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Committee on Technical Barriers to Trade

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IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE

COMMUNICATION FROM THE GOVERNMENT OF SOUTH AFRICA

Revision

The following statement under Article 15.2 of the Agreement on Technical Barriers to Trade is hereby submitted by the delegation of South Africa.

1 TRANSPARENCY

1.1 GOVERNMENT AUTHORITY

1.1. In accordance with the WTO Agreement on Technical Barriers to Trade (TBT) Article 10.10, the South African National Department of Trade and Industry, (the dti), has the overall responsibility to ensure compliance with South Africa's obligations under the TBT Agreement by National Government Departments with regulatory authority through national legislation and their regulatory bodies and institutions, as well as the domestic institutions forming the National Technical Infrastructure. The National Technical Infrastructure consists of the dti, the South African Bureau of Standards (SABS), the National Regulator for Compulsory Specifications (NRCS), the National Metrology Institute of South Africa (NMISA) and the South African National Accreditation System (SANAS).

1.2. The right of the South African public to national security, health, safety, environmental protection and protection against deceptive practices is entrenched in the Constitution of the Republic of South Africa. Although the TBT Agreement was never published in any official Government Gazette or incorporated in any domestic legislation, the Minister of Trade and Industry, duly authorised by, His Excellency, former President of the Republic of South Africa, Nelson Rolihlahla Mandela, signed an Instrument of Acceptance of the Marrakesh Agreement Establishing the World Trade Organization and the Final Act of the Uruguay Round including the TBT Agreement on 2 December 1994. The Marrakesh Agreement Establishing the World Trade Organization and the Final Act of the Uruguay Round including the TBT Agreement, were approved and ratified by the South African Parliament on 6 April 1995. South Africa is not a party to the Vienna Convention on the Law of Treaties, but recognises the provisions of the Convention through South African customary law. The TBT Agreement attained legal status in South Africa in terms of section 231 of the Constitution of the Republic of South Africa adopted by the Constitutional Assembly on 11 October 1996, certified by the Constitutional Court on 4 December 1996, and entered into force on 4 February 1997. The WTO Agreements including the TBT Agreement is not directly enforceable through South African law, except where it has been incorporated into domestic legislation. However, the Department of Trade and Industry in cooperation with the South African Bureau of Standards (SABS) oversee that the obligations under the TBT Agreement are adhered to.

1.3. Although South African Regulators have a right to regulate for legitimate purposes in terms of South African domestic legislation and the WTO TBT Agreement, technical regulations and conformity assessment procedures should not create unnecessary obstacles to international trade. An Interdepartmental Coordination and Advisory Committee on Technical Barriers to Trade had

been established in South Africa to support the implementation, operation and administration of the WTO TBT Agreement. The main objective of the Interdepartmental Coordination and Advisory Committee on technical Barriers to Trade is to promote cooperation and coordination with regard to South Africa's rights and obligations in terms of the TBT Agreement and regulatory policy development between the dti, Government Departments with regulatory authority, their regulators and the National Technical Infrastructure.

1.2 ENQUIRY POINT AND NOTIFICATION POINT

1.4. The dti serves as South Africa's notification point, but the Economic Impact and Intellectual Property Department, (formerly the Standards Information Centre) at the SABS was appointed as the WTO TBT Enquiry Point in South Africa by the dti. Contact details for WTO TBT matters are as follows:

The Director: Market Access
Trade Negotiations
International Trade and Economic Development Division
Department of Trade and Industry
Private Bag X84
PRETORIA
0001
South Africa
Website: <http://www.thedti.gov.za/>
Tel.: +27 12 394 9500
Fax: +27 12 394 9501
Email: KNkuna@thedti.gov.za

1.5. The WTO TBT Enquiry Point at the SABS is responsible for the functions of an enquiry point in terms of Article 10.1 of the TBT Agreement and as recommended by the TBT Committee in the triennial reviews of the TBT Agreement contained under point 4.5 of the "Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995" in document G/TBT/1/Rev.12 of 21 January 2015, pages 34 to 37. The South African WTO TBT Enquiry point contact details are as follows:

The South African WTO/TBT Enquiry Point
Economic Impact & IP Department
South African Bureau of Standards
1 Dr Lategan Road
Groenkloof
Private Bag X191
Pretoria 0001
South Africa
Website: <http://www.sabs.co.za>
Tel.: +27 12 428 6229
Email: wto@sabs.co.za

Contact Person:
Ms. Dineo Hexana
Tel: + 27 12 428-6229
E-Mail: wto@sabs.co.za

2 DEVELOPMENT AND APPLICATION OF TECHNICAL REGULATIONS AND CONFORMITY ASSESSMENT PROCEDURES

2.1 PUBLICATIONS

2.1. Notices of technical regulations and conformity assessment procedures made by the regulators of South African Government Departments and the NRCS are published in the South African Government Gazette. Notices on standards are published monthly in the SABS Official Information, supplement to the SABS Bulletin, and the WTO is notified in accordance with Article 10.6 of the TBT Agreement.

