In recent years, the number of technical regulations and standards adopted by countries has grown significantly. More stringent regulatory policy can be seen as impelled by higher standards of living worldwide, which have boosted consumers’ demand for safe, high-quality goods, and by growing problems of water, air, and soil pollution that have encouraged modern societies to explore environmentally friendly products.

Measures related to technical barriers to trade (TBTs) and to sanitary and phytosanitary (SPS) standards and regulation have become important dimensions of preferential trade agreements (PTAs) (see Maur and Shepherd, ch. 10 in this volume). Governments seek to act through their PTAs, as well as through the World Trade Organization (WTO), to protect human, animal, or plant life or health. Such efforts are within WTO guidelines, provided that they are not discriminatory and that regulations and standards are not used as disguised protectionism. In a number of instances, PTA members seek to go beyond the broad rules-based approach followed in the WTO and to reduce differences in national standards and certification processes that impede trade.

There are, broadly, two models for dealing with standards measures in PTAs. Where the European Union (EU) is a party to a PTA, the agreement often calls for the partner country to harmonize its national standards and conformity assessment procedures with those of the EU. PTAs in the Asia-Pacific region and those in which the United States is a partner typically seek to address problems resulting from different national standards and conformity procedures through a preference for international standards or through the use of mutual recognition mechanisms.

Both approaches can be successful in reducing the negative impact of a multiplicity of standards and conformity assessment procedures. There is, however, a risk that they can introduce de facto discrimination in global markets, particularly against developing countries, because achieving conformity in technical standards requires capacity and resources.

This chapter looks at the experience of representative PTAs with TBT and SPS provisions, with a view to identifying common characteristics of, and differences between, their basic approaches to standards.

**Standards and International Trade**

The aims of SPS regulations and standards are to protect human beings or animals from risks arising from additives, contaminants, toxins, and disease-causing organisms in their food; to protect human life from plant- or animal-carried diseases; to protect animal or plant life from pests, diseases, or disease-causing organisms; and to prevent or limit other damage to a country from the entry, establishment, or spread of pests.1

TBT technical regulations and standards set out specific characteristics of a product, such as its size, shape, design, functions, and performance, or the way it is labeled or packaged before it is put on sale. In certain cases, how a product is made can affect these characteristics, and it may then prove more appropriate to draft technical regulations and standards on the basis of process and production methods rather than of the product’s characteristics per se.

In all the PTAs reviewed in this chapter, members use the PTA to go beyond what is achievable through the multilateral instruments of the WTO (box 11.1). They appear to recognize that only by avoiding a situation in
Box 11.1. WTO Standards and Guidelines on TBT and SPS Measures

Article XX of the General Agreement on Tariffs and Trade (GATT) allows governments to enact trade measures to protect human, animal, or plant life or health, provided that the provisions do not discriminate and are not used as disguised protectionism. In addition, two specific World Trade Organization agreements deal with food safety, animal and plant health and safety, and product standards in general. Both seek to identify how to meet the need for standards and at the same time avoid protectionism in disguise. These issues are becoming more important as tariff barriers fall.

The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (the SPS Agreement) lays out the basic rules on food safety and on animal and plant health standards. It allows countries to set their own standards, but it stipulates that regulations must be based on science and should be applied only to the extent necessary to protect human, animal, or plant life or health. Furthermore, such regulations should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail. Member countries are encouraged to use international standards, guidelines, and recommendations where these exist. When this practice is followed, the measures are unlikely to be challenged legally in a WTO dispute. Members, however, may impose measures that result in higher standards if there is scientific justification; they may set higher standards on the basis of appropriate assessment of risks, so long as the approach is consistent and not arbitrary; and they can, to some extent, apply the “precautionary principle”—a kind of safety-first approach—to deal with scientific uncertainty.

The agreement allows countries to use different standards and different methods of inspecting products. If an exporting country can demonstrate that the measures it applies to its exports achieve the same level of health protection as in the importing country, the importing country is expected to accept the exporting country’s standards and methods. The SPS Agreement includes provisions on control, inspection, and approval procedures. Governments must provide advance notice of new or changed sanitary and phytosanitary regulations and establish a national enquiry point to provide information. The agreement complements the WTO Agreement on Technical Barriers to Trade (the TBT Agreement).

The TBT Agreement seeks to ensure that technical regulations, standards, and testing and certification procedures do not create unnecessary obstacles. The agreement does recognize countries’ rights to adopt the standards they consider appropriate—for example, to protect human, animal, or plant life or health; to safeguard the environment; or to meet other consumer interests. Furthermore, members are not prevented from taking measures necessary to ensure that their standards are met. But the agreement also lays down disciplines. A myriad of regulations can be a nightmare for manufacturers and exporters. Life can be simpler if governments apply international standards, and the agreement encourages them to do so. In any case, whatever regulations countries use should not discriminate. The agreement also sets out a code of good practice for both governments and nongovernmental or industry bodies in preparing, adopting, and applying voluntary standards, and more than 200 standards-setting bodies use this code. Under the agreement, the procedures used to decide whether a product conforms with relevant standards have to be fair and equitable, and any methods that would give domestically produced goods an unfair advantage are discouraged.

The agreement also encourages countries to recognize each other’s procedures for assessing whether a product conforms. Without recognition, products might have to be tested twice, first by the exporting country and then by the importing country. Manufacturers and exporters need to know what the latest standards are in their prospective markets, and, to ensure that this information is made available conveniently, all WTO member governments are required to establish national enquiry points and to keep each other informed through the WTO. About 900 new or changed regulations are notified each year. The Technical Barriers to Trade Committee is the main clearinghouse for sharing information among members and the primary forum for discussing concerns about the regulations and their implementation.


which producers have to manufacture to different standards in different national markets, or have to test the same product repeatedly, will the parties be able to foster more deep-seated economic integration.

