

## **Gap Analysis for Implementation of WTO TBT Agreement in BIS**

**1. INTRODUCTION:** The WTO's agreements are the legal foundation for the international trading system that is used by the bulk of the world's trading nations. The TBT Agreement is part of a broader category of WTO agreements dealing with non-tariff measures (NTMs). NTMs, which include technical regulations, standards and conformity assessment procedures, provide the WTO with a number of challenges.

Provision of WTO TBT agreement on standards, Conformity Assessment procedures & Technical regulations are of direct relevance to BIS and India being a member of WTO, it is binding on us to implement & follow these provisions.

***“Gap Analysis for Implementation of WTO TBT Agreement in BIS”*** would ensure compliance to all obligatory provisions/principles of the TBT agreement in line with international practices. This will prevent us from any kind of infringement of the TBT agreement which can be raised by other WTO members particularly during TBT Committee meetings or during trade policy review of the country. The Trade Policy Review (TPR) is undertaken by the WTO for every member country and its frequency is dependent on the share of the country's world trade. This exercise will also help BIS to stand in good stead during the Trade Policy Review of India.

### **2. Background/ Literature**

Within the WTO framework, the TBT Agreement is intended to ensure that technical regulations, standards and conformity assessment procedures do not constitute unnecessary barriers to international trade while recognizing the right of Members to take regulatory measures to achieve their legitimate objectives: national security requirements, quality requirements, protection of human health or safety, protection of animal or plant life or health, protection of the environment, prevention of deceptive practices, among others.

The TBT Agreement applies to:

- Technical regulations: measures which lay down product characteristics or their related processes and production methods, with which compliance is mandatory.
- Standards: measures approved by a Recognized Body that provide, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is voluntary
- Conformity assessment procedures: procedures used, directly or indirectly, to determine the fulfilment of relevant requirements contained in technical regulations or standards

The TBT Agreement covers all technical regulations, standards or conformity assessment

procedures, except when these are SPS measures, regardless of their objective.

### Institutional Coverage:

The TBT Agreement applies to a wide range of bodies and systems, both governmental and non-governmental: Central government, local government, international, regional and non-governmental bodies.

Members are responsible for the implementation of the TBT Agreement, but their obligation to ensure compliance is different at different levels of governmental bodies, non-governmental entities and regional bodies. Members' obligations regarding the compliance with the TBT Agreement of Central Government Bodies are summarized below:

*“ Members are fully responsible for ensuring that central government bodies comply with the obligations regarding technical regulations and conformity assessment procedures. Members shall also ensure that central government standardizing bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards (Code of Good Practice)”.*

Under the TBT agreement, there are important provisions on Standardization, Conformity Assessment & Technical Regulation which are obligatory for the WTO members to be followed. Some of these provisions which are relevant to BIS are as follows:

- (i) Standards are addressed by the TBT Agreement in a separate "Code of Good Practice for the Preparation, Adoption and Application of Standards" (the Code) contained in Annex 3 of the TBT Agreement.
- (ii) Article 5 of the TBT agreement lays down principles for preparation, adoption and application of the Conformity Assessment Procedures.
- (iii) The mandate for establishment & functioning of TBT enquiry point is provided under Article 10 of the TBT agreement. BIS is the TBT enquiry point for India for all sectors other than telecommunications.

Reviewing the implementation of relevant provisions of TBT agreement in BIS is important ensure our commitment on these provisions. Any gaps in implementation are to detected in order to ensure that BIS does not violate any of the national obligations to WTO which can be raised during TBT committee meeting or Trade Policy review of India.

### **3. Methodology of Research :**

The research methodology largely comprises of two major ways:

- (i) **Desktop research:** In this process information from following sources/ links was

gathered for better understanding of obligatory requirements under WTO TBT Agreement and assessing implementation of these provisions in BIS

<https://www.wto.org/>

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

[https://www.wto.org/english/tratop\\_e/tbt\\_e/tbt\\_enquiry\\_point\\_guide\\_e.pdf](https://www.wto.org/english/tratop_e/tbt_e/tbt_enquiry_point_guide_e.pdf)

[https://www.wto.org/english/res\\_e/booksp\\_e/tbt3rd\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/tbt3rd_e.pdf)

