

Digital trade in the WTO TBT Committee

overview and trends

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Roadmap

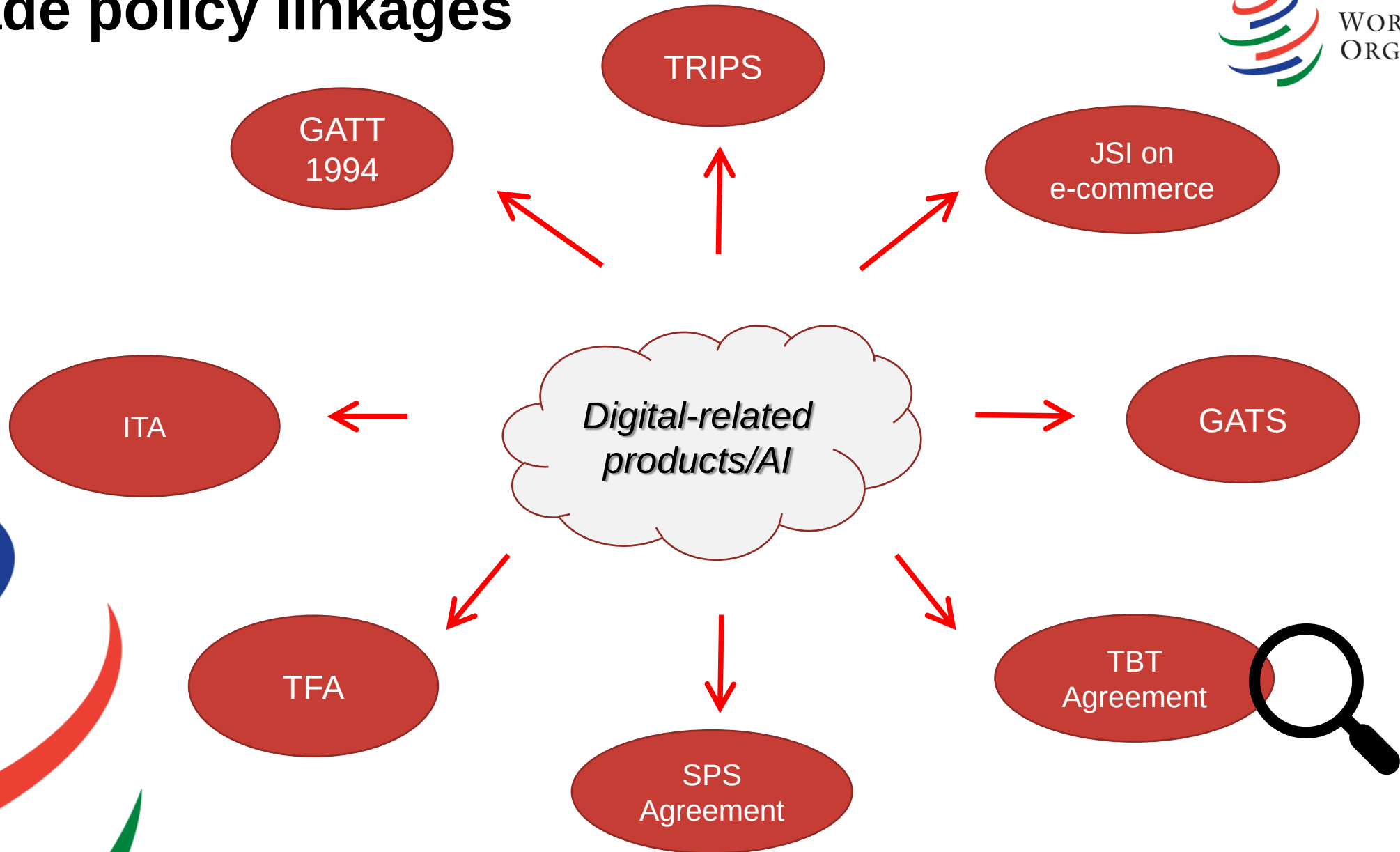
1. WTO and digital issues (e.g., AI, cybersecurity)
2. International standards: Making globally relevant and inclusive international standards work for trade
3. Regulatory cooperation and transparency
4. What's next