2.2 Time Allowed For Comments

2.2. As recommended by the TBT Committee, a minimum period of at least 60 days is generally allowed for comments before the adoption of draft technical regulations and conformity assessment procedures, with exception for certain cases (depending on urgency consideration) where this period could be extended or reduced.

2.3 Adoption of a measure

2.3. Technical regulations and conformity assessment procedures are usually adopted after the consideration of comments from interested parties during the comment period and publication of the adopted measure in the Government Gazette. In accordance with the 2001 WTO Ministerial Decision on Implementation-related Issues and Concerns¹ and the decision of the TBT Committee, the period between the publication of adopted technical regulations and conformity assessment procedures and their entry into force, is usually a period of six months, except for measures that require earlier implementation for urgent legitimate reasons.

2.4 OTHER NATIONAL AUTHORITIES AND AGENCIES: SOUTH AFRICAN TECHNICAL INFRASTRUCTURE INSTITUTIONS

2.4. Although the TBT Agreement is not directly enforceable through South African law, the technical infrastructure provides the essential framework for implementation of the TBT Agreement. The technical infrastructure also provides for the industry and government to maintain domestic and foreign confidence in South African goods and services. It is the key to enhancing global competitiveness. International trade could not take place without the necessary support of the technical infrastructure. In South Africa, the technical infrastructure institutions include:

- the South African Bureau of Standards (SABS), which is responsible for the development of standards;
- the National Regulator for Compulsory Specifications (NRCS) which administers and enforces compulsory specifications (technical regulations) for the right of the public to health, safety, environmental protection and protection against deceptive practices;
- the South African National Accreditation System (SANAS), which formally recognizes the technical competence of a conformity assessment services provider; and,
- the National Metrology Institute of South Africa (NMISA), which is responsible for the maintenance, traceability and dissemination of national measurement standards.

2.5. The table below lists technical infrastructure and their contact details.

The South African Technical Infrastructure Institutions

Institution	Mandate	Contact Details
South African Bureau of Standards (SABS)	Development of Standards, tests and certify products against standards	1 Dr Lategan Road Groenkloof Pretoria Private Bag X191 Pretoria 0001 Tel : +27 12 428 7911 Fax: +27 12 428 7889 Email: wto@sabs.co.za Website: https://www.sabs.co.za

¹ WTO document WT/MIN(01)/17, 20 November 2001, para. 5.2

Institution	Mandate	Contact Details
National Regulator for Compulsory Specifications (NRCS)	Administer and enforce compulsory specifications and legal metrology technical regulations	SABS Campus 1 Dr Lategan Road Groenkloof , Pretoria PO Box: NRCS Private Bag X25, Brooklyn 0075 Tel: +27 12 482 8700 Website: http://www.nrcs.org.za
South African National Accreditation System (SANAS)	Formally recognises the technical competency of a conformity assessment service provider	Private Bag X23 Sunnyside Pretoria 0132 South Africa Tel: +27 12 394-3760 Fax: +27 12 394-0526 Website: http://www.sanas.co.za
National Metrology Institute of South Africa (NMISA)	Responsible for the maintenance, traceability and dissemination of national measurement standards	Private Bag X34 Lynnwood Ridge Pretoria 0040 South Africa Tel: +27 12 841 4152 Fax: +27 12 841 2131 E-mail: info@nmisa.org Website: http://www.nmisa.org

National Government Departments with regulatory authority through national legislation containing provisions that support the implementation and administration of the TBT Agreement

National Government Department responsible	Principal Legislation ² providing regulatory authority in support of the TBT Agreement	Contact Details
Department of Trade and Industry (the dti)	Accreditation for Conformity Assessment, Calibration and Good Regulatory Practice Act, Act No. 19 of 2006; Consumer Protection Act, Act No.68 of 2008; Measurement Units and Measurement Standards Act, Act No. 18 of 2006 Merchandise Mark Act, Act No. 17 of 1941; National Building Regulations and Building Standards Act, Act No. 103 of 1977; National Regulator for Compulsory Specifications Act, Act No.5 of 2008 Standards Act, Act No 8 of 2008. Legal Metrology Act, Act No. 9 of 2014 Intellectual Property Act No. 28 of 2013 Gambling Act (Act No. 7 of 2004)	Private Bag X84 Pretoria 0001 South Africa Tel: +27 12 394 9500 Fax: +27 12 394 9501 Website: http://www.thedti.gov.za

² The principal Acts listed may have been amended by amendment Acts.