PTAs that include TBT and SPS provisions normally incorporate an active work program of cooperation on standards, certification, and conformity assessment issues. This produces a stronger economic development focus, in contrast to the way these issues are treated in WTO agreements. The latter are designed to set standards and guidelines, whereas the PTAs examined here go beyond that objective to contribute to economic integration through the phased elimination of standards-related barriers. Some of the most ambitious PTAs in this regard are South-South agreements among developing countries; these include the Association of Southeast Asian Nations (ASEAN) and the Southern Cone Common Market (Mercosur, or Mercado Común del Sur).

There are different models for dealing with the elimination of the employment of TBT and SPS measures as trade barriers in PTAs. In PTAs involving the EU, there is a strong preference for harmonization of standards and for conformity assessment procedures. As a trade-off, the EU typically supports, both technically and financially, significant technical assistance programs to assist developing-country partners with the harmonization effort. When the EU concludes an agreement with more distant countries, such as Chile, there is not normally an obligation to harmonize
completely with EU standards and procedures; instead, the agreement calls for the promotion and use of both EU and international standards.

Agreements concluded among Asian countries and those involving the participation of the United States take a different approach from that of the EU. Rather than require harmonization, these PTAs typically seek to facilitate mutual recognition agreements and approaches based on equivalence of different approaches in different countries. The U.S. PTAs normally include the establishment of a committee charged with addressing TBT measures or SPS rules that are seen to be creating trade problems.

In chapter 10 in this volume, Maur and Shepherd observe that it is unclear which advantages each model may or may not yield and that any judgment as to which model is superior may well depend on the particular partner country and the similarity of regulatory preferences. In the sections that follow, the main features of TBT and SPS provisions in 11 representative PTAs are reviewed, taking first North-North PTAs and then North-South and South-South agreements. Experience with the cost of implementing TBT and SPS measures and the role of technical assistance are then discussed. Table 11.1 provides a summary of the main features of the 11 agreements with respect to TBT and SPS measures.

North-North PTAs: The Example of AUSFTA

As a benchmark for a discussion of North-South and South-South PTAs in the area of TBT and SPS measures, this section briefly reviews the Australia–United States Free Trade Agreement (AUSFTA) as illustrative of North-North PTAs.

After relatively brief negotiations, the AUSFTA entered into force in 2005. The agreement was not the outcome of an attempt to solve any significant trade issues between the two countries; rather, it was seen by both Canberra and Washington as a demonstration of how two like-minded developed countries could move ahead with significant trade liberalization in a period when multilateral progress in the Doha Round was stalled. That said, both U.S. and Australian exporters did face some difficulties with SPS measures in their bilateral export markets, and it was natural to build into the agreement provisions addressed to both SPS and TBTs.

Both Australia and the United States accepted as the basis for their obligations the provisions of the WTO SPS and TBT Agreements. The chapters of the agreement build on these basic obligations by establishing bilateral institutions and procedures designed to further facilitate trade between the parties.

Chapter 7 of the AUSFTA establishes a bilateral committee with a mandate of facilitating bilateral information exchange and bilateral consultations on SPS measures that could affect bilateral trade; on technical cooperation activities and issues; and on positions and agendas in multilateral SPS forums, including the WTO’s SPS Committee. The committee is supplemented by a Standing Technical Working Group on Animal and Plant Health Measures. The mandate of the working group includes resolving specific

Table 11.1. Comparison of Main Features Relating to TBT and SPS Measures, 11 PTAs

<table>
<thead>
<tr>
<th>PTA</th>
<th>Use of international standards</th>
<th>“Living agreement” institutions</th>
<th>Provisions on TBT issues</th>
<th>Provisions on SPS issues</th>
<th>WTO+ transparency</th>
<th>Technical assistance provisions</th>
<th>Binding with dispute settlement</th>
</tr>
</thead>
<tbody>
<tr>
<td>ASEAN Trade in Goods Agreement (ATIGA)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Unclear</td>
<td>Yes</td>
</tr>
<tr>
<td>Australia–United States FTA (AUSFTA)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Chile–China</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Not for SPS</td>
</tr>
<tr>
<td>Chile–United States</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>China–New Zealand</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>EU–Chile</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>EU–Morocco</td>
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<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>EU–South Africa TDCA</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Mercosur</td>
<td>Unclear</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Unclear</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Singapore–Australia FTA (SAFTA)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>Thailand–Australia FTA (TAFTA)</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Not for SPS</td>
<td></td>
</tr>
</tbody>
</table>

Source: Author’s compilation.

Note: ASEAN, Association of Southeast Asian Nations; FTA, free trade agreement; PTA, preferential trade agreement; SPS, sanitary and phytosanitary; TBT, technical barriers to trade; TDCA, Trade and Development Cooperation Agreement.
SPS issues, engaging in bilateral scientific and technical exchange on risk assessment and regulatory processes, and considering measures relating to SPS that affect or are likely to affect bilateral trade. The working group is also to establish specific work plans to address any SPS issues in the bilateral relationship.

The TBT chapter of the PTA differs from the SPS chapter in that it creates TBT chapter coordinators that are responsible for coordinating TBT matters with the other party and for consulting with the other side should a TBT issue arise in the bilateral relationship. Where an issue cannot be resolved through the efforts of the coordinators, the PTA provides for the establishment of ad hoc technical working groups charged with identifying workable and practical solutions that would facilitate trade.

The parties to the agreement obligate themselves to use relevant international standards to the extent provided in the WTO Agreement and to give positive consideration to accepting as equivalent the technical regulations and conformity assessment procedures of the other party. The transparency provisions of the WTO Agreement are backed up by bilateral TBT notification obligations.

