance to South Africa;
- (d) facilitation of technical assistance for Southern African capacity building initiatives in the fields of accreditation, metrology and standardisation;
- (e) developing practical links between South African and European standardisation,
- (f) accreditation and certification organisations.

Source: Agreement on Trade, Development and Cooperation between the European Community and its Member States, of the one part, and the Republic of South Africa, of the other part [http://europa.eu.int/eur-lex/en/archive/1999/l_31119991204en.html];

<http://www.tralac.org/pdf/TDCA.pdf>)

2.5 Mutual Recognition Agreements (MRA) in EU Trade Agreements

The already in the WTO chapter stated MRAs are mentioned as a supplement for more concrete harmonisation in EU trade agreements. They should be used to specify the paragraphs concerning TBT in the EU trade agreements more precisely.

These MRAs take into account the mutual acceptance of standards, labels and laboratories. "They do not require or presuppose harmonisation of each party's substantive requirements or recognition of their equivalence (as is the case in the EC internal market). Each party to an MRA is free to set its health, consumer protection, environmental standards or other regulations at whatever level it deems necessary as long as they comply with international obligations" (Source: Community External Trade Policy in the Field of Standards and Conformity Assessment [http://trade-info.cec.eu.int/tbt/documents/tbt_97_mra1.pdf]). The legal preparation as well as the execution is supervised by a joint committee.

Although MRAs are mentioned in all the presented trade agreements, so far they are only established between industrialised countries. In order to reach the establishment of MRAs between developing countries and the EU the treaties support the upgrading of national insti-

tutions of quality infrastructure and the establishment of the necessary system. In the cases of the EU-MEDA agreements most partner countries are obliged to adapt to EU standards.¹

Source: EU Homepage [http://europa.eu.int/comm/enterprise/international/index_en.htm]

3 Economic Partnership Agreements (EPAs) between EU and ACP countries

Although the at present applied Cotonou Agreement has to be replaced by regional trade agreements in 2008 to realise conformity with the WTO regulation, negotiations on TBT matters are until today far from being finished. In some cases even the working groups to negotiate these issues are not yet established. TBT matters have a high priority in most EPAs.

These EPAs are currently under negotiation between the EU and the ACP-regions: West Africa, Central Africa, Eastern and Southern Africa, SADC, Caribbean and Pacific.

The negotiations with West Africa, Central Africa, Eastern and Southern Africa and SADC already deal with TBT measures. Technical working groups dealing with TBT issues have already been established to negotiate TBT measures between EU and the mentioned regions. Meanwhile the Caribbean and the Pacific regions do not have agreed on further steps concerning TBT measures.

A study by Pricewaterhouse Coopers evaluates the importance of TBT measures in international trade. It assesses selected relevant sectors in the ACP regions concerning the consequences of the EPA's. In the field of SPS and TBT they especially focus on eco-labelling.

See: Study of Pricewaterhouse Coopers about EPAs

[http://www.sia-acp.org/acp/download/revise_mid-term_report_february_15_final.pdf]

3.1 TBTs in the Cotonou Agreement

As mentioned above, the EPAs shall replace the current Cotonou Agreement. TBT measures between the EU and ACP countries have been regulated so far in the Cotonou Agreement in Article 47 on "Standardisation and Certification". The Cotonou Agreement refers to the rules laid down in the WTO agreement. Furthermore, the agreement stimulates cooperation in standardisation and certification which should lead to compatible systems between the involved parties.

¹ Please see the annex for further information on the MRAs. The first table in the annex shows the already agreed MRAs, the second one those under negotiation.

TBT in the Cotonou Agreement

ARTICLE 47

Standardisation and Certification

1. The Parties agree to cooperate more closely in the field of standardisation, certification and quality assurance to remove unnecessary technical barriers and to reduce differences between them in those areas, so as to facilitate trade. In this context, they reaffirm their commitment under the Agreement on Technical Barriers to trade, annexed to the WTO Agreement (TBT Agreement).
2. Cooperation in standardisation and certification shall aim at promoting compatible systems between the Parties and in particular include:
 - measures, in accordance with the TBT Agreement, to promote greater use of international technical regulations, standards and conformity assessment procedures, including sector specific measures, in accordance with the level of economic development of ACP countries, ACP/CE/en 68
 - cooperation in the area of quality management and assurance in selected sectors of importance to the ACP States,
 - support for capacity building initiatives in the ACP countries in the fields of conformity assessment, metrology and standardisation,
 - developing functioning links between ACP and European standardisation, conformity assessment and certification institutions.
3. The Parties undertake to consider, in due course, negotiating mutual recognition agreements in sectors of mutual economic interest.