National Government Department responsible	Principal Legislation ² providing regulatory authority in support of the TBT Agreement	Contact Details
Department of Agriculture, Forestry and Fisheries	Agricultural Product Standards Act, Act No. 119 of 1990; Fertilizers Farm Feeds, Agriculture Remedies and Stock Remedies Act, Act No. 36 of 1947; Genetically Modified Organisms Act, Act No. 15 of 1997; Liquor Products Act, Act No. 60 of 1989 Plant Improvement Act (Act No. 53 of 1976) Plant Breeders' Rights Act (Act No. 15 of 1976) Animal Diseases Act, 1984 (Act No. 35 of 1984) NRCS Act, 2008 (Act No. 5 of 2008)	Private Bag X250 Pretoria 0001 South Africa Tel: +27 12 319 6000 Fax: +27 12 319 6000 Website: http://www.daff.gov.za/
Department of Health	Health Act (Act No. 63 of 1977) Foodstuffs, Cosmetics and Disinfectants Act, Act No. 54 of 1972; International Health Regulations Act (Act No. 28 of 1974) Hazardous Substances Act, Act No. 15 of 1973; Medicines and Related Substances Control Amendment Act, Act No. 90 of 1997 Tobacco Products Control Amendment Act, Act No. 12 of 1999. NRCS Act, 2008 (Act No. 5 of 2008)	Private Bag X828 Pretoria 0001 South Africa Tel: +27 12 395 8000 or 395 9200 Fax: +27 12 395 9019 Website: http://www.doh.gov.za
Department of Labour	Occupational Health and Safety Act, Act No. 85 of 1993 NRCS Act, 2008 (Act No. 5 of 2008)	Private Bag X117 Pretoria 0001 South Africa Tel: +27 12 309 4000 or 309 5000 Fax: +27 12 320 2059 Website: http://www.labour.gov.za
Department of Environmental Affairs	National Environmental Management Act, Act 107 of 1998 National Environmental Management Air Quality Act (Act No. 39 of 2004) National Environmental Management Protected Areas (Act No. 57 of 2003 as amended) National Environment Management Biodiversity Act (Act No. 10 of 2004)	Private Bag X447 Pretoria 0001 South Africa Tel: +27 12 399 9000 Fax: +27 12 359 3625 Website: http://www.environment.gov.za

National Government Department responsible	Principal Legislation ² providing regulatory authority in support of the TBT Agreement	Contact Details
Department of Transport	National Land Transport Act, Act No. 5 of 2009 National Road Traffic Act, Act No. 93 of 1996 Civil Aviation Act No. 13 of 2009 Merchant Shipping Act (Act No. 57 of 1951) South African Maritime Safety Authority Act (Act No. 5 of 1998) National Railway Safety Regulator Act (Act No. 16 of 2002) NRCS Act, 2008 (Act No. 5 of 2008)	Private Bag X193 Pretoria 0001 South Africa Tel: +27 12 3093000 Fax: +27 12 328 3370 Website: http://www.transport.gov.za
Department of Energy	Gas Act, Act No. 48 of 2001 Petroleum Products Act No. 120 of 1977 Nuclear Regulation Act No. 47 of 1999 Electricity Act, 1987 (Act No. 41 of 1987) Electricity Regulation Act No 4 of 2006	Private Bag X19 Arcadia Pretoria 0001 South Africa Tel: +27 12 444 4000 or 444 4253 Fax: +27 12 444 4502 Website: http://www.energy.gov.za
Department of Communications	Broadcasting Act, Act No. 4 of 1999 Electronic Communications Act, Act No. 36 of 2005 Telecommunications Act, Act No. 13 of 2000	Tshedimosetso House 1035 Frances Baard & Festival Street Hatfield, Pretoria 0083 Tel: +27 12 473 000 Website: http://www.doc.gov.za
Department of Mineral Resources	Mineral and Petroleum Resources Development Act, 2002, Act No. 28 of 2002	Private Bag X59 Arcadia 0007 South Africa Tel: +27 12 444 3000 Website: http://www.dmr.gov.za
Department of Water and Sanitation	National Water Act (Act No. 36 of 1998) Water Services Act (Act No. 108 of 1997)	Private Bag X313 Pretoria 0001 South Africa Tel: +27 12 336 7500 Fax: +27 12 336 8664 Website: http://www.dwa.gov.za
Department of Telecommunications and Postal Services	Independent Communications Authority of South Africa Act (Act No. 13 of 2000)	Private Bag X860 Pretoria 0001 South Africa Tel: +27 12 427 8000 Fax: +27 12 427 8011 Website: http://www.dtps.gov.za

