

# **“Technical Regulations”**

What is a technical regulation?

## 1. *Technical regulation*

Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

TBT Agreement, Annex 1

[https://www.wto.org/english/docs\\_e/legal\\_e/17-tbt\\_e.htm#annex1](https://www.wto.org/english/docs_e/legal_e/17-tbt_e.htm#annex1)

7.110. Whether a measure constitutes a technical regulation depends on three criteria<sup>615</sup>:

- a. "[f]irst, the document must apply to an identifiable product or group of products";
- b. "[s]econd, the document must lay down one or more characteristics of the product"; and
- c. "[t]hird, compliance with the product characteristics must be mandatory".<sup>616</sup>

"Australia – Tobacco Plain Packaging"

WT/DS435/R, WT/DS441/R, WT/DS458/R, WT/DS467/R

[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds435\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds435_e.htm)

How are regulations “made”?

What steps and what sequence?

Is there a need to regulate?

Article 2.2 of the TBT Agreement:

“... . 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. ...”



“Legitimate objective”

The fire door shall be red.

Is this a “legitimate objective”?

But, would the WTO have anything to say about this?



2.8 Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

The door should offer at least 30 minutes of protection against fires.

# Performance rather than design

(One example of “best practice”)

Over the years a set of "best practices"  
have **evolved** for regulation

(these are not necessarily spelt out in the WTO agreements - e.g., TBT Agreement)

This is, essentially, about lessons learnt.

Problem identification.  
Is there a need for  
government intervention?

(Article 2.2; 5.1.2)

Is there a need to regulate?

What is the “legitimate  
objective”?

(Article 2.2)

If so, what type of measure  
(how strict should it be)

Is regulation the way to go?

lead paint in toys

product quality

energy efficiency

dwindling fish stocks

fruit size

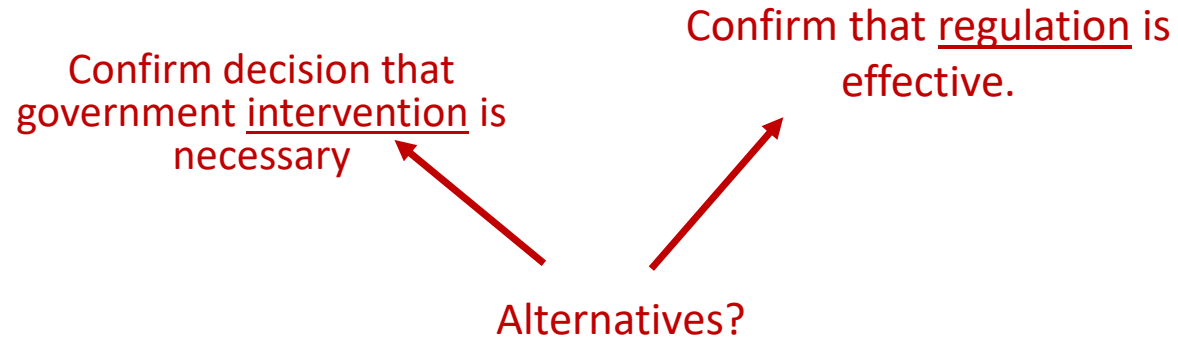
organic agriculture

animal welfare

earthquake resistant structures

graphic warning labels on alcohol

country of origin labelling



# analysis and review

(Regulatory Impact Assessment - RIAs)

Identify alternatives

How will compliance be achieved / checked?

Assess alternatives



How does it work in Ghana?

## “whole-of-government”

Is there a central government unit that checks all regulations?

Who are they?  
(Regulators, trade, ministries, industry, NGO, consumers, etc.)

How to involve?  
(Written procedure, web-based, information campaigns, ePing, etc...)

Stake holders

When to involve?  
(Same time as external, before, after, ...etc)

# Internal procedural

## Who is responsible?

Is the regulation coherent at the national level (federal, local, regional ...)?

## Domestic co-ordination

“National TBT Committee?”