Source: Cotonou Agreement

http://europa.eu.int/comm/development/body/cotonou/pdf/agr01_en.pdf#zoom=100

3.2 The Current State of Negotiations between EU and the ACP-Regions

As already pointed out, the current state of negotiations between EU and the ACP-regions differs a lot. Some regions have already started negotiations about concrete matters; others have just established working groups or are still on the level of specifying the fields that will be part of the contract.

The next paragraph shows the current state of negotiations between the regional groups and the EU in the field of TBTs:

- Central Africa Region: A number of priority product areas have been identified for analysis and development support.
- Eastern and Southern Africa Region (ESA): Substance talks on ministerial level in the beginning of 2006 will focus on inter alia the improvement of existing market access to the EC. ESA is demanding duty and quota free access under an EPA. This also includes discussions on technical regulations and standards.
- Southern African Development Community (SADC): Initial discussions on TBT issues have started. As in the Eastern and Southern Africa regions substance talks dealing with technical regulations and standards have begun in the beginning of 2006.

- West Africa: Both parties have had extensive discussions on their respective regional integration processes, particularly in the area of technical standards. A main part of work will start in 2006. Five negotiating groups will be established. Group one will deal with trade in goods and standards.
- Caribbean Region: During the regional-integration phase, talks covered tariffs and non-tariff measures, customs and trade facilitation issues, SPS, TBT, services and investment regimes, intellectual property, competition policy and government procurement. Negotiations will be conducted in four negotiating groups. Subgroups can be established by the negotiating groups, for instance on SPS and TBT measures. In order to prepare the starting talks the Regional Preparatory Task Force (RPTF) has been requested to assess eleven areas identified as important for the negotiations and implementation of the EPA. The first one is "Technical Barriers to Trade".
- Pacific Region: While the EC has been negotiating with the other mentioned regions on a full free access to the EC market, the Pacific Regions' request on this issue has not yet been discussed. The focus of discussions is narrower and TBTs are not mentioned so far.

Source: Commission Staff Paper: The trade and development aspects of EPA negotiations

[\[http://trade-info.cec.eu.int/doclib/docs/2005/november/tradoc_125863.pdf\]](http://trade-info.cec.eu.int/doclib/docs/2005/november/tradoc_125863.pdf)

4 Conclusions and Recommendations for the EPA Negotiations

In the field of TBT the agreements discussed in this paper replicate to their main part the WTO TBT agreement: They encourage the usage of international standards as national ones, the participation in international standardisation agreements and the mutual acceptance of conformity assessment as well as the cooperation in upgrading national laboratories. Besides, most treaties encourage the bilateral establishment of MRAs if already possible. Otherwise they propose measures to upgrade national institutions in order to create the necessary circumstances to conclude MRAs.

In contrast to the relatively detailed paragraphs concerning SPS specific measures to realise the reduction of TBTs are not noted in detail. Although MRAs are stated in the treaties to realize for further specification of TBT reductions they are so far not widespread concluded between EU and other countries or alliances. While there are some already agreed to by the EU and industrialised countries there are none established between the EU and developing countries so far (see Annex).

The most obvious difference between the EU-MEDA agreement and the other three discussed bilateral ones are the different philosophies of harmonisation. While in the EU-MEDA agreement the EU is promoting the adjustment to EU standards, in the other three agreements the EU is supporting the harmonisation through the usage of international regulations

Although the paragraphs concerning TBTs only roughly cover the fields of cooperation and show the general goal of harmonisation or in some cases only repeat the WTO TBT agreement it is stressed that culturally sensitive products are excluded and the establishment of joint working groups is mentioned.

