



★ 8 ★

Technical Barriers to Trade (TBT)

The Trans-Pacific Partnership (TPP) levels the playing field for American workers and American businesses, leading to more Made-in-America exports and more higher-paying American jobs here at home. By cutting over 18,000 taxes different countries put on Made-in-America products, TPP makes sure our farmers, ranchers, manufacturers, service suppliers, and small businesses can compete—and win—in some of the fastest growing markets in the world. With more than 95 percent of the world’s consumers living outside our borders, TPP will significantly expand the export of Made-in-America goods and services and support American jobs.

EXECUTIVE SUMMARY

TPP’s Technical Barriers to Trade (TBT) chapter helps create an open, transparent, stakeholder-based system of standards-setting in the Asia-Pacific. It ensures that technical standards-setting, conformity assessment procedures, and technical regulations are fair and transparently developed,

with opportunities for meaningful input and “bottom-up” participation in standards-setting. The TBT chapter also has specific annexes covering particular issues in information and communications technology, cosmetics, medical devices, pharmaceuticals, wines and spirits, formulas for certain food products, and organics. While making it easier for U.S. companies to export “into” Asia-Pacific supply chains and lead in innovation, the chapter preserves the full rights of governments to regulate products and manufacturing processes for public health, environmental quality, and other public-policy goals.

CHAPTER OVERVIEW

Technical Regulations

TPP Parties will cooperate to ensure that international standards and recommendations likely to form the basis for technical regulations do not create unnecessary barriers to trade.

Conformity Assessment

TPP parties will provide “national treatment” to one another’s conformity assessment bodies—that is, testing and certification performed by another Party’s qualified conformity assessment body will be accepted as confirmation that its products, services, or systems meet requirements of the other Party. This will make it easier for U.S. exporters to have their goods tested or certified only once before accessing other TPP markets, reducing costs and burdens for U.S. businesses, especially small firms. In no case will this alter U.S. regulations for health, food safety, product safety, or other substantive public policy goals.

Transparency

The TBT chapter ensures that stakeholders and interested parties from TPP countries have the opportunity to participate in the development of technical regulations, standards, and conformity assessment procedures by government bodies. This reflects the U.S. approach to standards-setting. As in the United States, TPP countries will publish new technical regulations and conformity assessment procedures, offer opportunities for public comment, explain how a TPP country’s final regulations and conformity assessment procedures meet the objectives sought; and provide responses to substantive issues raised by comments.

Compliance Period

The TBT chapter ensures a reasonable interval between publication of regulations and entry into force so that stakeholders have sufficient time to meet the new requirements. Similarly, TPP countries have committed to provide producers a reasonable amount of time to demonstrate the conformity of their goods with the relevant requirements.

Annexes

The TBT chapter also includes several sector-specific annexes to promote common regulatory approaches across the region, including the following:

- **Cosmetics, Medical Devices, and Pharmaceuticals**

The annexes on cosmetics, medical devices, and pharmaceuticals promote transparent and open practices when regulating products in these sectors. For example, TPP Parties will have to consider relevant scientific and technical guidance when developing regulations, grant marketing authorizations based on specified and publically available criteria, provide reasons for rejecting applications, and establish due process procedures that allow for appeal so that U.S exporters are not unfairly or arbitrarily discriminated against in TPP markets.

- **Information and Communications Technology (ICT) Products**

The ICT annex covers commercial products containing cryptography and that promote the electromagnetic compatibility of information technology equipment products. With respect to ICT products that contain cryptography, TPP Parties will be prohibited from disclosure of proprietary information in order to comply with technical regulations or conformity assessment procedures, a requirement that some governments could use to expropriate proprietary information and disseminate it to competitors. Exceptions are granted for government production, sale, or use of a product as well as for requirements a TPP government maintains related to the networks it owns or controls or measures it takes related to financial institutions or markets. In cases where a TPP country requires assurance that a product complies with a technical regulation or standard for electromagnetic compatibility, Parties must accept a supplier's declaration of conformity for unintentional electromagnetic emitters, as in the United States.

- **Wine and Distilled Spirits**

The annex on wines and distilled spirits establishes parameters for the labeling of products, while preserving the ability of regulators to ensure consumer protection. It creates a common definition of “wine” and “distilled spirits,” to facilitate trade in these products, and also provide for supplementary labeling of wine and distilled spirits. TPP Parties commit not to reject imports solely because they use certain descriptive terms and adjectives related to wine or winemaking.