According to Article 7.2.2 of the agreement, the entire SPS chapter is off-limits with respect to dispute settlement action. Thus, although the SPS provisions impose a kind of “best-efforts” obligation on the parties, they are not binding over the longer term. A different approach is taken in the TBT chapter; only one article addressed to technical regulations (Article 8.5) is exempt from recourse to dispute settlement. This implies that the remainder of the chapter—in particular, its obligations regarding conformity assessment and transparency—are legally binding on the parties and that this binding nature applies in both the short and long terms.

The provisions of the AUSFTA have been fully implemented with respect to TBT and SPS measures. Implementation, however, has not been problem free. U.S. exporters now enjoy relatively uninhibited (in terms of quarantine restrictions) access to the Australian market for stone fruit, table grapes, and citrus fruit, but this access has not put an end to U.S. complaints about the overly restrictive nature of Australian quarantine measures at the WTO SPS Committee. For its part, Australia still complains about the effect of certain American SPS measures on its exports.

**North-South PTAs**

The impact on international trade of the need to comply with different foreign technical regulations and standards may be more significant in the case of “asymmetrical” North-South agreements where one party is economically dominant. Meeting TBT and SPS regulations and standards in those circumstances could involve significant costs for producers and exporters located in the less developed country. These costs typically arise from the translation of foreign regulations, the hiring of technical experts to explain foreign regulations, and the adjustment of production facilities to comply with the requirements. In addition, there is the need to prove that the exported product meets the foreign regulations. The high costs involved may discourage manufacturers from trying to sell abroad. In the absence of international disciplines, a risk exists that technical regulations and standards could be adopted and applied solely to protect domestic industries.

The remainder of this section reviews the treatment of TBT and SPS provisions in seven PTAs representative of the variety of North-South agreements: EU–Morocco, EU–Chile, EU–South Africa, Singapore–Australia, Thailand–Australia, Chile–United States, and China–New Zealand.

**EU–Morocco: A Euro-Mediterranean Agreement**

The EU–Morocco PTA is representative of the approach to TBT and SPS provisions in the Euro-Mediterranean agreements. The agreement action program is aimed at eliminating trade barriers associated with standards and conformity assessment. It obliges the parties to the PTA to take appropriate steps to promote the use by Morocco of EU technical rules and EU standards for industrial and agricultural products and certification procedures.

A system of accreditation of conformity assessment procedures based on international and EU standards is also foreseen for Moroccan adoption. A separate mutual recognition agreement (MRA), the Agreement on Conformity Assessment and Acceptance of Industrial Products, is intended to implement this aspect of the PTA (Lesser 2007).

In 2003, at the Palermo Euro-Med ministerial meeting, Euro-Med participants agreed to address the approximation of legislation in the field of standards, technical regulations, and conformity assessment procedures, through a six-point program. That program calls for

- Identifying priority sectors
- Building acquaintance with applicable EU legislation and conducting a gap analysis
- Transposing necessary framework legislation and sectoral legislation
- Creating or reforming institutions
- Setting up necessary certification and conformity assessment bodies
- Identifying technical assistance needs.
Perhaps because of the gap between the two countries’ relative levels of economic development, it has been difficult for Morocco to harmonize its standards with those of the EU or even to develop acceptable approaches to the development of mutual recognition agreements. A 2007 document of the Moroccan government comprehensively lays out the steps that Morocco needs to take to realize the objectives of the 2005 EU–Morocco Plan of Action, which covers a period of three to five years. Among the actions deemed necessary in the short term are the reinforcement of local institutions charged with standardization, conformity assessment, metrology, and market surveillance. The document notes that it will be particularly important for Morocco to reinforce its conformity assessment structures and guarantee their competence in areas covered by regulation. Although it is clear from both the 2007 government paper and the action plan that harmonizing national standards with EU and international standards remains an important medium-term goal, there is little evidence that Morocco has as yet been successful in these efforts.

Working with representatives of Moroccan industry and the Commerce and Industry Ministry, the Moroccan Office of Standardisation and Quality Promotion has identified a number of priority sectors for the conclusion of conformity assessment recognition agreements with the EU. The choice of priority sectors (electrical appliances, construction machinery, and building products) stemmed partly from a desire to ensure that certain products were safe to use in the Moroccan market and partly from knowledge of where national testing capacity is already in place in the country.

The EU has worked to support Morocco through technical assistance. A document of the Directorate General for Trade lists 53 instances of SPS-related technical assistance provided to Morocco during the period 2001–05. But although this assistance has undoubtedly been helpful, Morocco faces other important problems in selling its products on the EU market.

A major problem relates to the increasing need for producers and exporters to meet private quality control standards in the EU, many of which differ greatly from one member state market to another. For instance, a 2005 World Bank case study notes that producers and exporters of citrus and tomatoes have to meet six different quality control standards: of these, two are recognized worldwide, three are European retailers’ individual standards, and one relates to organic and biodynamic standards (Aloui and Kenny 2005). Just how much the machinery of the PTA can help Moroccan exporters in areas like this is unclear. Furthermore, compliance has proved not only technically difficult, but also costly (see “Implementation Costs and Technical Assistance Needs,” below).

**EU–Chile Free Trade Agreement**

The EU–Chile Free Trade Agreement (FTA) is representative of a looser EU approach to TBT and SPS standards and regulations. Here, the focus is on the use of technical regulations and conformity assessment procedures based on international standards, unless those standards are judged to be ineffective or inappropriate for fulfilling legitimate objectives. The parties also agree to work toward compatibility or equivalence of their respective technical regulations, standards, and conformity assessment procedures, and the agreement establishes a special committee on these matters. The committee has identified the need for a technical assistance program and has launched such a program, funded by the EU.