TBTs are also an important item within the current negotiations between EU and the ACP countries in order to form the Economic Partnership Agreements (EPA) to overcome the so far implemented Cotonou Agreement. At the moment the state of these negotiations does not allow a prognosis of their outcome.

Recommendations for the Development Friendly Design of EPA Negotiations

According to the Cotonou agreement both parties are obliged to:

- reaffirm the commitment under the TBT agreement annexed to the WTO agreement
- cooperate in standardisation and certification which shall aim at promoting compatible systems between the parties
- negotiate Mutual Recognition Agreements in sectors of mutual economic interest

These already established rules should be the basis for the EPA negotiations. Consequently, the following five points should be considered during the negotiations:

Reaffirmation of WTO TBT Agreement

Firstly, according to national divergences in the institutional setup, the historical and cultural background and the environmental preconditions, bilateral trade agreements should not define too precisely how the parties have to deal with “Technical Barriers to Trade”. The treaties should encourage the reduction of TBTs and the usage of international standards, but they should leave space for solutions that are appropriate to national circumstances.

Secondly, it is recommended to orientate more at international standards than at European ones in order to facilitate trade not only between the negotiating parties and the EU, but also to integrate ACP Countries into world economy, too.

Conclusion of Mutual Recognition Arrangements

Specific items should be treated via MRAs. The approach by which MRAs have to be established should include the building of working groups dealing with these specific items. The conclusion of MRAs should bear in mind that the benefit of augmented trade should cover the occurring costs for the mutual adaptation of the QI-infrastructure. Furthermore, it should be secured that national interests like consumer and environmental protection are not endangered by the MRAs.

Explicit provision of technical assistance

According to the level of development, there is an urgent need for technical assistance in order to improve the national quality infrastructure that should be provided by European institutions in a comprehensive and cooperative manner.

Sequencing

In the field of “Technical Barriers to Trade” all EPA countries should upgrade their quality infrastructure in parallel in all fields on the technical as well as on the administrative level according to international standards and regulations.

Regional TBT provisions could be harmonised and implemented in parallel to the EU provisions, but they should be geared to international best practices. European Institutions should provide the respective assistance

Regional integration geared to international best practices

The regional integration in the field of quality infrastructure should be supported. The efforts towards the regional integration should take into account an effective regional resource allocation and coordination mechanism, the harmonisation with international best practices and the integration in international institutions of quality infrastructure. In respect to the size of the market or the level of development the support to the establishment of quality infrastructure institutions on a regional level should be taken into consideration.

EU institutions in the field of quality infrastructure should seek partnership with other regional QI institutions

European institutions, dealing with TBT issues, should seek partnerships with other regional organisations. They should assist these institutions cooperatively in institutional upgrading on a technical and administrative level.

Annexes

TBT provisions in EU free trade arrangements

	MEDA	EU-Mexico	EU-Chile	TDCA (EU-South Africa)	Cotonou
Confirmation of WTO TBT Agreement					
Reaffirmation of WTO TBT Agreement		X	X	X	X
Cooperation on TBT measures	X	X	X	X	X
Harmonisation as an explicit target	X	X	X		X
Explicit provision of technical assistance on TBT measures	X	X	X		X
Individual supplement beyond WTO provisions					
Product specific provisions or amendments	Gold and silver and other exhaustible natural resources as well as national treasures				
Establishment of a joint committee		X	X		

