

TBT Provisions in RTAs: Do they go beyond the TBT Agreement?

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Motives and Objectives

- TBT issues have drawn more and more attention since the WTO was founded in 1995.
 - 116 new concerns were raised in the TBT Committee till the end of 2004.
 - 337 new concerns were registered in 10 years since 2005.
- In the same period, the proliferation of RTAs has also been observed.
- Questions related to the TBT provisions in RTAs:
 - whether they differ from the WTO TBT Agreement
 - whether they entail broader commitments

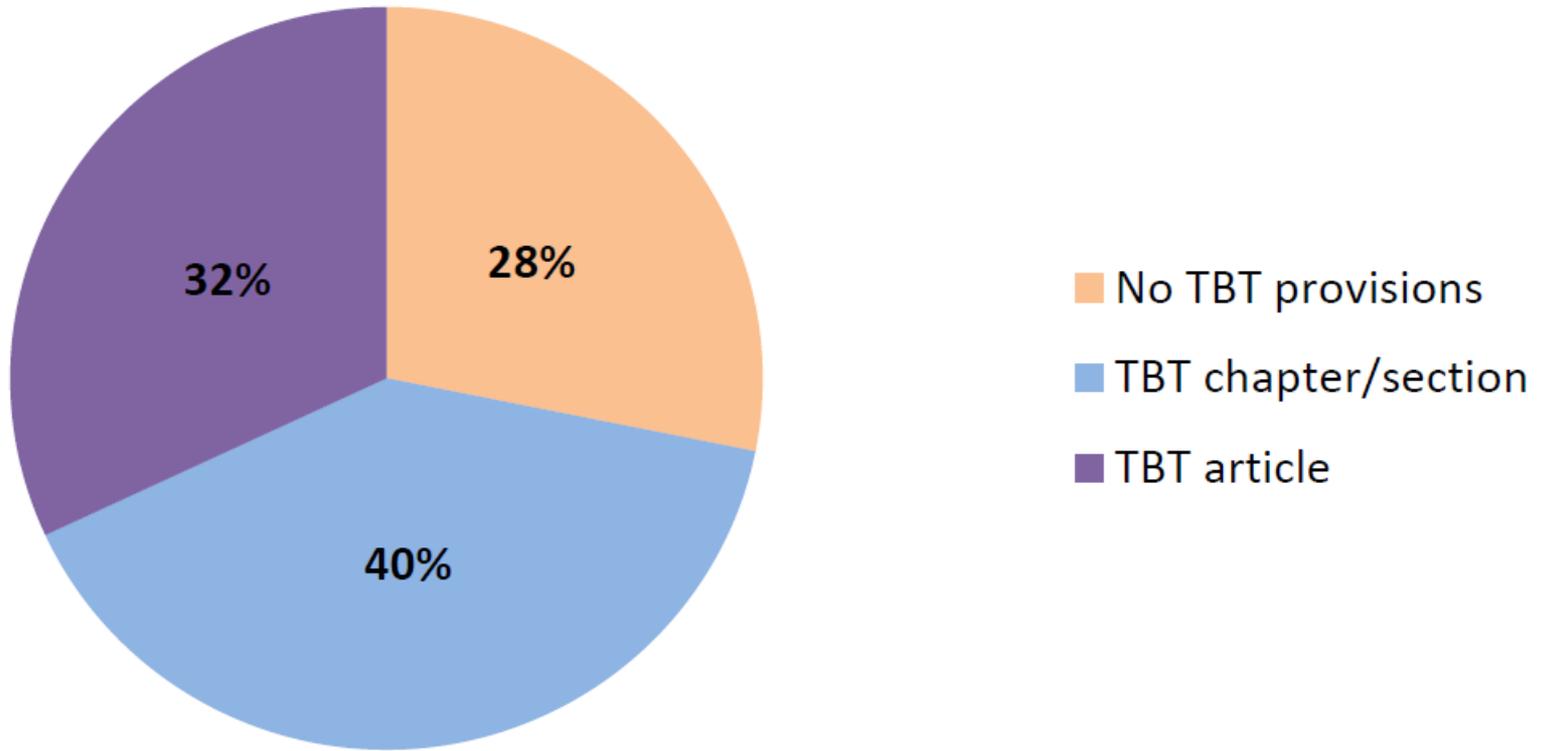


What we have looked into...