2.6. Some of the above listed national departments have statutory agencies that carry out specific regulatory functions. These activities are the administration of technical regulations, the development of technical regulations for approval by the relevant minister, participation in international standards and technical regulation activities, market surveillance, inspections and enforcement. The agencies include among others, the SABS, the Civil Aviation Authority (CAA), the South African Maritime Safety Authority (SAMSA), the Railway Regulator (RSR), the National Energy Regulator (NERSA), Independent Communications Authority of South Africa (ICASA) and the Medicines Control Council (MCC).

3 INTERNATIONAL STANDARDS AND CONFORMITY ASSESSMENT FORUMS THAT SOUTH AFRICA PARTICIPATES IN

3.1. As the first option South Africa often reviews applicable international standards, such as the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), *European Telecommunications Standards Institute* (ETSI), European Standards (EN), Codex Alimentarius and Economic Commission for Europe (ECE) Standards, for adoption as the basis for technical regulations. Where applicable, international standards are adapted for use as national standards, to include national requirements for example: because of climatic and geographical factors or technological problems. In order to prevent unnecessary costs on business, only those parts that represent the minimum necessary requirement to fulfil the legitimate objective are used. All standards prepared are non-mandatory except those which are incorporated into technical regulations of the regulatory authorities for public health and safety and the environment.

3.2. The SABS has accepted the Code of Good Practice for the Preparation, Adoption and Application of Standards contained in Annex 3 of the WTO TBT Agreement and publishes the status of its standardization programme at intervals of six months (April, October) as required under the Code, free of charge.

3.3. South Africa participates in the following international standards and conformity assessment activities in support of technical regulations:

International Standards Committees	Participation by Department or others	Products
Codex Alimentarius Commission and Food Safety Standards (CODEX)	Health, Agriculture, forestry and Fisheries and NRCS	Food Safety, pesticides, GMO's
World Health Organisation (WHO)	Health	Pharmaceuticals
International Atomic Energy Cooperation (CHIC)	Health and Energy	Medical Devices and Energy provision
Cosmetic Harmonisation and International Cooperation (CHIC)	Health	Cosmetics
Global Harmonisation Task Force (GHTF)	Health and SABS	Medical Devices
United Nations Dangerous Goods Technical Committee	Transport and SABS	Dangerous goods packaging
International Civil Aviation Organisation (ICAO)	Transport and CAA (Civil Aviation Authority)	Aviation Safety
International Conference on Harmonisation (ICH)	Health	Pharmaceuticals for human use
International Labour Organisation (ILO)	Labour and SABS	Chemical hazards labelling
Veterinary International Conference on Harmonisation	Agriculture, Forestry and Fisheries	Veterinary drugs
OECD Joint Committee on Chemicals	the dti and SANAS	New and existing chemical classifications, etc

International Standards Committees	Participation by Department or others	Products
International Electro-Technical Committee (IEC)	Labour and SABS	Electric and Electrical Products
UN GHS for Chemicals Sub committee	Labour and SABS	Global Harmonized System for Chemicals
International Telecommunication Union (ITU)	Communications and ICASA	Telecommunication Services
UNECE Working Party 29	the dti and NRCS	Automotives and components

3.4. South Africa maintains the international recognition of its Standards, Accreditation and Metrology infrastructure through active participation in appropriate international conformity assessment forums.

International conformity assessment forums	Participated by	Coverage
International Accreditation Forum (IAF)	SANAS	Certification of systems –ISO 9000, ISO 14 000, HACCP
International Laboratory Accreditation Cooperation (ILAC)	SANAS	Testing and Inspection
International Organisation of Legal Metrology (OIML)	NRCS	Measurement instruments
Bureau International des Poids et Mesures (BIPM)	NMISA	Measurement standards
OECD Chemicals Programme	SANAS	GLP
ISO Committee of Conformity assessment (CASCO)	SANAS and SABS	Conformity assessment

3.5. In respect of the mutual recognition of conformity assessment procedures in the voluntary sphere, South Africa can inform the TBT Committee that the South African National Accreditation System (SANAS) has a mutual recognition agreement in respect of testing and calibration with the European Accreditation of Laboratories Cooperation (EAL). SANAS is also active within the International Laboratory Accreditation Cooperation (ILAC) as well as the International Accreditation Forum (IAF).