Already Covered Product Groups in EU MRA's

Country	Product Groups	Date of Signature
Australia	<ul style="list-style-type: none"> • Automotive products • EMC • Low Voltage Equipment • Machinery • Medical Devices • Pressure Equipment • TTE 	17/08/1998
Canada	<ul style="list-style-type: none"> • EMC, Electrical Safety, Recreational Craft and R&TTE as from 01/10/2001 • GMP as from 01/02/2003 	16/10/1998
Israel	The MRA between the EU and Israel is not yet in the operational phase.	9/10/1999
Japan	<ul style="list-style-type: none"> • Electrical products • R&TTE 	29/10/2001
New Zealand	<ul style="list-style-type: none"> • EMC • Low Voltage Equipment • Machinery • Medical Devices • Pressure Equipment • TTE 	17/08/1998
Switzerland	<ul style="list-style-type: none"> • Machinery • Personal Protective Equipment • Toys • Medical Devices • Gas appliances and boilers (Hot water boilers) • Pressure vessels • Equipment and protective systems intended for use in potentially explosive atmospheres • Electrical equipment • Measuring instruments and pre-packages • Motor Vehicles • Agricultural and forestry tractors • Good Laboratory Practice - GLP • Medicinal products, Good Manufacturing Practice (GMP), inspection batch and certification 	30/04/2002
United States of America	<p>Passage from the transitional to the operational phase has taken place for the following sectors:</p> <ul style="list-style-type: none"> • Recreational Craft as of 01/06/2000 • EMC and Telecom as of 14/12/2000 	4/02/1999

Source: EU-Homepage [http://europa.eu.int/comm/enterprise/international/index_en.htm]

Summary of Current MRA negotiations by Country / Sector

Sectors under discussion	USA	CANADA	AUSTRALIA	NZ	JAPAN	SWITZERLAND
MEDICAL DEVICES	X	X	X	X	X	X
PHARMACEUTICALS GMP	X	X	X	X	X	X
GLP	X	X			X	X
TELECOMS EQUIPMENT	X	X	X	X	X	X
ELECTRICAL EQUIPMENT & EMC	X	X	X	X	X	X
PRESSURE VESSELS			X	X	X	X
MACHINERY			X	X	X	X
PPE	X	X			X	X
AIRCRAFT	X	X	X	X		
AUTOMOTIVE PRODUCTS			X			X
RECREATIONAL CRAFT	X	X				X
LAWN MOWERS	X					X
MEASURING INSTRUMENTS						X
TOYS						X
PHYTOPHARMACEUTICALS						X
DANGEROUS						X

SUBSTANCES AND PREPARATIONS						
CONSTRUCTION SITE EQUIPMENT						X
ELECTRICAL EQUIPMENT FOR EXPLOSIVE ATMOSPHERES (ATEX)						X
GAS APPLIANCE						X
TRACTORS						X

Source: Communication of the Commission: Community External Trade Policy in the Field of Standards and Conformity Assessment

http://trade-info.cec.eu.int/tbt/documents/tbt_97_mra1.pdf

References

European Commission Staff Paper: **The Trade and Development Aspects of EPA Negotiations**

<http://trade-info.cec.eu.int/doclib/html/125863.htm>

European Commission: **Communication of the Commission Community External Trade Policy in the Field of Standards and Conformity Assessment**

http://trade-info.cec.eu.int/tbt/documents/tbt_97_mra1.pdf

OECD: **Working Party of the Trade Committee Regulatory Reform and International Standardisation**

<http://www.oecd.org/dataoecd/33/19/1955309.pdf>

Information about the mentioned trade agreements:

Cotonou Agreement

http://europa.eu.int/comm/development/body/cotonou/pdf/agr01_en.pdf#zoom=100

Economic Partnership Agreements

<http://europa.eu.int/comm/trade/issues/bilateral/regions/acp/epas.htm>

Economic Partnership, Political Coordination and Cooperation Agreement between the European Community and the United Mexican States

http://europa.eu.int/comm/external_relations/mexico/doc/a3_acuerdo_en.pdf

EU-Chile Association Agreement

http://europa.eu.int/comm/trade/issues/bilateral/countries/chile/euchlaqr_en.htm

Euro-Mediterranean Association Agreements

http://europa.eu.int/comm/external_relations/euromed/asso_agree_guide_en.pdf

Free Trade Agreement between South Africa and EU

http://europa.eu.int/eur-lex/en/archive/1999/l_31119991204en.html

Tuck School of Business Dartmouth: Tuck Trade Agreement Database

http://cibresearch.tuck.dartmouth.edu/trade_agreements_db/

WTO: Sanitary and Phytosanitary Measures

http://www.wto.org/english/tratop_e/sps_e/spsund_e.htm

WTO: Technical Barriers to Trade Agreement

http://www.wto.org/english/tratop_e/tbt_e/tbt_info_e.htm