- All 250 RTAs that are in force and notified to the WTO as of December 2014.
- 12 RTAs excluded from the examination because they were superseded by subsequent RTAs. (e.g. EEA).
- 238 remaining RTAs, plus their related protocols, annexes, side letter, and other legal instruments
- Purely legal text examination, no inference of implementation
- Other bilateral TBT cooperation agreements were not included.



Overview of the agreements

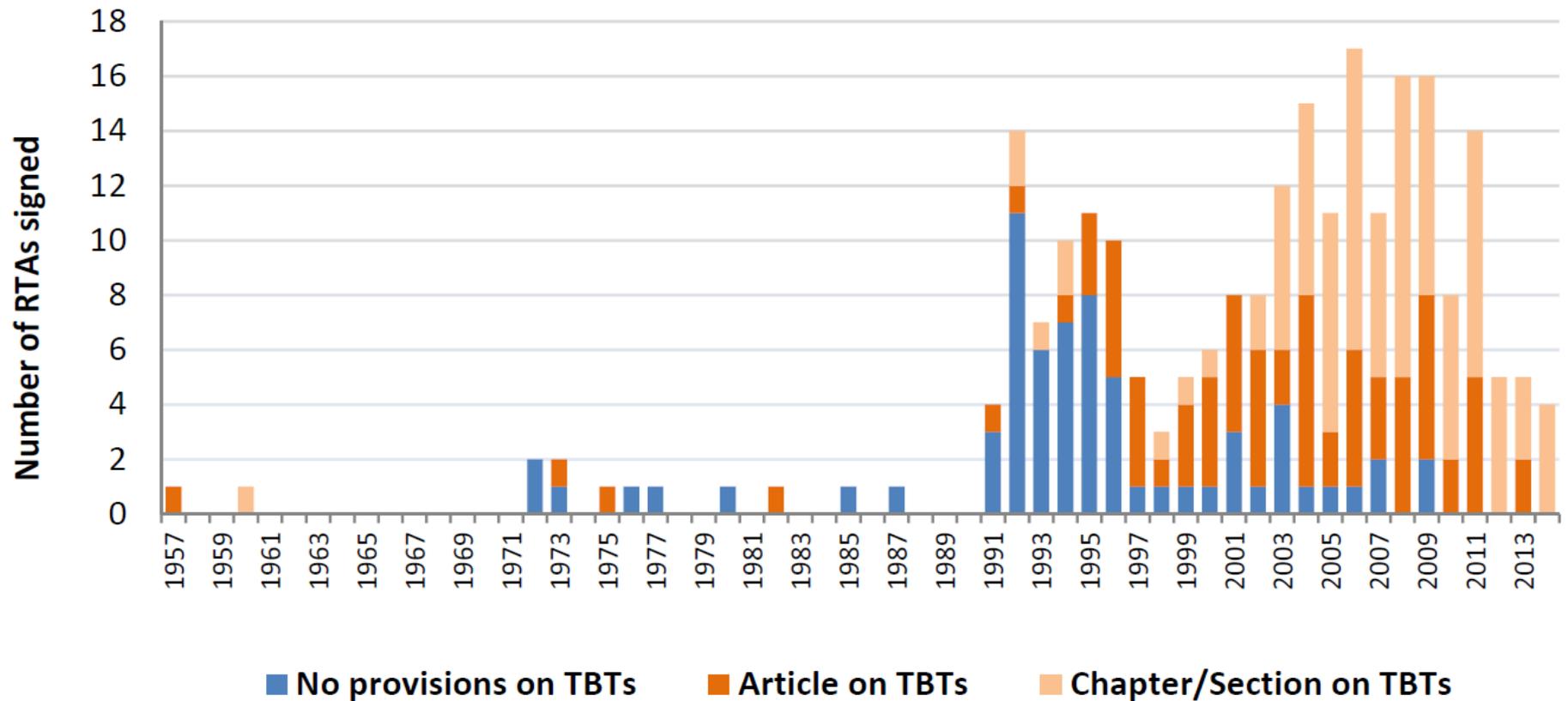




- TBT inclusion into RTAs has become more systematic since 1997.
- All RTAs after 2010 have TBT provisions.
- Until 2002, the majority of RTA included single articles on TBT
- Since 2003, on average 72% of the RTA signed each year, TBT provisions were provided in a separate chapter/section.
- A TBT chapter/section (than an article) can not be used as a proxy to characterize the “depth” of the provisions in the agreement