The special committee is cochaired by Chile and the EU. Its work program aims at:

- Monitoring and reviewing the implementation and administration of the TBT chapter of the agreement
- Providing a forum for discussing and exchanging information on any matter related to the TBT chapter, in particular as it relates to the parties’ systems for technical regulations, standards, and conformity assessment procedures, as well as developments in related international organizations
- Providing a forum for consultation and prompt resolution of issues that act or can act as unnecessary barriers to trade
- Encouraging, promoting, and otherwise facilitating cooperation between the parties’ organizations, whether public or private, for metrology, standardization, testing, certification, inspection, and accreditation
- Exploring any means for improving access to the parties’ respective markets and enhancing the functioning of the TBT chapter.

The committee has met regularly. According to a joint communiqué issued following the seventh meeting, held in 2009, “the overall working of the committee was considered highly satisfactory by the parties.”

Information about the details of the agendas and the results of the meetings of the committee is not readily available. A specific working group on animal welfare was established in 2003 by the Joint Management Committee for SPS, with the aim of achieving the objectives of SPS provisions in the EU–Chile PTA. According to the information available, this working group has developed its activities on the basis of an annual action plan that has been agreed jointly. At the beginning, it was focused on practices relating to the stunning and slaughter of animals. In 2006 both parties decided to incorporate animal
pursued in harnessing the potential created by the Agreement for expanding EU interests into the surrounding countries. Full use should be made of the action agreed and cooperation tools envisaged, particularly in the following areas: . . . .

It appears that Chile has, to some extent, been caught in a bind resulting from differing obligations in the PTAs it has concluded with the EU and the United States. The passage continues, concerning standards and technical regulations:

The EU observed with concern a marked tendency for the Chilean standardisation process to incorporate solely a reference to the US standards, particularly when no agreed international standards exist. The immediate effect of such behaviour is to divert trade to imports of non-EU origin or to give rise to additional costs to adapt products made in the EU. The EU will focus on increased cooperation and pay political attention to the promotion of international standards, or in their absence, to double recognition of both US and EU norms. Such an approach should be followed, in particular, for new technologies where the EU local value added is still prominent.

On SPS, the annex adds:

In the sanitary and phytosanitary area the objectives are to implement the EC/Chile SPS Agreement fully and effectively. The EU’s potential to export food products and semi-processed agricultural products in order to complete the national product range on offer should be supported by smooth SPS administration.

EU–South Africa Trade and Development Cooperation Agreement

The 1999 EU–South Africa Trade and Development Cooperation Agreement (TDCA) is another illustration of the EU’s approach to TBT and SPS standardization and conformity assessment, this time in a low-income country.

Under the agreement, the parties pledge to cooperate on

- Measures, in accordance with the provisions of the WTO TBT Agreement, to promote greater use of international technical regulations, standards, and conformity assessment procedures, including sector-specific measures
- Development of agreements on mutual recognition of conformity assessment in sectors of mutual economic interest
- Cooperation in the area of quality management and assurance in selected sectors of importance to South Africa
- Facilitation of technical assistance for Southern African capacity-building initiatives in the fields of accreditation, metrology, and standardization
• Development of practical links between South African and European standardization, accreditation, and certification organizations.\(^{12}\)

In comparison with other agreements signed by the EU—for instance, the EU–Chile Association Agreement—the TDCA is less ambitious in the TBT and SPS areas. In fact, there is just one provision on TBTs that appears in the section related to other trade-related matters, while SPS is referred to in the general provisions on agriculture (Article 61) within the section on economic cooperation. There is no ready evidence on the extent to which implementation of TBT and SPS provisions has been achieved. According to an official communication from the European Commission, it became clear to the Commission that TBT and SPS provisions were not being implemented fully when it recognized that bilateral cooperation on some topics, including SPS, was mostly limited and ad hoc. In addition, the Commission pointed out,

This situation seems to explain the initial interest in including both TBT and SPS issues in the TDCA review.\(^{14}\) According to another European Commission communication, the parties should consider a new orientation and possible revision of the TDCA.\(^{15}\) The Commission identified some provisions in the PTA that might need to be amended. In effect, it suggested new commitments and enhanced cooperation in trade-related areas and mentioned, among other articles, Article 47, which is related to standardization and conformity assessment.

The communication suggested, concerning a revision of the economic cooperation text: "updated wording must be considered for cooperation in the fields of energy, transport, agriculture and sanitary and phytosanitary matters" (italics added). On SPS, the communication, a more substantial change was recommended because SPS measures had become "an important impediment to trade and therefore required enhanced cooperation."

The negotiations on an agreement amending the TDCA, which started formally in 2007, did not in the end include negotiations on trade and trade-related matters. In a European Commission communication concerning a proposal for an EU–South African agreement amending the TDCA, it was acknowledged that

From the start of the negotiations it was clear that all trade and trade-related issues would be discussed in the context of the talks on the future Economic Partnership Agreement (EPA) with the countries of Southern Africa. The TDCA negotiations on trade and trade-related matters were therefore immediately suspended, pending the outcome of the EPA talks.\(^{16}\)

Trade and trade-related issues seem to be handled more effectively under the EPA between the EU and the Southern African Development Community (SADC). According to a trade cooperation report, "the revision of the trade chapter of the TDCA continued to be dealt with within the framework of the negotiations for an EU–SADC [EPA]."\(^{17}\)

The EU’s interest seems to be to try to achieve meaningful coexistence between the TDCA and the EU–SADC EPA. That, however, may take longer than expected because the regional context in southern Africa is particularly complex. In general terms, it is known that the EPA’s objectives are to develop a more predictable and rules-based regional market for goods and services with a view toward fostering regional integration; to harmonize trade rules within the region; and to create a simple trading framework between the countries of southern Africa and the EU.