[https://www.wto-ilibrary.org/the-wto/technical-barriers-to-trade\\_61b896b0-en](https://www.wto-ilibrary.org/the-wto/technical-barriers-to-trade_61b896b0-en)

<https://bis.gov.in/>

<https://bis.gov.in/index.php/product-certification/product-certification-overview/>

<https://bis.gov.in/index.php/fmcs/fmcs-overview/>

<https://www.crsbis.in/BIS/about-crs.do>

[https://www.wto.org/english/tratop\\_e/tbt\\_e/epingusers\\_map\\_e.htm](https://www.wto.org/english/tratop_e/tbt_e/epingusers_map_e.htm)

**(ii) Coordination with relevant departments of BIS for seeking information:** In order to analyze implementations of various provision of the TBT agreement in BIS, necessary information was sought from FMCD, SCMD, Technical departments and IRD through discussions and correspondence. In this regard, following questionnaire was also prepared keeping in view the obligations under relevant Articles of WTO TBT Agreement to seek, necessary information from the concerned departments:

- Questionnaire w.r.t. Conformity Assessment procedures operated by BIS, in cases where a positive assurance of conformity with technical regulations or standards is required (Relevant to CMD-1)
- Questionnaire w.r.t. Foreign Manufactures' Certification Scheme and Compulsory Registration Scheme
- Questionnaire w.r.t. Standardization Activity for Technical Departments
- Questionnaire for SCMD

Questionnaire prepared is given at **Annex A** .

#### **4. Result & Analysis**

Substantive disciplines of the TBT Agreement: non-discrimination, avoidance of unnecessary barriers to trade, the use of international standards, and Transparency – are core elements of the TBT Agreement. These principles are being addressed in various articles of the TBT Agreement appropriately.

In this regard, implementation of the provisions of TBT Agreement which are relevant to BIS are examined w.r.t following three activities of BIS and findings are reported for the same:

- **Standardization Activity**
- **Conformity Assessment Procedures**
- **Enquiry Point Functioning**

#### **A. Implementation of WTO TBT Agreement w.r.t Standardization Activity**

Standards are addressed by the TBT Agreement in a separate "Code of Good Practice for the Preparation, Adoption and Application of Standards" (the Code) contained in Annex 3 of the TBT Agreement. This Code, which is open to acceptance by any standardizing body, offers guidance on the process of setting standards (e.g. these should be transparent, and standardizing bodies should accept comments and avoid duplication). The TBT Agreement (Article 4) instructs members to ensure that their central government standardizing bodies accept and comply with the Code.

BIS being the National Standards body has notified its acceptance of the Code to WTO.

Based on the information gathered from desktop research and inputs received from technical departments as well as SCMD *vis-a-vis* provisions of Annex 3 of WTO Agreement, following observations are made:

**Compliance to the relevant provisions of WTO TBT Agreement is observed in following processes:**

- Indian Standards do not distinguish between products of national origin and like products originating in any other country. The requirements specified in Indian standard are common irrespective of country of origin of the product.
- Existing international standards are considered as the basis for development of Indian Standards. However, in some cases due to fundamental climatic or geographical factors or fundamental technological problems, indigenous standards are formulated to meet nation specific needs which is permitted under the WTO Code. Also, Indigenous standards are formulated to suit indigenous practice of manufacturing and use, special development needs of s of Indian Industry, availability of testing facilities, etc. which is in accordance with Article 12.4 of the TBT agreement.
- Participation in a particular international standardization activity/ TC meeting takes place through one delegation. This shows that BIS synergizes with other standardizing bodies in the country to ensure that there is no duplication or overlap of work
- BIS diligently adheres to the transparency norms of the Code. The program of work for each sectional committee is available on the BIS website for public viewing. It includes all the published standards, the draft documents under various stages of development and the Indian standards which are superseded/withdrawn and are under product certification. The work programme for each standard indicate,

- a) The classification relevant to the subject matter
- b) The stage attained in the standard's development
- c) The references of any international standards taken as a basis

This information is updated on real time basis.