TBT provisions in RTAs





- Few RTAs with commitments go beyond the TBT Agreement.
- 88% (150) of the RTAs covered all three measures in TBT Agreement.
 - 40 RTAs covered metrology;
 - 12 RTAs also covered authorization procedures to sell goods.
- Only 8% (14) of the RTA covered less measures than those of the TBT Agreement.



Provision covered	TBT Chapter/Section	TBT Article	Total	Percent
standards, technical regulations and conformity assessment procedures	66	44	110	64.3
standards, technical regulations, conformity assessment procedures and metrology	16	12	28	16.4
standards, technical regulations, conformity assessment procedures, metrology and authorization procedures	7	5	12	7.0
technical regulations and conformity assessment procedures	1	1	2	1.2
technical regulations and standards	0	8	8	4.7
conformity assessment procedures	3	0	3	1.8
technical regulations	1	0	1	0.6
not specified	1	6	7 ^a	4.1



Recap: TBT Agreement

- Evolved from the “Standards Code” agreed in the Tokyo Round, and became a multilateral agreement in 1994.
- Covers three measures:
 - Technical regulations
 - Standards
 - Conformity assessment procedures
- Objectives
 - Ensure that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to international trade
 - Allow members to pursue other legitimate policy objectives

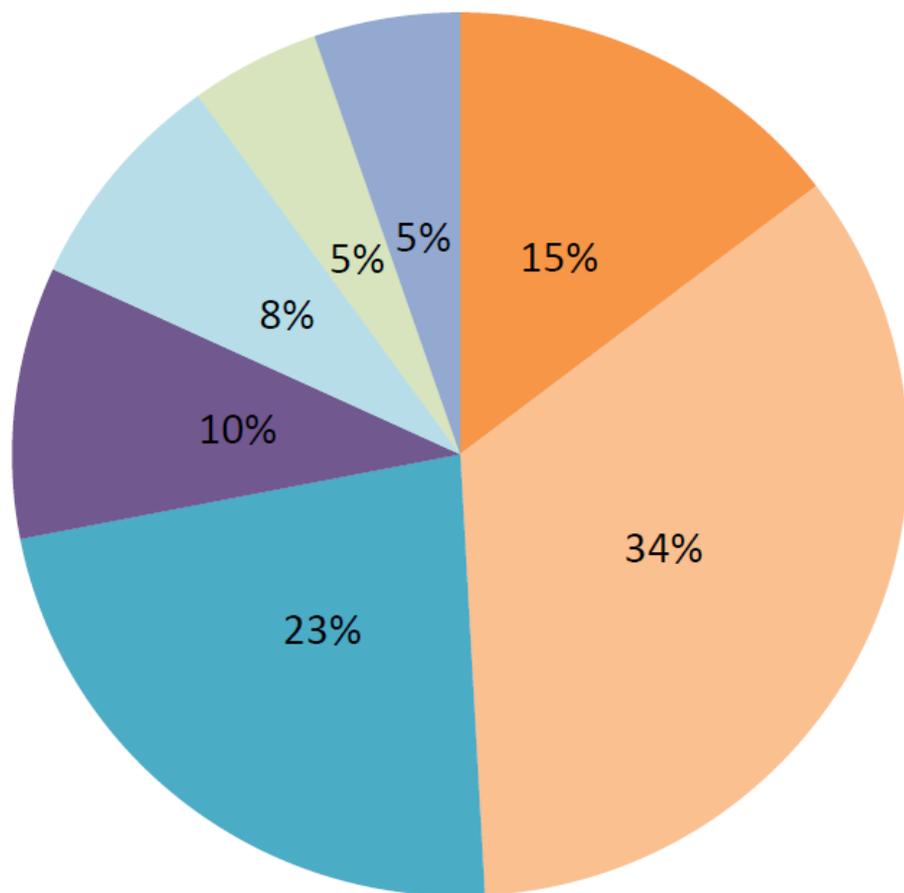


- Principles in the TBT Agreement
 - Non discrimination
 - Avoidance of unnecessary obstacle
 - Using international standards
 - Accepting equivalence
 - Performance-based regulations
 - Accepting conformity assessment results
 - [Suppliers' declarations]
 - Harmonization
 - the establishment, recognition and application of common measures by different countries
- Transparency requirement