AI and trade



- AI can lead to greater productivity, better supply chain management and lower trade costs.
- Trade and trade policy matter for the diffusion of AI systems because they enable access to goods, services, people and data.
- The incorporation of AI into industry requires the development of a range of new standards (e.g. interoperability)
- Governments around the world increasingly introduce policies and regulations to govern AI and other digital tech development and use:
 - According to ITU, while in 2019 only 18 countries had AI strategies, in 2021 the number had risen to 49.
 - AI regulations are at an early stage of development, and tend to be sector-specific, and their stringency varies from sector to sector.
- Many other digital reg areas: cybersecurity, 5G, wearables, SaMDs/IoMTs, IoTs, brain-computer interfaces, etc.

WTO and digital products/AI – examples of trade policy linkages



Objectives of the TBT Agreement



trade liberalization...

**avoiding
discriminatory and
unnecessary
barriers to trade**

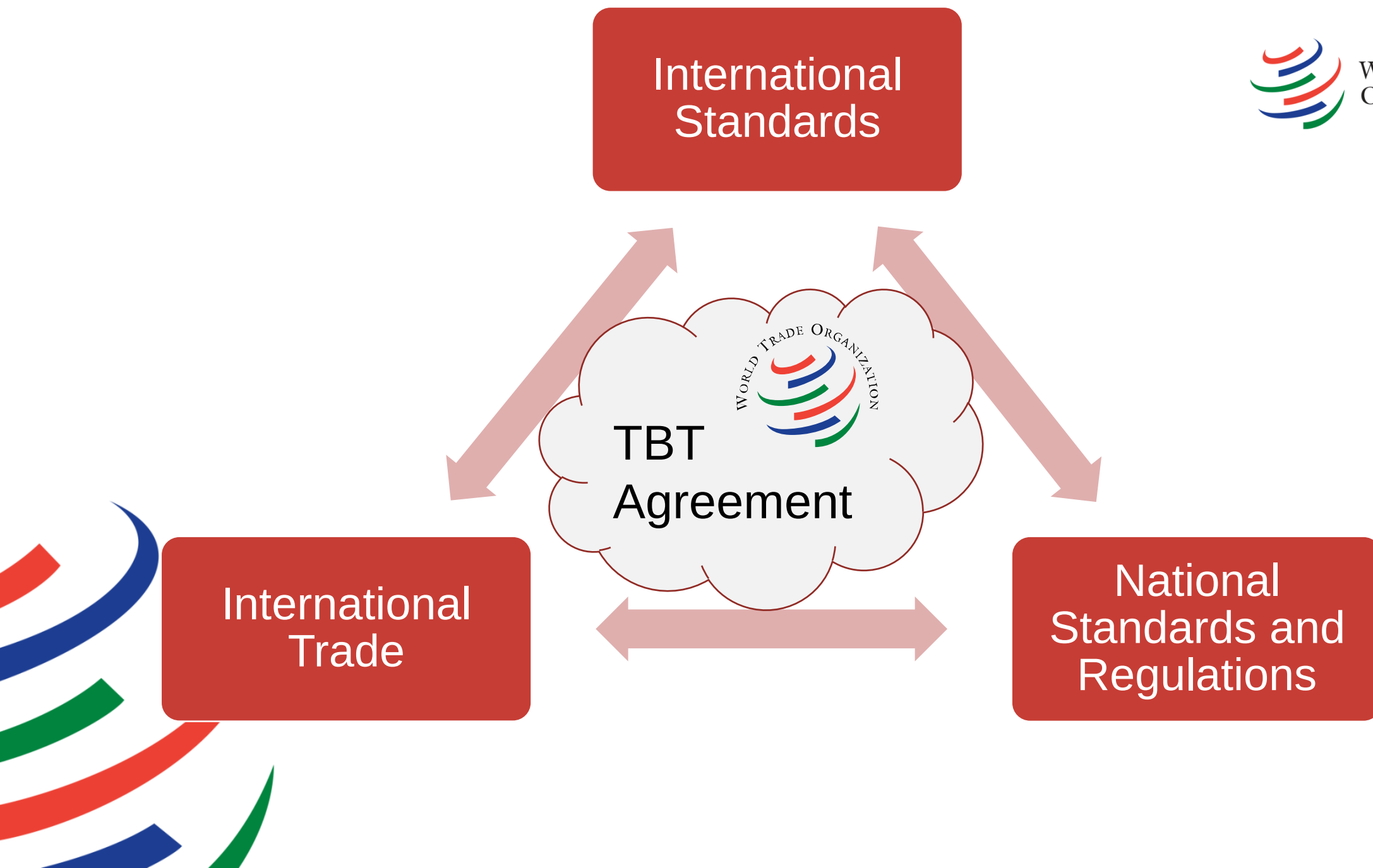


right to regulate...

**preserving
Members' right to pursue
legitimate policy objectives
at levels they consider
appropriate**

***international standards
(harmonization)***

International standards



TBT Agreement: using *international standards*



Members **shall** use...



relevant international standards

technical
regulations
(Art. 2.4)

conformity
assessment
procedures
(Art. 5.4)

Also: *national standards*
(Annex 3.F)

... as a *basis* for

when *ineffective* or *inappropriate* for
policy objectives

(e.g., fundamental climatic or geographical
factors, or technological problems)

← **except!**



TBT Committee “*Six Principles*”



- **Transparency:** work programme/proposal accessibility, adequate time and opportunity for comments;
- **Openness:** all Members have right to participate at all levels of standard setting;
- **Impartiality and consensus:** no bias against any Member, region, supplier & consensus procedures;
- **Relevance and effectiveness:** respond to regulatory and market needs, as well as scientific and technological developments in various countries; no negative impact on competition or innovation; performance-based;
