

The Transparency Principle and an Early Warning System to Overcome Information Barriers to Trade

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Abstract

Transparency is a core principle of the World Trade Organization – WTO, which includes the objective to reduce technical barriers to global commerce. Country members of this international organization presume that the Agreement on Technical Barriers to Trade provide the exporters greater expectation security related to their investments in manufacturing of goods, on account of containing detailed transparency obligations and for requiring notifications of new regulatory measures. This paper results from bibliography and documentary research on technical barriers to trade and on the Brazilian experience. It examines how the flow of information on foreign technical requirements to be complied by exporters is a question of competitive market access. It is expected to contribute to the analysis and identification of market access difficulties and its qualitative impact on competitiveness. It is also hoped that this study increases the knowledge of how the transparency principle can positively affect exports.

Key words: Transparency, Information, Competitiveness & Technical Barriers

1 Introduction

All countries require that imported goods comply with the normative legislation that applies to local products for both consumer health and safety. Despite the fact these requirements are being applied by governments for legitimate reasons, such regulatory measures could in practice become barriers to trade. These barriers arise if regulations differ from country to country. Exporting companies have to guarantee in such situations that the products attend to different technical requirements by increasing their costs.

Many disputes and commercial difficulties that are observed in the World Trade Organization (WTO) derive mostly from embargoes related to technical aspects. The Agreement on Technical Barriers to Trade (hereafter TBT) defines rules and obligations to country members of the WTO with regard to the development and application of normative measures which affect quality and commerce of the products. These norms include among others: (1) technical regulations; (2) standards, and; (3) conformity assessment procedures, including tests and certifications that reflect the compliance of the products with technical requirements.

Indeed, exportation perspectives for new manufactured goods demand a systematic study of the difficulties and the potentialities of the global market concerning international norms and specifications of quality that are peculiar to each nation, considering

adequate measures to ensure the promotion of foreign commerce.

Transparency is an essential principle in many WTO agreements, TBT included. The capacity of governments to exchange information on items such as standards, technical regulations and conformity assessment procedures, improving mutual confidence, strengthens the stability of the multilateral trading system and helps to reduce commercial barriers. For this purpose, each WTO country member must operate a TBT central authority responsible for enquiries and notifications of relevant normative measures, and still obtain similar information from other countries.

We hereby assess how transparency is operated by a notification system (relating the information on technical requirements applicable to the manufacturing to the circulation of products through WTO country members in the context of the TBT Agreement) can open opportunities for companies to innovate, and mainly to obtain access to all markets, in their search for competitiveness for its exports.

Thus, a medium term strategic vision that takes into consideration an opportunity-effect with regard to the transparency of technical demands originating from the regulation processes in foreign countries has set in.

We will try to understand how the knowledge of the transparency principle and its use is a

competitive way of access to external markets, and as such which should be evaluated by industrial executives, government officials and academic experts.

Objectives

Technical requirements specified in normative documents (technical regulations, standards and conformity assessment procedures) are the basis of international trade, so as to establish a common compromise amongst countries to ensure that no kind of product will cause risk to the environment or consumers. The multiplicity of existing approaches made by the countries makes it difficult for companies to adjust their production to international demands, the latter eventually running into technical barriers to trade as a result.

Considering the different objectives applied by different national policies to guarantee quality for consumers in terms of health, security and environment, moreover their potential as a determining factor in the competitive access to foreign markets; here we investigate how the transparency principle enhances competitiveness to external market access.

In order for investments to be planned for the future, both business sectors and governments need guarantees that their trading partners apply the rules agreed at international level. The means by which the WTO achieves this goal is through two different mechanisms, that impact on the trade policies and practices of country members: multilateral review (appreciation and evaluation) and transparency (notification).

Therefore it seems clear that for a country to benefit from the multilateral trading system, it is necessary to understand the purpose and advantages of a more transparent, global, and open participation in decisions about commercial rules, especially in the processing of trade policies in other countries.

In this sense, the general objective of this work is to make a revision of the concept of the transparency principle within the rules of international trade. Bearing in mind the specificity of this study, it is focused on the theory of the transparency principle, especially when applied to technical requirements for products.

Consequently, it is expected that the present paper contributes for a deeper understanding of the transparency principle's potentialities to promote in business circles a more fertile environment for the differentiation and innovation of products in export quality management.

2 Methodology

Referring to the TBT Agreement, the research effort is concentrated on international documents (peer reviewed information) to guarantee the accuracy of the TBT text and the common understanding of its provisions. However, it is also worth mentioning that official interpretations of international trade

agreements do not exist, being the harmonized understanding on many points, a prerogative that arises from disputes settlement cases (panels) in the scope of the Dispute Settlement Body in the WTO. Indeed, definitions on technical barriers to trade have a trend to be diffuse, incomplete and difficult to apply in practice.