In the relationship between the SADC, the Southern African Customs Union (SACU), and the TDCA, a number of issues appear to require urgent attention. At the Second South Africa–EU Summit, it was noted, the experience of the EU is witness to the benefit of strong regional integration. We recognise that the Regional Economic Communities (RECs) are key pillars for deeper integration in Africa and therefore support greater political cohesion and stronger economic integration in SACU and the SADC.

In this context, we engaged in a frank and open discussion on the EU–SADC Economic Partnership Agreement and on the implications that these negotiations, at all its stages, have on current processes of regional integration in Southern Africa. We agreed to urgently pursue the negotiation and resolution of all outstanding issues with a view to a prompt and mutually satisfactory conclusion that supports regional integration and development in Southern Africa.\(^{18}\)

Cooperation on SPS measures is one of the areas explicitly identified as a priority for treatment in the joint action plan of the EU–South Africa Strategic Partnership, established May 14, 2007.\(^{19}\) This inclusion is important because the joint action plan and the TDCA constitute the groundwork for enhanced and deepened political dialogue and cooperation.

The trade cooperation report mentioned above contains a section on SPS matters. Within it, both parties
express their commitment to conduct “open and transparent collaboration and communication” and “to avoid or minimise trade obstacles in the future.” This commitment followed an earlier South African ban on imports of EU meat. During early 2009, close contacts between both parties continued, with a view to ensuring SPS protection and doing so in “a way, which prevents any undue trade restrictions between the EU and SA.” The report points out that

the European Commission continued to extend SPS training opportunities to the competent South African authorities. For example, on 25–27 November 2008, a regional training workshop was held in Johannesburg on EU legislation for Bovine Spongiform Encephalopathy (BSE). The South African authorities were also invited to participate in a training course in Austria on 2–3 March 2009 for veterinarians at border inspection posts at airports. An invitation has also been extended to a forthcoming training programme for laboratory experts in the area of aflatoxins/ochratoxins. Another meeting on food analysis will take place in Munich on 3–14 August 2009.20

The EU also funded a South Africa Pesticide Initiative Program (SA PIP), which, although related to SPS matters, was developed in the context of the private sector development program. It was reported that the program has had good results:

The South Africa Pesticide Initiative Program (SA PIP) has successfully hosted training workshops throughout the years, disseminating information to emerging farmers; grower associations and various stakeholders. . . . The Programme’s two main focus areas are to assist exporting producers to comply with the EU’s legal food safety requirements; and to support and develop emerging farmers through training and empowerment initiatives, and so to grow the South African export volume destined for Europe.21

Within the context of the TDCA framework, South Africa and the EU jointly developed a country strategy paper (CSP) and a European Commission multiannual indicative program (MIP) for the period 2007–13. At least 5 percent of this 980 million euro funding allocation will go toward supporting a TDCA facility program. A development cooperation report indicates that the EU will contribute 5 million euros to the project, to help with the implementation of the TDCA and the joint action plan.22

**Singapore–Australia Free Trade Agreement**

The Singapore–Australia Free Trade Agreement (SAFTA), signed in 2003, was Australia’s first PTA since the conclusion of an agreement with neighboring New Zealand 20 years earlier. (Singapore, by contrast, was already one of the most active negotiators of PTAs at the time.) The bilateral relationship underlying this PTA is significant both economically and politically, and each party had something to offer the other through additional liberalization. In particular, through a process of annual reviews, the agreement has helped considerably to facilitate trade between Australia and Singapore, including trade affected by TBT and SPS measures, as exemplified by the Sectoral Annex on Horticultural Goods (box 11.2).

The TBT and SPS chapter of SAFTA builds on an earlier bilateral mutual recognition agreement on conformity assessment. The chapter includes best-efforts obligations on harmonization of mandatory requirements, acceptance of the equivalence of each other’s mandatory requirements, and cooperation on SPS questions that might arise in the bilateral relationship. The core purposive policy in this PTA is found in its provisions related to the negotiation of sectoral annexes, which are, in effect, the implementing arrangements for the chapter. For SAFTA, the sectoral annexes are intended to resolve specific issues in the bilateral relationship over time.

The conformity assessment procedure has had effects in other market sectors. This includes the restriction on imports of cars that are more than three years old, a way of ensuring that Singaporean road safety standards are met. It is further illustrated by the removal of technical barriers to Australian electrical exports to Singapore. In the past, such goods had to be inspected and approved by two separate Singaporean agencies before they could be approved for sale. Since the implementation of SAFTA, Singapore recognizes Australian conformity assessment procedures.23

**Box 11.2. Success Story: Orchids to Australia**

The Sectoral Annex on Horticultural Goods of the Singapore–Australia Free Trade Agreement establishes the concept of “accredited exporter,” defined as “an exporter of the scheduled horticultural goods who has demonstrated to its regulatory authority that it possesses the necessary technical capabilities, management competence, facilities, equipment and production systems required to meet the mandatory requirements of the importing Party.” In an early success story, Australia and Singapore agreed that Australia will minimize import control and inspection and approval procedures when orchids shipped by accredited Singaporean exporters are accompanied by the required certificates and reports. Other horticultural goods are similarly subject to reduced import control, and goods can be added to the coverage of the annex by mutual agreement of the SAFTA parties.

Although SAFTA’s provisions are not very binding, as the obligations are nearly all of a best-efforts nature, the PTA has produced some worthwhile short-term results. In the longer term, the agreement is likely to progressively take on a more binding character, as sectoral annexes are negotiated and implemented to deal with specific issues and problems in bilateral trade. It is unlikely that the specific best-efforts obligations of SAFTA Chapter 05 could be the basis for a successful action under the PTA’s own dispute settlement procedures. However, Article 10.1 of Chapter 05 makes it clear that implementing arrangements for the chapter are intended to be reflected in sectoral annexes with more operational legal content. Failure to abide by the terms of a negotiated sectoral annex would appear to give cause for invocation of the PTA’s dispute settlement provisions. By their very nature, obligations under a sectoral annex could not be the cause for action under the WTO’s Dispute Settlement Understanding (DSU) because they do not fit the definition of a “covered agreement.”