- **Coherence:** avoid duplication/overlap with other international standardizing bodies, through co-operation and coordination;
- **Development dimension:** promotion of developing countries' participation in international standards; take into account constraints on developing countries.

How “Six Principles” are used - one example



G7 Trade Ministers' Digital Trade Principles:

International standards for information and communication technologies should be developed in a way that complies with the six principles of the WTO Technical Barriers to Trade Committee, namely transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and the development dimension. Such standards must continue to play an important role in supporting an open, free, and fair environment in the digital age.

Regulatory cooperation/coherence tools and transparency

Equivalence



Article 2.7 (TBT Agreement):

“Members shall give positive consideration to accepting as equivalent technical regulations of other Members, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations”.

Recognition of foreign conformity assessment results - MRAs



Article 6 (TBT Agreement):

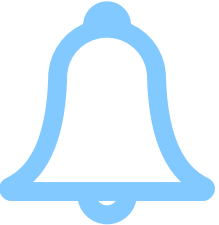
- *“Members shall ensure, whenever possible, that results of conformity assessment procedures in other Members are accepted, even when those procedures differ from their own, provided they are satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own procedures.”*
- Use of accreditation, encouragement to negotiate MRAs.

Transparency obligations



- Notification of ***draft*** regulations
- Publication of regulations
- Establishment of enquiry point
- Designation of notification authority
- Statement of implementation
- Notifications from standardizing bodies

***Opportunity for global
public consultation on
draft regulations***



Receive ***email alerts*** on relevant notifications based on products/markets preferences



Search notifications, trade concerns



Member profiles/ Enquiry points

Two main themes of the TBT Committee work

1 Managing trade tensions
“specific trade concerns”
(mostly based on
notifications)

2 Information exchange on
cross-cutting issues
(harmonization,
transparency, ...):
leading to decisions and
recommendations