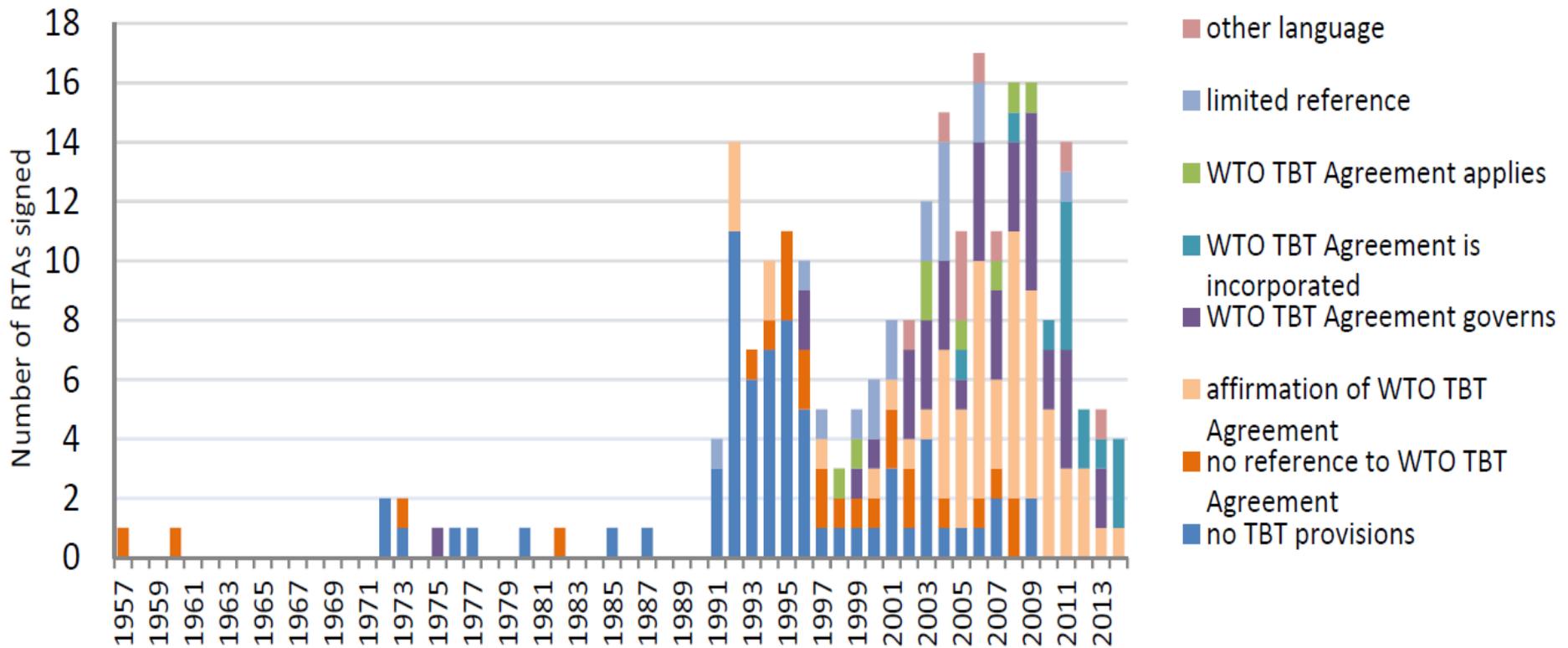


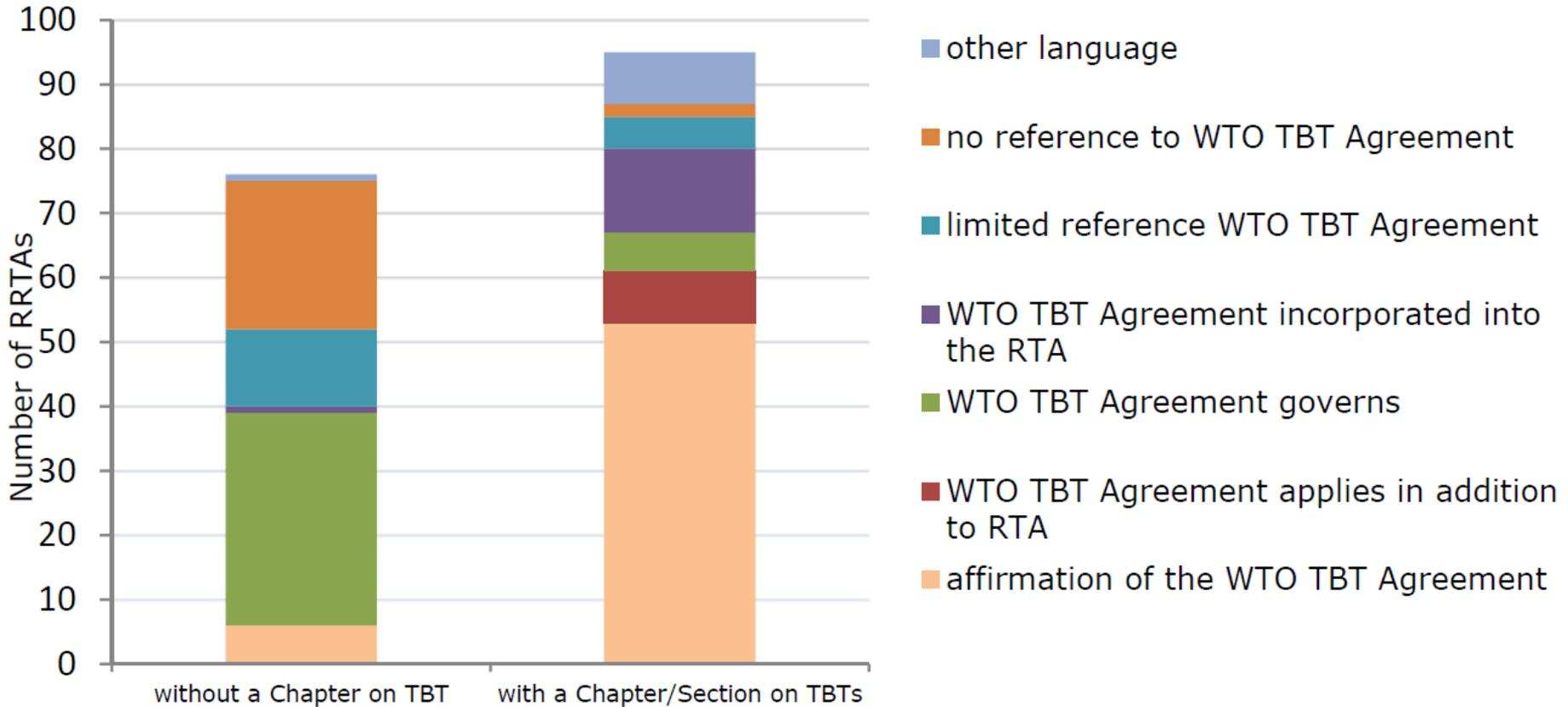
What we found...

- 85% of the 171 RTAs with TBT provisions refer to the TBT Agreement.
- Language used for referring the TBT Agreement varies:
 - Affirmation of the TBT Agreement
 - TBT Agreement governs
 - TBT Agreement incorporated into the RTA
 - TBT Agreement applies in addition to RTA
- All WTO Members are bound by the TBT Agreement.