## what to notify?

## who will notify?

## when to notify?



(Article 2.3)

Monitoring and Review

Technical Cooperation /  
Special and Differential  
Treatment

(Article 11 and 12)

Publish a notice of  
anticipated regulatory  
activity (“early notice”)

(Article 2.9.1; 5.6.1)

**External**

(impact on other countries)

**procedural**

Notify proposed  
regulations to the  
WTO

(Article 2.9; 5.6 ++)

Guidance for  
Compliance  
(Article 2.11; 5.8)

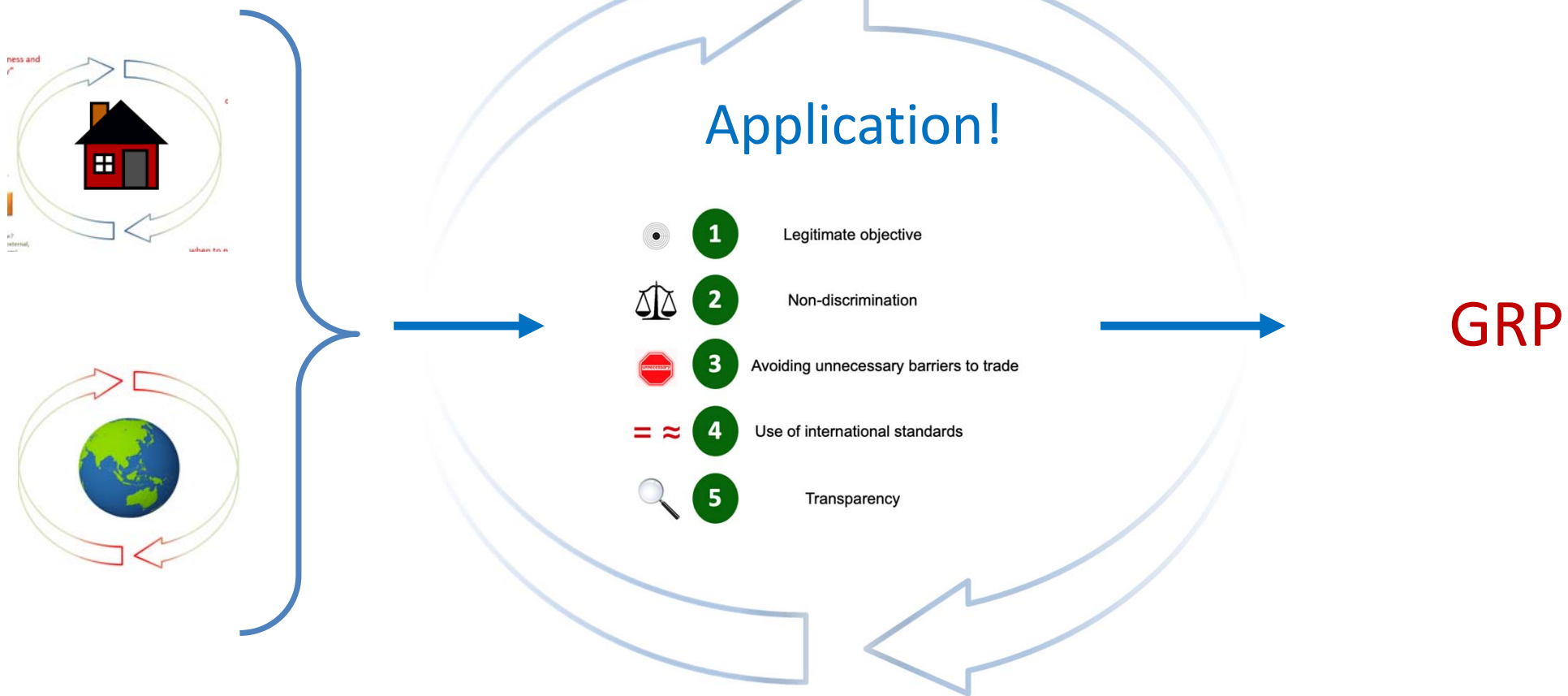
Reasonable interval  
before entry into force  
(Article 2.12; 5.9)

Publish  
(final regulation and  
final assessment – RIA)  
(Article 2.11; 5.8)

Consultation / Comment  
(Article 2.9; 5.6 ++)



(These principles in the TBT Agreement colour what went before.)