3 RESULT

3.1 Revision on transparency: essential principle to trading system

Among the constitutional principles of the General Agreement on Tariffs and Trade (GATT, 1947), it is important to point out the most favored nation, the national treatment, the general elimination of quantitative restrictions and the transparency principle, the latter, doubtless, one of the foundation pillars of the global trading system.

It is valuable to note that this trading principle does not apply only to goods but embodies services, and in an ample spectrum, includes intellectual property, antidumping, agriculture, and technical barriers in a broad sense, to mention extremely sensible subjects.

In this sense, the objective in this topic is to look into the transparency principle context inside the legal rules of the trading system, which are the outcome of multilateral negotiations. We focus on transparency and orbital rules, applicable to technical requirements.

3.2 The transparency principle and the technical barriers to trade

Transparency is justified for promising to not erect a trade barrier, being as important as reducing them, since it gives business a clearer view of their opportunities. With stability and predictability, investment is encouraged, jobs are created and consumers can entirely enjoy the benefits of competition – diversified choices and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable.

Transparency is, therefore, a basic principle in the context of the multilateral trading system, yet not specifically defined. In essence, the word transparency in the scope of the WTO is used to give sense to one of the central principle of its agreements: the objective is to achieve a bigger rank of clarity, predictability and to make public the information about commercial policies, rules and national regulations. With this goal, the countries must avail themselves of the notifications to implement the concept. One presumes that the notification procedures cover all aspects of a commercial policy.

Indeed, transparency creates trust amongst countries that international legal obligations are being

respected and that benefits are not being undermined. It also facilitates investment and production decisions being made upon identifying foreign market opportunities. Transparency plays an essential role in ensuring security and predictability in market access, by assisting countries – mainly developing and relatively least developed countries – to defend their commercial interests, and in avoiding trade disputes. Nevertheless, transparency alone can not resolve a real conflict of interest.

Transparency is at its core an ethical, social operational principle. Those who wish to avoid allegations of conflicts of interest will act transparently. Those who wish to secure respect for decisions by contracting parties, especially those of a binding nature, must ensure that decisions are transparently determined, not only by the inclusion of all members in the different stages of the process, but equally by not withholding information vital to a fair outcome and the balance of benefits. (...) To a large extent the WTO agreements impose certain obligations on Members in respect of Notifications to be made, in general and specific instances. Moreover, the binding of tariffs and their publication is to ensure predictability and competitive conditions for trade. The so-called grey area measures used as protectionist measures were precisely non-transparent and in violation of the spirit and letter of GATT rules.

The fact is that the provisions on the transparency principle of the GATT time were extended during the Uruguay Round, which created a broad base to ensure multilateral transparency. Such provisions represent negotiated results and are recognized as mechanisms that must be administered to fully prevent problems.

The TBT Agreement extends the international rules and the transparency principle to govern the application of technical regulations, standards and conformity assessment procedures. The main objective of the provisions detailed by the agreement is to guarantee that technical regulations are not formulated and applied by the countries with the intention in creating arbitrary obstacles to trade.

According to the OECD (Organisation for Economic Co-operation and Development, 1992), a distinction drawn between "economic instruments" and "regulatory instruments" is that, in general, economic instruments will have effects more uniform, and less distorting trade effects in a market economy, than regulatory instruments, which affect prices, directly and in a foreseeable way. For this reason, the transparency of regulatory instruments is likely to guarantee more attention than the ones of economic policy instruments.

Precisely, regulation is the activity through which the State bureaucracy legislates in an autonomous way on aspects under its specific competence, that is, by publishing documents that prescribe duties to citizens and companies [7].

Thus, regulation is the materialization of one public policy through a normative diploma, acting with legal force, emanated from a public agency, so as to

establish technical directives and limits for the conduction of some activities. Regulation is one of the only possible tools of economic regulation [Idem].

The regulation is, thereby, legitimate and explicitly authorized, so that those that do not observe its purpose are in fact, in a final analysis, against law.

Indeed, technical regulations, standards, sanitary and phytosanitaries measures, are probably the most important instruments and are decisive factors in the success of public policies implementation, given its relative agility.

Ex-ante notification (before adoption trade-related measures), as required under the terms of the Agreement on Technical Barriers to Trade, could offer the opportunity for third interested Parties, to provide input at the stage of development of such new legislation and time for affected producers to adapt to new regulations. On the contrary, *ex post* notification, which is the norm in GATT, when properly complied with, can go a long way towards meeting the objectives described above.

Transparency, as a principle, was defined in GATT-1947 (Article X), later reinforced by the "Decision on Notification's Procedures" (the Uruguay Round). Its importance is confirmed amongst WTO members and also to the world population, in general. As to the countries, for the reinforcements of multilateral trade systems and, to the society, to bind WTO arrangements on issues like environment, economic development and labor. Thus, transparency, in the external and internal spheres, proves being essential to the WTO's own legitimacy.