### **GAPS & Areas of Improvement:**

**GAPS:** The following notification requirements prescribed under the TBT Code are apparently not complied with as there is no evidence /information w.r.t compliance of the following:

- The Code requires that a notice of the existence of the work programme shall be published in a national or, as the case may be, regional publication of standardization activities.
- The Code also requires that the standardizing body shall notify the existence of the work programme to the ISO/IEC Information Centre in Geneva. The notification shall contain the name and address of the standardizing body, the name and issue of the publication in which the work programme is published, the period to which the work programme applies, its price (if any), and how and where it can be obtained. The notification may be sent directly to the ISO/IEC Information Centre, or, preferably, through the relevant national member or international affiliate of ISONET, as appropriate.

### **Areas of Improvement**

- The TBT Code emphasizes on 60 days commenting period on draft standards, however in BIS commenting period on draft standards is generally 30-60 days. Though the TBT Code allows shortened commenting period in cases where urgent problems of safety, health or environment arise or threaten to arise, it cannot be ascertained whether BIS is giving less than 60 days commenting period only in cases of urgent problems as mentioned above. This can be ensured through clear instructions/ guidelines for the same.
- The TBT Code asks for prompt publication of standard once adopted. In BIS, publication of standard takes 2-4 months time owing to procedures involving approval of Chairman of Division Council, submission of Gazette notification details, decision on time period for concurrent running etc. Efforts can be made to reduce this period further through procedural changes if possible.

## **B. Implementation of WTO TBT Agreement w.r.t Conformity Assessment Procedures**

Article 5 of the TBT agreement lays down principles for preparation, adoption and application of the Conformity Assessment Procedures.

Based on the information gathered from desktop research and certification related information available on BIS website *vis-a-vis* provisions of Article 5 of WTO Agreement,

following observations are made.

**Compliance to the relevant provisions of WTO TBT Agreement is observed in following processes:**

- The Procedure for each Conformity Assessment Scheme operated by BIS is available on BIS website. FAQs provide additional useful information to those aspiring for BIS Certification such as standard processing period, fee details etc.
- As per the Conformity assessment schemes operated by BIS, on receipt of an application, the applicant is informed in a precise and complete manner of all deficiencies after examining the completeness of the documentation.
- As per the procedure, the results of the assessment is communicated in a precise and complete manner to the applicant so that corrective action may be taken if necessary
- BIS follows a well-established complaint redressal procedure. Complaints are recorded centrally at Complaints Management and Enforcement Department (CMED). Complaints can be made both offline and online. Online complaint can be made through mobile app BIS CARE or by use of Consumer Engagement Portal. On receipt of the complaint it is investigated and further actions are taken for its redressal.
- The conformity assessment schemes are laid down in BIS (Conformity Assessment) Regulations, 2018 which are based on principles laid down in IS/ISO/IEC 17067: 2013
- Scheme for foreign manufacturers for certifying products originating in the territories of other countries accords equal treatment to the foreign manufacturers as accorded to the manufacturer of products of national origin (under domestic scheme) or originating in any other country, in terms of procedures for grant of license
- Confidentiality of information under FMCS is respected in the same way as for domestic products
- Fees imposed for assessing the conformity of products under FMCD is equitable as for products of national origin taking into account costs arising from differences between location of facilities of the applicant and the conformity assessment body.

**GAPS:**

- The TBT Agreement requires that conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Members than for like domestic product. However, the standard timeline for grant of license for Domestic manufacturer is 4 months (under normal procedure) and 1 month (under simplified procedure) whereas for manufacturer located outside the country is 6 months under FMCS.

- Under the TBT Agreement, governments must ensure that TBT measures do not discriminate against foreign producers (in favour of domestic producers), or between foreign producers. However, as per BIS procedures,, option 2 for Grant of license i.e. the simplified procedure of grant of license is not available for foreign manufacturers under FMCS. Here the timeframe for grant of license is 1 month only. This is a clear violation of the provisions of TBT Agreement.

### **Areas of Improvement**

Under FMCS there are some additional requirements for grant of license (Nomination of AIR, indemnity bond and Performance Bank Guarantee for 10,000 USD).