Regular work at the WTO helps members ease trade tensions

1995 - 2022*

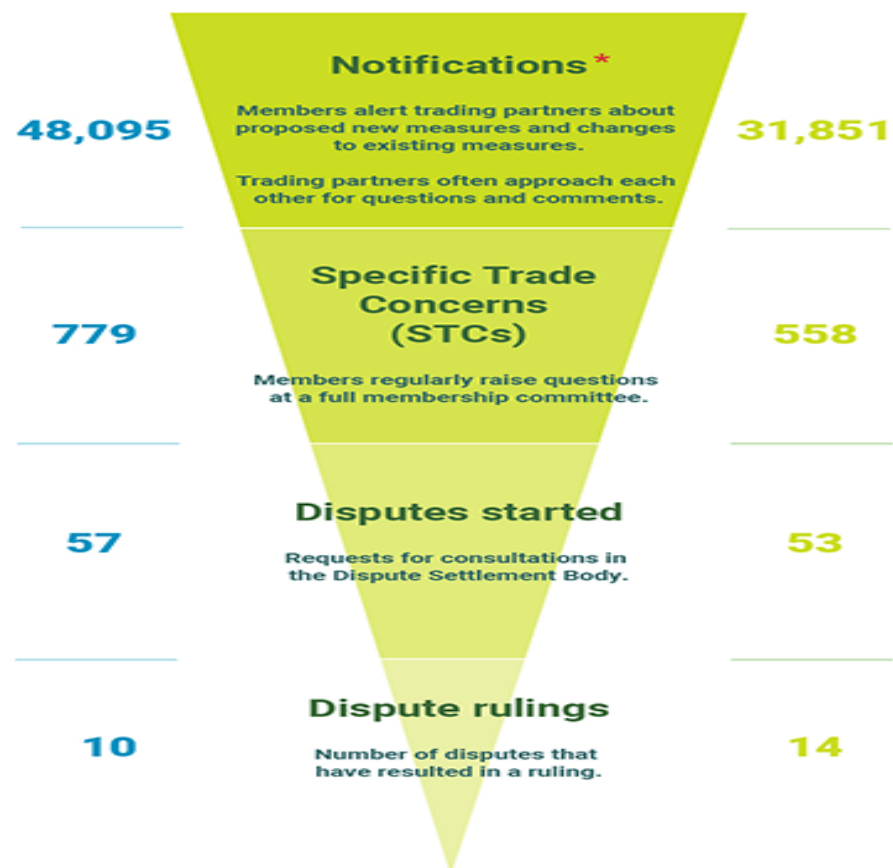
*until 31 December

TBT

Technical requirements affecting trade in all products (both industrial and agricultural)

SPS

Measures relating to food safety, and animal and plant health



* All types of notifications included. The same measure may be associated with more than one notification.



WORLD TRADE ORGANIZATION

Managing trade tensions

TBT Committee and digital-related regulations



- WTO Members increasingly notify digital-related regulations, standards and conformity assessment procedures covering a variety of products such as:
 - Internet of Things;
 - Drones (incl unmanned aircraft systems);
 - Software (incl. medical devices as a software);
 - Autonomous/automated vehicles;
 - AI;
 - 5G technologies etc.
- Such notifications envisage safety, interoperability, national security, cybersecurity, performance and quality requirements as well as different conformity assessment procedures etc.

EU AI Act (proposal)



- In 2021, the European Union notified to the TBT Committee the draft harmonised rules on AI (AI Act).
- The draft AI Act regulates the development, marketing and placing on the European Union market of AI systems, embedded or not into physical products, that pose certain risks.
- The draft AI Act is limited to "the minimum necessary requirements to protect the safety and fundamental rights of persons considering the risks and challenges posed by AI systems, without unduly constraining or hindering technological development or otherwise disproportionately increasing the cost of placing AI solutions on the market".
- The stringency of the rules varies depending on the "degree of risk" AI systems are considered to pose.

[G/TBT/N/EU/850](#)

TBT Committee and *cybersecurity*



- The TBT Committee is becoming an important debate forum over cybersecurity policies and regulations.

Notifications:

- Around 80 cybersecurity-related TBT measures have been notified to the TBT Committee, 65% of which since 2020.
- *Products/issues covered:* cybersecurity of IoT, 5G technology, telecommunication, vehicles and radio equipment and software/network-enabled goods.
- *Legitimate objectives:* mostly national security but also the prevention of deceptive practices, protection of human health or safety and quality.

STCs

- According to a preliminary ongoing study by the WTO Secretariat, the average imports per STC on the topics of *cybersecurity* amounts to **USD 159 billion**.
 - *Examples of measures subject to such STCs:* mandatory market access requirements for Internet-connected products, restrictions on the use of network elements coming from manufacturers that pose a high risk in the context of 5G, data localization requirements.
 - *Examples of concerns:* measures' lack of clarity, transparency, broad scope of application, inconsistency with international standards, discriminatory effects and unnecessary trade-restrictiveness.