The transparency principle constitutes one 'behavior's obligation' on the part of members which are subjected to the obligation to notify. It contributes for a "greater expectations' security", reducing the secret that always facilitates the unilateralism as "reason of State".

Assuming that the decision to export depends on the entrepreneurs' expectation for future profit, their investment decisions on the production could be conditioned to the requirement to foresee the future and, therefore, uncertain of the market for the product specification to be generated by the industrial installation; In normal conditions, the businessman estimates the rate of return of its investment (marginal efficiency of capital) confronting the waited profit, calculated from his vision on the behavior of the variable; such as the product adaptation cost. If this rate of return is satisfactorily higher than the tax for attainment of funds or application of resources in the financial market - that is, the interest rate - then he feels motivated to the investment.

Without looking into deeper details of the economic theory about the instability of the capitalist system, resulting from wavering in the business' expectations with regard to future profit, it is evident the importance of foreseeing the evolution in the determination of variables that have impact on the productive activity. For instance, it is mentioned, the environmental global scanning of standardization of products.

3.3 TBT Enquiry Point: the case of Brazil

In order to ensure transparency of information on technical regulations applied or that are being prepared, the TBT Committee orders country member to abide by the following obligations: a) To establish an enquiry point; and; b) Notify new technical regulations and conformity assessment procedures when the following two circumstances apply: first, a relevant international standard does not exist or the technical content of a proposed measure is not in accordance with the technical content of the standard; and second, the proposed measure may have a significant effect on the trade of other Members.

The main purpose of a notification serves to alert other countries that new regulations, will frequently demand from exporting companies to do changes in their productive process or method.

In the TBT Agreement Article 10.10iii requires a single central government authority to be responsible for notification procedures. Without distinction, more than one notification authority is permitted for legal or administrative reasons, under Article 10.11iv.

The TBT Agreement does not preclude the TBT Enquiry Point and the TBT Notification Authority from being the same body, and there are advantages to be gained if one body undertakes both functions. These include reduced staffing, faster processing due to a reduced need to hand work from one body to another, the benefits of a wider view of the TBT world, and central government only needs to fund one body.

However, for a Member to benefit from its rights as well as its obligations under the Agreement, it is important that the enquiry point and/or notification authority develop a close co-operative relationship with the export and import sectors. The extent to which this basic service is enhanced is dependant on available resources in the state's treasury.

In Brazil, the focal point function (or more commonly enquiry point) concerning the TBT Agreement was delegated to the National Institute of Metrology, Standardization and Industrial Quality – Inmetro, in 1995.

Considering the changes on the international front, the plan was that Inmetro focused on the interface of the activities' areas of the Institute and their relations with foreign trade. It was recognized that the Brazilian enquiry point could be able to become a knowledge locus on the subject and a potential and useful performer of services to the Brazilian exporters. This action would have as its fundamental objective the support to the Brazilian exporting effort, prioritizing its action in the identification and overcoming of technical barriers, as it already occurs in other countries.

In consonance with the strategic directive above mentioned, Inmetro developed a system that embodies a set of services related to better electronic information management on technical requirements in what concerns the TBT.

The Brazilian system embodies the following

service, entirely free, offered through the website of Inmetro: the "Alerta Exportador!" a service through which the subscriber receives, by e-mail, customized information about the proposals of technical regulations notified to WTO. As such, one only needs the completion of an informative register of the contact data and countries and products from which the user desires to receive information.

The moment a notification is published in the WTO in one of the three official languages, namely, Spanish, English or French, the clients of the enquiry point system receive the notice of that publication, in a variable time period between two or four days. This acknowledgement, via electronic message, contains a summary in Portuguese, copy of the attached original notification, and, occasionally, depending on the performance of the notifying enquiry point, the complete text of the proposed technical regulation.

3.4 Considerations on a strategic information system

Peter Drucker, in 1968, stated : “What will distinguish an advanced nation from another one will be the ability to collect, organize, prosecute and disseminate information”. In light of Drucker's thesis, it is worthwhile reinforcing the theory that the differential required by today's global market and advancements in information and communication technologies lies in the ability to collect, organize, prosecute, validate and disseminate information.

In that sense, it is advisable to illustrate an anticipated warning system from the methodological proposal of a strategic information system, i.e. an assembly of computerized tools that permit, by means of handling the data collected by strategic monitoring, the conversion of the same data in information, and the aggregation of knowledge, with the intention to design and create inputs for strategic business intelligence.

It becomes clear, therefore, that an early warning system like 'Alerta Exportador!' is also fundamental for foreseeable focusing and for environment scanning, from competitive intelligence and knowledge management as supportive tools to the decision taking.