Concern over Performance bank guarantee has been raised multiple times in TBT Committee meetings as a discriminatory approach and potential barrier to trade considering that this requirement is not for grant of license to domestic manufacturers . India has been defending its position repeatedly saying that performance bank guarantee is intended to protect the Bureau of Indian Standards (BIS) during the tenure of the license and is invoked only in case of breach of any condition of the agreement signed between BIS and licensee. It essentially covers for any possible loss of revenue to BIS on account of non-payment of requisite marking fee dues to BIS. In case of breach of Marking Fee by domestic manufacturer, we can seek compensation through Court, whereas the Law cannot be enforced in foreign countries

In order to have our conformity assessment procedures non-discriminatory and in accordance with the TBT agreement, we may consider to have similar requirements for domestic manufacturers also.

### **C. Implementation of WTO TBT Agreement w.r.t functioning of TBT enquiry point**

The mandate for establishment & functioning of TBT enquiry point is provided under Article 10 of the TBT agreement.

BIS is designated as TBT Enquiry Point of India in all fields/subjects other than telecommunications by the **Ministry of Commerce** under WTO-TBT Agreement and is responsible to answer all reasonable enquiries from other Members and interested parties in other Members regarding technical regulations, Standards & Conformity Assessment. For performing enquiry point activities, International Relations & Technical Information Services Department (IR & TISD) of BIS is the nodal department in BIS and has been using the e-mail ID [enquiry@bis.gov.in](mailto:enquiry@bis.gov.in) to respond the queries. The queries received at the enquiry point are responded through this email id which is exclusive for this purpose.

**Compliance to the relevant provisions of WTO TBT Agreement is observed in following processes:**

- IR&TISD is fulfilling the transparency obligations under TBT agreement to respond to reasonable queries on Technical Regulations, Conformity Assessment &

Standards and is able to provide relevant documents/ information regarding

- membership and participation in international and regional standardizing bodies and conformity assessment systems,
  - bilateral and multilateral arrangements within the scope of this Agreement;
  - Location of notices published pursuant to this Agreement
  - Provide information on Location of the enquiry points
- In addition to above IR&TISD is also disseminating the TBT notifications through the notification portal.

#### **GAPS:**

- There is no GAP observed as far as obligatory requirement/ responsibility of Enquiry given under TBT Agreement.

#### **Areas of Improvement**

- **Need for establishment of "National TBT Committee", or "mirror committee"** : In Indian, we do not have a National TBT Committee which can provide the necessary fora to discuss and share information on notifications of particular interest or concern. Based on domestic consultations, a variety of actions can then be taken, e.g. the member concerned can provide comments on the measure to the enquiry point of the notifying member, seek technical assistance or raise specific trade concerns bilaterally or in the TBT Committee. Here it is relevant to mention that as per the TBT Committee's recommendations, requests (query/ information sought) should be processed if possible within five working days, and if a delay in supplying the documentation requested is foreseen, this should be acknowledged to the requester, along with an estimate of when the documents can be provided. Deciding on the right course of action in response to requests for information or comments entails significant coordination. The enquiry point's role is important – it acts as a coordinator between regulators and stakeholders, both domestic and international. Here the role of "National TBT Committee" is very important. Many WTO members have established their "National TBT Committee". Significance of "National TBT Committee" is also mentioned in TBT Enquiry Point Guide .
- **BIS to register for WTO e- Ping system** : WTO e- Ping system is an effective tool in encouraging engagement of public and private sector stakeholders. ePing's email alert service allows registered users to receive SPS/TBT notifications of particular interest to them based on criteria such as products covered or export markets. The system also offers a number of additional features such as the Enquiry Point management tool and discussion fora, with a view to facilitating dialogue among public and private stakeholders in addressing potential trade problems at an early stage. However, BIS being the national enquiry point of India is yet to get access to the Enquiry Point Management Tool and to get admin rights to administer ePing at the national level.



**5. Recommendation:** It is recommended that the GAPS and Areas of improvement identified in report w.r.t Standardization Activity, Conformity Assessment and Enquiry Point may be shared with the concerned departments for taking necessary steps so as to ensure our compliance and commitment towards implementation of relevant provisions of the WTO TBT Agreement in BIS.

Also, the Questionnaire given at ***Annex A*** may be utilized by the concerned departments of BIS in future to review implementation of the obligatory requirements under TBT Agreement which are of relevance to BIS at regular time interval.