**Thailand–Australia Free Trade Agreement**

The Thailand Australia Free Trade Agreement (TAFTA), which entered into force in 2005, resulted from a negotiation that was much more problematic than the Singapore–Australia negotiations. Given Thai resistance to hard-law obligations in many areas of the agreement, Australia was often willing to settle for looser language and weaker obligations. In a number of areas in which it proved too difficult to reach agreement, the two sides pledged to return to the negotiating table in 2008. Political issues have since interfered with that second stage of negotiations.

Against this background, it is not surprising that TAFTA incorporates a number of best-efforts obligations on the parties in respect of industrial standards, including obligations to endeavor to harmonize technical regulations and to give positive consideration to accepting as equivalent the technical regulations of the other party. For TBT matters, the parties agree to work together to resolve problems resulting from differing conformity assessment procedures and to share information through contact points established for the purpose. In the SPS area, obligations are more significant, and the parties have created a standing Expert Group on Sanitary and Phytosanitary Measures and Food Standards. This body is charged with consulting on requests for recognition of equivalence of SPS measures and promoting resolution of disputes that arise in connection with SPS measures. A unique and apparently valuable feature of the SPS chapter is its provision, in Article 607.4, for cooperation on a product trace-back system for notification of noncompliance of imported consignments for commodities subject to SPS measures.

In most important areas, TAFTA obligations do not take the form of binding hard law. Generally, the obligation is for best efforts. In addition, the fact that the SPS chapter is specifically excluded from recourse to the PTA’s dispute settlement mechanism also loosens the binding nature of the PTA. Mandated, more binding, obligations exist in areas in which compliance are easiest, such as information sharing and cooperation on procedural questions.

By virtue of its Article 610.2, TAFTA’s SPS provisions cannot give rise to invocation of the bilateral PTAs dispute settlement provisions. Part of the mandate of the SPS Expert Group, however, is “progressing resolution of disputes that arise in connection with the matters covered by this Chapter.” The TBT chapter is silent on the question of dispute settlement, but its best-efforts obligations would be difficult to litigate successfully under most dispute resolution systems. In all likelihood, serious disputes between Australia and Thailand would need to be adjudicated under the WTO DSU.

Cooperation under the PTA has been unable to resolve Thailand’s long-standing complaints about lack of access to the Australian poultry market. Australia cites concerns over infectious bursal disease virus (IBDV) as necessitating SPS measures that exclude the importation of fresh poultry. An Australian risk assessment procedure in 2006 has had the effect of making the Australian SPS measures more severe. Market access has improved with the implementation of TAFTA because of the utilization of TBT-related mechanisms designed to promote world best practices in transparency, quarantine, and industrial standards.24

**Chile–United States Free Trade Agreement**

Chile and the United States have long had one of the best economic and political bilateral relationships in the Western Hemisphere. Originally, the plan was for Chile to join the North American Free Trade Agreement (NAFTA), and there was strong support from both Mexico and Canada for this idea. Opposition from several quarters in the United States sidetracked that plan, and both Canada and Mexico negotiated separate bilateral PTAs with Chile before the United States and Chile sat down at the negotiating table. The PTA entered into force in 2004. Agricultural trade issues and quarantine questions are important to both parties in this agreement, and it is altogether natural that forums would be established through the PTA to address these issues.

The Chile–United States PTA relies on a living agreement approach to resolving SPS and TBT issues, in both cases establishing committees mandated to enhance mutual understanding, consult on matters related to the development and implementation of TBT and SPS matters, and
coordinate technical cooperation programs. The SPS committee is also charged with reviewing progress on addressing SPS matters arising in the bilateral relationship. The TBT committee’s responsibilities include consulting on matters that come up under the agreement, and where such consultations relate to a dispute between the parties, they constitute consultations for the purpose of the operation of the PTA dispute settlement chapter.

The PTA’s TBT chapter also contains provisions designed to facilitate negotiations on recognition of conformity assessment procedures, and it enhances transparency over and above that provided through the multilateral TBT Agreement in the WTO.

The PTA affirms that the basic binding obligations of the parties are those of the WTO TBT and SPS Agreements. Instead of hard-core binding obligations, the PTA’s provisions in these areas establish cooperative frameworks for discussion and resolution of problems that might arise in bilateral trade.

Recourse to the PTA dispute settlement provisions is not permitted for any matter that might arise under the SPS chapter, meaning that all serious SPS disputes would need to be dealt with only under the WTO DSU. Obligations under the TBT chapter could presumably be taken to the PTA-specific dispute settlement provisions, but hard obligations exist only with respect to transparency and national treatment in accreditation of conformity assessment bodies.

Discussions in the context of the PTA’s SPS Committee reportedly led to the easing of Chilean SPS restrictions on citrus fruits, creating a new market opportunity for Sun Pacific Shippers Sales, a company that is now able to access the Chilean market in the off-season for citrus. Similarly, the agreement allowed Chile to raise issues concerning plant registration in exportation, where a certification system has been established to address SPS matters.

China–New Zealand Free Trade Agreement

In the Asia-Pacific region, China has been actively pursuing a program of negotiating PTAs with its main trading partners. Part of China’s motivation for these agreements is to gain formal recognition from its partners of its market economy status, an acknowledgment that it sets as a precondition for the commencement of PTA negotiations. For China’s partners, of course, the motivation is access to the huge Chinese market. In its negotiations with China, New Zealand was keenly aware that Australia was also negotiating a PTA with the Chinese. New Zealand won the race, and its PTA entered into force in 2008. SPS measures are a critically important trade concern in both China and New Zealand, so it is not surprising that the chapters dealing with SPS and TBT matters in this PTA are more detailed than in some other agreements and that the PTA has an important proactive character.