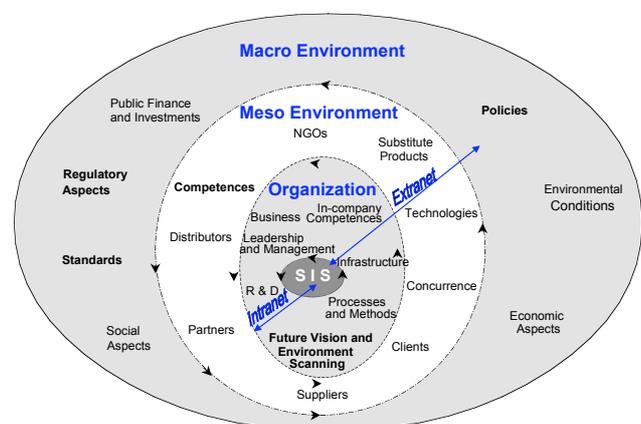


Figure 1 – Methodological proposal for a Strategic Information System (SIS) [2].

4 Discussion

Comments on the Graphic of Canongia (*et al.* 2001) about its relation to environment scanning of standardization

It is time now to see how a strategic anticipated information warning system can empower an organization with the necessary competences to interact with the external environment. As it concerns competitive access to external markets, the graphic above and elements in bold (the authors' highlighting) are held as technical barriers to international commerce.

If we enlarge the borders of the Macro Environment to the sphere of the WTO, the transparency principle allows us to monitor the evolutionary movements of national legislations published and disposed by the notification system. This type of monitoring will prove extremely fundamental if the information collected is employed to contribute towards the formation of intelligence capable of drawing up strategies that will improve competitiveness.

The handling of this information could be done in different ways depending on one's objective the one wants to reach. As such, reflections on the unique nature of the private and public sectors are called for. We shall begin by examining the private sphere.

An organization which sells products in foreign markets will be able to diminish the uncertainty involved in the investment in production, through the environmental monitoring that will eliminate the surprise brought on by the creation of new technical standards. Moreover, it will be able to utilize the information (normative legislation) received from the monitoring in order to adapt its product to the exigencies of foreign markets. The required effort to differentiate the product and conform to external competences, converts the company into a more globally competitive.

For different reasons, the public sector is obliged to keep track of deviations in foreign legislation. It is worth considering at least three of them. The first one it is that regulatory instruments contain technical knowledge, and these as being public documentation, are accessible at lower cost, in contrast to similar documents of technical information. As example of these latter, the technical norms that are protected by intellectual property rights and, consequently, they are sold. A prospecting about the certain already existing knowledge saves work in the formulation of the national politics that bring welfare for society through the standardization of products.

A pro-active dissemination of information through the electronic management of notifications permits to the industry to examine and comment on foreign normatives that can erect technical barriers to exports. With this approach, it is waited to be defending and promoting the interests of the national

industry and to argue against regulatory measures in disagreement with the international treaties.

A least target could still remain for public agents regarding to this vigil of foreign regulatory measures. Making use of statistical tools, they could show a result of general trend for standardization of goods. A sign that would demonstrate the necessity to modernize national technical regulations in order to raise the domestic production's quality to a world class level.

5 Concluding Observations

This study on how to systematize the transparency principle in a way to create a positive effect on competitiveness of exports overcoming technical barriers leaves room for final observations.

The transparency principle is meant to be operated and monitored as a strategic information system, which understands the foreign market as a path to innovation and competitiveness.

With the quick changes observed in current times, it is even more and more important to observe the tendencies of the demand in prospecting exercises. Knowing the real requirements of the final consumer and their socio-economic needs is a base for any prospective research work, in the present world economic system.

The notification system in the TBT Committee is a means by which one operates the transparency principle capable of showing evolutionary movements of legislative and regulatory processes and of predicting eventual impacts on the manufactured goods' industry in a hypothetical horizon compatible with the stated periods of maturation of typical investments.

"Alerta Exportador!" is an early warning system by which exporters can be duly informed of the notifications directed to the WTO of new proposals of technical regulations in countries and products selected. This system, apart from maintaining a continuous relationship between Inmetro and companies, helps us encounter markets whose regulations foresee the tending and emergent norms in other localities, and allows both parties to carry out joint-efforts to innovate and differentiate products.

Inmetro's experience as Brazilian Enquiry Point for WTO's Committee on Technical Barriers to Trade enabled a strengthening of the institute to deal with trade promotion and support exports, especially when it depends on compliance of mandatory technical requirements. The design and development of a bunch of public electronic services, mainly an early warning system, has provided so far a pro-active approach to overcome information barriers related to market access. The management and continuous improvement of such activities can play a fundamental role in a direction that would helpfully allow developing countries to pave the way for policy proposals in addressing competitive foreign trade.

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