1

Legitimate objective



2

Non-discrimination



3

Avoiding unnecessary barriers to trade



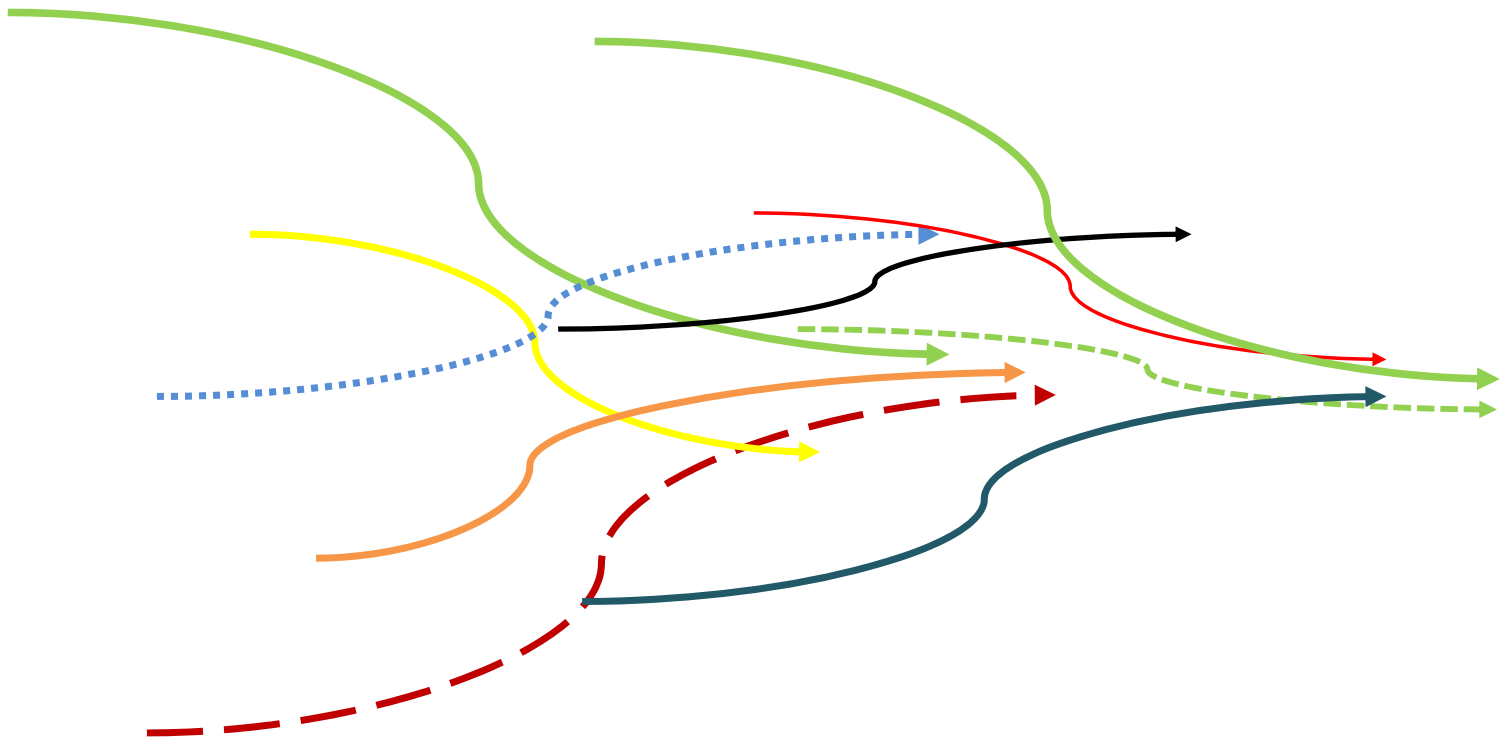
4

Use of international standards



5

Transparency



GRP

And why GRP?

Good regulatory practice is about the practical implementation of the TBT Agreement. As the Agreement does not contain specific provisions on good regulatory practice, the emphasis of the Committee's discussions has been on how best to implement the provisions of the Agreement to achieve a particular policy objective. Effective implementation through best practices is seen as an important means of avoiding unnecessary obstacles to trade



# Sources (last slide):

WTO TBT Document: JOB(08)/7, and in particular footnote 3:

Both at the Committee's Third (2003) and Fourth (2006) Triennial Reviews, Members reiterated that good regulatory practice can help to avoid unnecessary obstacles to trade and can contribute to the effective implementation of the disciplines of the Agreement (G/TBT/13, para. 9 and G/TBT/19, paras. 7 and 8, respectively).

Similar points have been made by several WTO Members, including by the United States in 2003 and 2005 (G/TBT/W/220, paras. 2-7, G/TBT/W/258, para. 2, respectively); by Canada in 2006 (G/TBT/W/264, para. 1); and by New Zealand in 1997 (G/TBT/W/44, para. 13)

Avoiding “unnecessary barriers to trade”

Two models

## **“Integrated Standardisation”**

The process of preparing, adopting and applying standards is in fact the methodology the country uses to establish the mandatory requirements for products

= government policy is driven by standardisation!