What's next

What's coming next?



19-23 June 2023:

- Regular meeting of the TBT Committee
 - Review of STCs
 - Discussions on cross-cutting issues
- **20 June: Thematic sessions on Intangible Digital Products (AI) and Cybersecurity**
- 10th Special meeting on procedures for information exchange (transparency)



Thematic Session on Regulatory Cooperation between Members on Intangible Digital Products

Room D - Hybrid

10:00 - 13:00 20 JUNE 2023

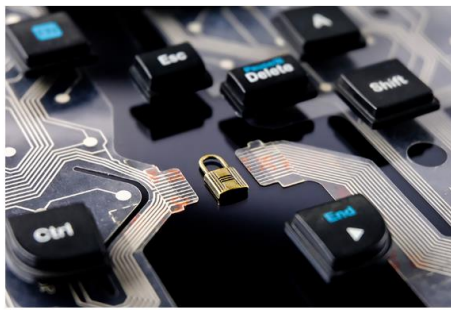
The integration into our daily lives of emerging digital technologies such as Artificial Intelligence (AI), Internet-of-Things (IoT), 3D printers, quantum computing is moving at an extremely rapid pace. The magnitude of their potential impact in all economies and societies – both positively transformative as well as disruptive – is also becoming rapidly clear.

The pace, prevalence and disruptive nature of this process can pose unique challenges to governments, consumers and economic operators, in particular MSMEs. Novel regulatory solutions may thus be needed to ensure the benefits of these technologies can be harnessed while their risks mitigated. Regulatory cooperation may also be particularly important for, among others, ensuring that regulatory interventions in this area do not unnecessarily restrict trade.

This session intends to explore regulatory challenges in this area, and how the WTO TBT Agreement (and the work of the TBT Committee) can assist governments and other stakeholders in developing novel regulations and standards that are fit-for-purpose to both safeguard consumers and facilitate trade in an emerging global digital economy where the boundaries of the tangible and intangible are becoming increasingly blurred.

This session will aim to address the following guiding questions:

- ▣ *What are the challenges and opportunities for trade in intangible digital products? How can standards, technical regulations and conformity assessment procedures help address these challenges and harness these opportunities?*
- ▣ *What is the impact of regulatory interventions on MSMEs in the area of trade in intangible digital products? How to ensure MSMEs are not disproportionately affected by such regulations, and what role can the TBT Committee play in this regard?*
- ▣ *What opportunities exist for regulatory cooperation and standards development between Members and stakeholders (both within and outside the WTO) in the area of emerging digital technologies and how can such cooperation help in avoiding unnecessary regulatory fragmentation in this area?*



Thematic Session on Regulatory Cooperation between Members on Cybersecurity

Room D - Hybrid

15:00 - 18:00 20 JUNE 2023

The thematic session will provide an opportunity to explore the role of technical regulations, standards and conformity assessment procedures in contributing to Members' policies to address cybersecurity threats. The discussion is expected to focus on what are the current approaches in managing cybersecurity risks and what are the opportunities for regulatory cooperation in this area.

This session will aim to address the following guiding questions:

- ▣ *What are the challenges and opportunities of trade and regulation of cybersecurity?*
- ▣ *How do the disciplines and principles under the WTO TBT Agreement contribute to effective trade policies to ensure cybersecurity? What role can the TBT Committee play?*
- ▣ *What best practices should guide the development and implementation of regulations in this area? What role can international standards play in this regard?*

Key messages



1. The WTO is becoming a key forum for international trade policy cooperation on digital products (incl. AI, cybersecurity and beyond), amplifying the important work of international standardizing bodies.
2. TBT Agreement disciplines support interoperability and help avoid regulatory fragmentation that may unnecessarily hinder trade in digital (incl. AI-enabled) products. Also key: TBT's "*enhanced transparency*"
3. Regulatory cooperation encouraged by the TBT Agreement can help address some of the challenges and risks associated with the development and use of digital/AI-enabled products.

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