The SPS chapter establishes a joint management committee charged with overseeing implementation of the chapter, with responsibilities that include drawing up for each party a priority order for consideration of market access requests by the other party, including the undertaking of risk analyses. Areas addressed in considerable detail include adaptation to regional conditions; the acceptance of the other party’s measures as equivalent; verification, certification, and import check procedures; and a well-developed cooperation plan. Because the PTA entered into force relatively recently, China and New Zealand are still negotiating certain aspects of the implementing arrangements, but concrete results have already been achieved (box 11.3).

The PTA created a joint TBT committee to oversee implementation, identify priority sectors for enhanced cooperation, monitor the progress of work programs, and facilitate technical consultations. Other provisions in the TBT chapter favor the use of international standards, where possible, and the acceptance of each others’ technical regulations and conformity assessment procedures. Provision is also made for regulatory cooperation in a number

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**Box 11.3. Impact of SPS Measures in the China–New Zealand PTA**

In the Joint Report prepared by China and New Zealand on the occasion of the Two Year Review of the Free Trade Agreement, the Parties note that the following are among the arrangements concluded on new or improved market access:

- **Arrangement on New Zealand Product Process Hygiene Requirements for Processing Edible Tripe Products for Export from New Zealand to the People’s Republic of China;**
- **Cooperation Arrangement on Management of Sanitary Measures Regulating the Import of Dairy Products from New Zealand;**
- **Official Assurance Programme (OAP) for the Export of Pears from China to New Zealand;**
- **Agreed electronic certificate for live seafood exports from New Zealand to China;**
- **Official Assurance Programme for the Export of Table Grapes (Vitis vinifera) from the People’s Republic of China to New Zealand; and,**
- **Official Assurance Programme for the Export of Fresh Processed Onions (Allium cepa) from the People’s Republic of China to New Zealand.**

of important areas, for enhanced transparency, and for technical assistance.

The PTA contains an agreement on mutual recognition of conformity assessment for electrical and electronic equipment (EEEMRA). Before the implementation of that agreement, Chinese exports to New Zealand had to be tested against New Zealand standards, and New Zealand exports to China had to be tested, inspected, and certified by Chinese conformity assessment bodies. The EEEMRA gives suppliers in both countries an alternative way of demonstrating compliance with electrical safety and electromagnetic compatibility regulatory requirements.27

The SPS and TBT provisions of this PTA are considered binding by the parties and are subject to dispute settlement. Implementation of plans and work programs still under discussion are likely to make the PTA provisions even more binding over time, as the parties progressively adopt measures to further facilitate trade between them.

Although the TBT and SPS chapters lack dispute settlement provisions, the obligations of those chapters appear to be fully subject to recourse under the dispute settlement provisions in Chapter 16 of the PTA. There appears to be a soft-law option for both SPS and TBT issues. One function of the Joint Management Committee for SPS is consultation with a view to resolving SPS issues arising in bilateral trade; a similar provision exists with respect to the Joint TBT Committee. For TBTs, there is also an option for specialized technical consultations, which are explicitly stated not to prejudice rights under Chapter 16. The dispute settlement language of the PTA indicates that the complaining party can choose to turn to either the PTA or the WTO forum for dispute resolution.

South-South PTAs

When TBT and SPS provisions are present in South-South PTAs, they tend to refer mainly to the WTO Agreements. This is shown here by the review of three representative South-South PTAs: Mercosur, ASEAN, and the Chile–China FTA.

Mercosur

Mercosur, which links Argentina, Brazil, Paraguay, and Uruguay, dates from the December 1991 Treaty of Asunción. The economic aspects of the arrangements in the group have evolved over time, and significant amendments were made to Mercosur’s regional rules after the conclusion of the Uruguay Round of multilateral trade negotiations. Mercosur’s basic approach to TBT and SPS matters has been to use the WTO Agreements in these areas as the basis for Mercosur-specific work plans and decisions affecting intra-Mercosur trade.

Before the end of the Uruguay Round, for example, Mercosur’s member countries adopted, through Mercosur Decision 6/93, their own agreement on SPS measures (Acuerdo Sanitario y Fitosanitario entre los Estados Partes del Mercosur, ACSAFIM). The agreement contained provisions on harmonization with international standards for SPS protection, a provision facilitating acceptance of other countries’ measures as equivalent, rules on risk assessment and regionalization, and other provisions that later appeared in the WTO SPS Agreement. When the WTO SPS Agreement was adopted by Mercosur member countries, the Mercosur Council approved the WTO Agreement as the operative agreement in Mercosur and denounced ACSAFIM.

For SPS measures, Mercosur Resolution 60/99 sets out principles, directives, criteria, and parameters for SPS equivalence agreements among Mercosur member countries. The resolution starts with an indication that the basic principles to be applied in the Mercosur environment are those of the WTO and the WTO SPS Agreement. Key principles specifically referred to are the desirability of acceptance of others’ measures as equivalent where the protection level is as high as that in the importing country; the need to facilitate reasonable access for inspectors from the importing country; nondiscrimination; and proportionality in measures, which should in all cases be science based. Referenced international norms for the purpose of equivalence agreements include those of the Codex Alimentarius, the World Organisation for Animal Health (OIE), and the Plant Health Committee of the Southern Cone (COSAVE, Comité de Sanidad Vegetal del Cono Sur).28

In the TBT area, the Mercosur countries decided to build on the basics of the WTO Agreement through an internal work program aimed at reducing intraregional barriers to trade by harmonizing technical regulations and setting up procedures to govern the recognition of different conformity assessment processes as equivalent (Decision 56/02). Key terms in this decision are taken directly from the WTO TBT Agreement. (A Mercosur technical regulation has the same meaning as a technical regulation as defined in Annex 1 of the TBT Agreement.) A basic principle of the Mercosur decision is that in the elaboration or revision of Mercosur technical regulations and conformity assessment procedures, the PTA partners must take as the basis of their work the general principles and rules of the TBT Agreement. The decision also obliges Mercosur countries to take international standards into account where applicable and to apply adopted
technical regulations in the same way to commerce among Mercosur states and to imports from third countries (the national treatment principle).