These steps will prevent us from any kind of infringement of the TBT agreement which can be raised by other WTO members particularly during TBT Committee meetings or during trade policy review of the country

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**A. Questionnaire w.r.t. Conformity Assessment procedures operated by BIS, in cases where a positive assurance of conformity with technical regulations or standards is required:**

**Q1.** Please confirm that as per the Conformity Assessment Schemes operated by BIS, the standard processing period of each conformity assessment procedure is published or that the anticipated processing period is communicated to the applicant upon request?

**Q2.** As per the Conformity assessment schemes operated by BIS, whether on receipt of an application, the applicant is informed in a precise and complete manner of all deficiencies after examining the completeness of the documentation?

**Q3.** Whether as per the procedure, the results of the assessment is communicated in a precise and complete manner to the applicant so that corrective action may be taken if necessary?

**Q4.** Whether, the applicant is informed of the stage of the procedure, with any delay being explained, if requested ?

**Q5.** Please confirm, that whenever specifications of a product are changed subsequent to the determination of its conformity to the applicable technical regulations or standards, the conformity assessment procedure for the modified product is limited to what is necessary to determine whether adequate confidence exists that the product still meets the technical regulations or standards concerned ?

**Q6.** Whether, a procedure exists to review complaints concerning the operation of a conformity assessment procedure and to take corrective action when a complaint is justified?

**Q7.** Is there any “Conformity Assessment Procedure” in BIS where the technical content of the procedure is not in accordance with relevant guides and recommendations issued by international standardizing bodies? In such case, have we carried out the following exercises ?

**a)** Published any notice to enable interested parties in other Members to become acquainted with it.

**b)** Notify other Members through the WTO Secretariat of the products to be covered by the proposed conformity assessment procedure, together with a brief indication of its objective and rationale.

**c)** Without discrimination, allowed 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.

**B. Questionnaire w.r.t. FMCS & CRS:**

**Q1.** Whether the scheme for foreign manufacturers for certifying products originating in the territories of other countries accords equal treatment to the foreign manufacturers as accorded to the manufacturer of products of national origin (under domestic scheme) or originating in any other country, in a comparable situation?

**Q2.** Please confirm if the conformity assessment procedures are undertaken and completed as expeditiously as possible and in a no less favourable order for products originating in the territories of other Members than for like domestic product?

**Q3.** Please confirm if the confidentiality of information under FMCS is respected in the same way as for domestic products and in such a manner that legitimate commercial interests are protected?

**Q4.** Please confirm that the fees imposed for assessing the conformity of products under FMCD is equitable in relation to any fees chargeable for assessing the conformity of like products of national origin? (Taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body)

**C. Questionnaire w.r.t. Standardization Activity for Technical Departments**

**Q 1.** Whether there is any standard pertaining to your department which specifies different requirement to products of national origin and to like products originating in any other country. If so, what are the reasons thereof?

**Q 2.** Whether existing international standards are considered as the basis for development of Indian Standards? Under what circumstances international standards are not considered as the basis for development of Indian Standards?

**Q 3.** Whether there are instances where participation in a particular international standardization activity/ TC meeting took place through more than one delegation representing different bodies in the country?

**Q 4.** Are there any standards pertaining to your department where there is any kind of duplication or overlap of work with any other standardizing body in the country?

**Q 5.** How much time is given for submission of comments on the draft standard?

**Q6.** Please confirm that once the standard has been adopted, is promptly published ?

**D. Questionnaire for SCMD**

**Q 1.** Please confirm if the programme of work indicating name and address of BIS, the

standards it is currently preparing and the standards which it has adopted in the preceding period is published at least once every six months? Also, confirm that the notice of the existence of the work programme is published in a national publication of standardization activities.

**Q 2.** Please confirm whether the work programme for each standard indicate,

- a) The classification relevant to the subject matter
- b) The stage attained in the standard's development
- c) The references of any international standards taken as a basis.

**Q3.** At the time of publication of work programme, whether it is notified to the ISO/IEC Information Centre in Geneva indicating the period to which the work programme applies, its price (if any), and how and where it can be obtained?

This exercise will also help BIS to stand in good stead during the Trade Policy Review of India which is under progress.

*(It is recognized that the publication and communication of notices, notifications, draft standards, comments, adopted standards or work programmes electronically, via the Internet, where feasible, can provide a useful means of ensuring the timely provision of information)*

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