- **Formulas for Food Products**

The annex on formulas for food products will ensure that TPP countries retain full rights to require companies to provide information about prepackaged food and food additives. At the same time, it will ensure protection for the legitimate commercial interests and proprietary information of TPP companies by requiring TPP Parties to ensure the confidentiality of information regarding proprietary formulas that it requires companies to provide in order to meet its technical regulations and standards related to prepackaged food and food additives.

- **Organic Products**

The annex on organic products will promote trade in organic products and will encourage cooperation between the Parties on issues related to the production, processing, or labeling of products as organic.

NEW FEATURES

TPP’s TBT chapter includes many new features, building on those in the World Trade Organization (WTO) TBT Agreement and earlier Free Trade Agreements (FTAs). These include: new transparency requirements, including public consultation requirements early in the development of new measures, enabling trade-related concerns to be vetted and addressed before new measures are finalized; requirements ensuring that information on regulatory decision making is publicly available; and greater clarification that companies will need to have their goods undergo conformity assessment procedures only once before being able to sell them in TPP markets. In addition, TPP—for the first time in a U.S. FTA—includes annexes on specific products.

IMPACT

Product standards facilitate commerce by providing assurances to consumers and businesses that the products they are considering purchasing are safe and effective. Without such a system, commerce would be thwarted as consumers and businesses alike find themselves unable to determine whether products worked as advertised, met specifications, and were safe to use. Measures related to standards fall into three areas. The first, standards set by business and professional standards associations, make sure products are compatible, reliable, and otherwise meet business needs. An example is the design of electrical plugs, where standards-setting among businesses ensures that they fit securely into sockets, delivering electrical current safely and without risk. A second is the technical regulations governments develop to ensure that products do not pose risks to public health or safety and environmental quality, or to address other public policy concerns. An example is components for autos or airplanes, where specific safety standards must be assured. The third is conformity assessment procedures, or objective testing to verify that the products meet the standards and technical regulations set by governments or private standard setting bodies. Such testing may be conducted by governments or by private conformity assessment bodies, depending on the product.

The U.S. standards-setting system, both public and private, places high value on transparency and stakeholder participation. The U.S. Government sets technical regulations with input from stakeholders, but sets such regulations mainly in areas that could pose public health or safety risks, while leaving other standards setting to the private sector to promote efficiency and innovation. U.S. private standard-setting bodies operate from ‘the bottom up,’ with participation by businesses, engineering and scientific associations, academics, government agencies, and the broader public. This creates a system that encourages engineers and technical experts to find innovative ways to improve products and to work with companies across a sector to develop appropriate standards that are consensus-based. The scale of the opportunities a good standards-setting system can create is illustrated by the fact that in 2009, about \$118 billion of TPP countries’ exports were U.S. value-added—that is, products exported “into” supply chains by specialized U.S. firms.

Some major economies in the Asia-Pacific and elsewhere, however, rely heavily on government-mandated approaches that require particular standards that all companies must meet. Such an approach can deter innovation, create unnecessary “technical barriers to trade” that reinforce or substitute for tariffs, and serve as surreptitious ways to build invisible ad-

vantages for ‘national-champion’ firms closely linked to governments, to the detriment of American workers and businesses. TPP’s TBT chapter accordingly addresses several systemic challenges:

- **Transparency**

Unlike in the U.S., some countries limit public participation in the development of standards, technical regulations, and conformity assessment procedures. Enabling a broad range of stakeholders to participate in the development of standards-related measures in TPP countries will help ensure that standards do not discriminate against U.S. manufactured goods, and will encourage wider acceptance of U.S. approaches to standards in the Asia-Pacific region.

- **Fair Conformity Assessment**

Overly-restrictive conformity assessment procedures can hinder U.S. exports, for example by requiring testing procedures to be conducted in the importing country after American labs have already validated a product, or by imposing burdensome requirements on foreign testing facilities as a means of discouraging imports.

- **Promoting U.S. Exports in Key Sectors**

In many industries—medical and information technologies, foods and wines, medicines and cosmetics, and others—countries have not yet established their own standards-setting procedures or may follow the standards of U.S. competitors, such as the EU, which has aggressively promoted its standards to support its exports. TPP can help promote U.S. standards and bring consensus on the best approaches, creating opportunities for U.S. businesses and civil-society groups to participate as our TPP partners set standards and ensure that the tariff reductions we are negotiating in TPP are not undermined through discriminatory and burdensome standards.