- no reference to WTO TBT Agreement
- affirmation of the WTO TBT Agreement
- WTO TBT Agreement governs
- limited reference WTO TBT Agreement
- WTO TBT Agreement incorporated into the RTA
- WTO TBT Agreement applies in addition to RTA
- Other language





- Commitment to TBT Agreements are reinforced.



What's more?

- Whether commitments to harmonization and accepting equivalence differ and are broader than those under the TBT Agreement
 - Technical regulations
 - Conformity assessment procedures
- TBT Agreement encourages harmonization and accepting equivalence.
 - Harmonization: requires a common legislative framework
 - Equivalence: complementary approach to harmonization



Technical regulations harmonisation

- 21 per cent (51 of 238) of RTAs have this provision, but the wording and depth vary.
- In some cases, (e.g. agreements concluded by the EU), they specify that the harmonization of technical regulations is to be based on the regulations of one of the parties.
- Language varies:
 - the parties **commit** to harmonize or align their respective technical regulations;
 - the parties **commit when possible** to harmonize technical regulations among them;
 - the parties **are encouraged** to harmonize their technical regulations.



- the parties commit to harmonize or align their respective technical regulations
 - RTAs involve mainly those concluded in recent years by the EU with candidates or potential candidates for accession to the EU (e.g. EU-Georgia or EU-Moldova), and RTAs aiming to establish a customs union.
 - The parties agree to establish a common policy for technical regulations, but do not specify whether harmonization must follow international standards or regional standards.



- The parties commit when possible to harmonize technical regulations among them.
 - reinforce the commitment by the parties to use international standards to develop their rules and reach a certain level of harmonization among them
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 - EU – Korea FTA has stronger commitment to harmonization



- The parties are encouraged to harmonize their technical regulations.
 - encouraged to harmonize, reduce differences or cooperate through the harmonization of their respective technical regulations, using international standards, and in certain cases using the respective legislation of the other parties.
 - Some RTAs refer explicitly to international standards, others promote European standards



Technical regulation equivalence

- 41 RTAs explicitly replicate or mirror the commitment in the TBT agreement.
- 13 RTAs (5%) go beyond the TBT Agreement
 - Parties agree to accept as equivalent the technical regulations of the other party when the same policy objectives are met.
 - RTAs are the same, to a large extent, as the ones in Group 2 of previous section.
- 47 RTAs (20%) provides that the importing party must explain the reasons for not accepting as equivalent a technical regulation of the other party.



CA Harmonization

- The TBT Agreement encourages to use international guidelines or recommendations.
- Differing from the TBT Agreement implies that RTA parties harmonize their CA procedures.



Recognition of CA results

- The TBT Agreement encourages to accept equivalence. Mutual recognitions of CA results go beyond the TBT Agreement.
- 11 RTAs contain provision on mutual recognition of CA results.
 - Except for the customs union RTAs, other RTAs containing mutual recognition provision were signed after 2000 and involve mainly agreements in the Asia-Pacific region.
 - Japan – Thailand (2007), Japan – Philippines (2006), Korea – Singapore (2005), India – Singapore (2005), Singapore – Australia (2003), Japan – Singapore (2002), New Zealand – Singapore (2000).

- Transparency is one of the key principles of the TBT Agreement, and also one of the more frequent types of TBT provisions found in RTAs.
- About half (121) of all RTAs contain at least one related provision.



- Transparency provisions include:
 - Notifications (to the WTO and under the RTA)
 - Comment on draft regulations
 - **Publication of answers to comments from third parties**
 - 25 RTAs specify that the answers (or a summary) to significant comments have to be made available publically.
 - Some RTAs (e.g. China – New Zealand) include provisions that specify that the parties must explain the reasons for not accepting the comments.
 - Period between adoption date and date of application



To sum up:

- Only a minority of RTAs differ from the TBT Agreement by using more stringent wording and imposing broader commitments seeking to facilitate trade between the parties.
 - Only 6 per cent of all RTAs require the harmonization of technical regulations and conformity assessment procedures among the parties.
 - Only 5 per cent of all RTAs require that a party recognizes as equivalent the technical regulations of the other party.
 - Only 5 per cent of all RTAs make commitments with respect to the recognition of conformity assessment results.

Thank you