This means that the standardisation institution is given direct powers outside the legislative process to prepare, adopt and enforce the “mandatory standards”

Often the Standards Institution is a multi-disciplinary institution responsible for many of the following activities: Preparing standards (voluntary and mandatory), enforcing the standards, accreditation, certification, inspection, testing, metrology, training, consultancies etc. (conflict of interest)

# **“Government Governance” model**

Mandatory requirements are prepared through the legislative processes. Government policies are therefore driven by the legislators

All quality infrastructure activities have established roles and responsibilities

All enforcement of the mandatory requirements is done under the responsibility of government regulatory authorities and shall respect principles such as transparency, accountability, predictability, non discrimination etc.

Support functions shall follow internationally recognised guidelines following the same principles (standardisation, accreditation, certification, inspection, testing, metrology)

## **Principles for Developing ISO and IEC Standards Related to or Supporting Public Policy Initiatives**

It should be noted that, as private, voluntary organizations, ISO and IEC themselves are not directly representative of government interests. ISO and IEC consensus on ISO and IEC standards reflects agreement across a range of stakeholders at the standard drafting level, AND it reflects a consensus across national standards bodies at the approval level. National positions on ISO or IEC standards are not necessarily government positions, although government experts may participate in developing these positions with their counterparts from the private sector.

## **Principles for Developing ISO and IEC Standards Related to or Supporting Public Policy Initiatives**

### **Background Context**

The 2007 ISO General Assembly Open Session on International Standards and Public Policy addressed important dynamics confronting the ISO community – the relationship between ISO standards and public policy as well as the unique needs and concerns of one major class of ISO standards users, namely, governments. ISO's sister organization IEC, responsible for electrotechnical standardization, applauds the initiative and wishes to co-operate with ISO to develop common ISO/IEC principles and guidance to technical committees of both organizations. It is a reasonable goal that ISO and IEC wish to make their portfolio of standards more visible to public authorities and, equally important, ensure that its standards address the relevant needs and concerns of the public authorities. This will support their global relevance and applicability worldwide, as it has been shown that ISO and IEC standards are capable of providing valuable support to the implementation of public policy. ISO and IEC have been and will continue to be effective providers of voluntary standards that support the programs of government authorities, who need standards that meet the WTO TBT criteria and that support technical regulations and/or procurement actions.

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The following set of principles has been established to guide ISO and IEC committees developing standards related to or supporting public policy initiatives. These principles will ensure that ISO and IEC standards can properly support and be used by public authorities.

## **Principles**

**1.** ISO and IEC are committed to creating market-driven International Standards, based on objective information and knowledge on which there is global consensus, and not on subjective judgments, in order to provide credible technical tools that can support the implementation of regulation and public policy initiatives.

**2.** ISO and IEC are committed to developing International Standards that are market relevant, meeting the needs and concerns of all relevant stakeholders including public authorities where appropriate, without seeking to establish, drive or motivate public policy, regulations, or social and political agendas.

When ISO or IEC standards are anticipated to support a public policy initiative, the relationship between the standard(s) and the public policy initiative(s) should be clearly understood among all concerned parties. The interaction of standardization and public policy or regulation should be anticipated and the intervention of the public authorities in the standards development process should occur as early as possible. It should be noted that in many cases experts representing regulatory authorities are actively participating in the development of ISO and IEC International Standards both as members of the relevant international committees and/or at the pertinent national mirror committees to ISO and IEC technical bodies.

**3.** ISO and IEC recognize that the development of regulation, public policy and/or the development and interpretation of international treaties are the role of governments or treaty organizations.

**4.** ISO and IEC standards supporting regulation, regulatory cooperation and public policy are best developed within ISO and IEC structures and under operational approaches and participation models that have been proven successful and that are detailed in the ISO/IEC Directives.

The use of special committee structures, procedures or participation models may compromise the credibility and suitability of the resulting ISO/IEC standards supporting regulation and public policy.



<http://www.oecd.org/gov/regulatory-policy/49990817.pdf>

<http://www.oecd.org/fr/reformereg/34976533.pdf>

<http://www.oecd.org/regreform/34989455.pdf>

<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0278>

TBT Committee documents: JOB/TBT/ 7, 11 and 119Rev.1