The binding provisions in Mercosur appear to be more or less those of the WTO TBT and SPS Agreements. The decisions and resolutions specific to Mercosur are more process oriented and focus on practical steps, such as how to develop a Mercosur technical regulation.

Mercosur’s basic approach to dispute settlement is governed by Decision 37/03, which sets out the rules and regulations of the Olivos protocol for the settlement of disputes. Interestingly, Article 1 of the annex to that decision indicates that Mercosur members have the option of choosing the forum for settlement of their disputes. Evidently, they have the option of pursuing dispute settlement under Mercosur rules or taking the matter up under the WTO DSU.

When a dispute is submitted to resolution under Mercosur rules, a number of options are open to the parties: direct negotiations between the disputing parties; the intervention of the Grupo Mercado Común (which is optional); a WTO-like ad hoc arbitration procedure; and, finally, a review procedure by the Tribunal Permanente de Revisión del Mercosur. If judgments under the arbitration procedure selected are not adhered to by the losing party, the Mercosur dispute settlement procedure provides for compensatory measures, which must be proportional to the harm suffered by the winning party.

Research undertaken in 2003–04 for Mercosur identified more than 110 TBT and SPS practices in the region that acted as barriers to trade (Zago de Azevedo 2004). To address these issues, the Mercosur countries embarked on a harmonization and mutual recognition project. Hundreds of Mercosur technical regulations exist today, and guidelines and guides have been developed for the mutual recognition of conformity assessment procedures. Considerable progress has been made in harmonizing SPS regulations in the region.

In the Mercosur Trade Commission, consultations have been initiated between and among members with a view to exchanging information in an effort to resolve standards disputes. Two recent cases illustrate the process:

- Argentina initiated a complaint concerning unilateral modifications by Brazil and Uruguay to a Mercosur technical regulation dealing with toys. In Argentina’s view, the actions by its Mercosur partners negatively affected the harmonization process in Mercosur and prejudiced the interests of Argentine manufacturers.
- In another case, Paraguay requested consultations with Brazil regarding the negative impact on its exports of plastic chairs of Brazil’s adoption of legislation requiring mandatory quality certification.31

ASEAN Trade in Goods Agreement

The countries of the Association of Southeast Asian Nations (ASEAN) have not had generally applicable mutual obligations with respect to SPS and TBT matters, apart from the WTO Agreements. They have relied instead on the negotiation and implementation of sectoral MRAs. This changed with the implementation of the new ASEAN Trade in Goods Agreement (ATIGA), which contains new obligations in both the TBT and SPS areas.

In the TBT area, for example, ATIGA obligates ASEAN member governments to follow the TBT Agreement’s Code of Good Practice, to use international standards where possible, and to ensure that technical regulations are not adopted in ways that frustrate trade within ASEAN. Technical regulations, where applicable, must be applied in ways that facilitate the implementation of any ASEAN sectoral MRAs, and conformity assessment procedures are expected to be consistent with international standards and practices. A unique feature of ATIGA is the establishment of a postmarket surveillance system that is supported by alert systems designed to ensure ongoing compliance on the part of producers.

In the SPS area, ATIGA obligates members of ASEAN to be guided by international norms and standards in their SPS-related activities and encourages member governments to develop equivalence agreements and explore additional opportunities for intra-ASEAN cooperation.

The new agreement is generally considered to be binding in nature. Its provisions make frequent use of the word “shall,” which is interpreted within ASEAN as a mandatory obligation that must be complied with. Where it was felt that commitments could be less rigid, other expressions, such as “endeavor to,” were used in place of “shall.” Examples of such wording are, “Member States shall develop and implement a Marking Scheme, where appropriate, for products covered under the ASEAN Harmonised Regulatory Regimes or Directives,” but “Member States are encouraged to actively participate in the development of international standards.”

With the entry into force of ATIGA, its obligations are subject to potential dispute settlement action under the ASEAN Protocol on Enhanced Dispute Settlement Mechanism, signed in 2004. Although this is considered a hardlaw agreement, backed by dispute settlement, it is also the case that ASEAN traditionally favors resolution of problems through consultation—an approach explicitly referred to in the description of the mandate of the
ASEAN Committee on SPS Measures established by Article 82 of ATIGA.

Chile–China FTA

Chile is among the most active countries in the world when it comes to pursuing PTAs. The Chilenas saw a PTA with China as helping to lock in Chile’s important position in China as a copper supplier and as an opportunity for China to use the PTA with Chile as a gateway for Chinese business in South America. The PTA between Chile and China, in operation since October 2006, is a modern agreement in which the SPS and TBT provisions are tied closely to those in the WTO Agreements. This extends to the adoption of WTO definitions, phrases, and principles. In both the SPS and TBT sections, the PTA addresses such issues as the recognition of equivalence in technical regulations and conformity assessment, as well as notification and transparency provisions.

The parties to the PTA consider that it is legally binding on both countries’ central governments and regional authorities. Should a dispute arise under the agreement, the parties may have recourse to the PTA dispute settlement provisions, ensuring the legally binding nature of the TBT and SPS provisions.

As with China’s PTA with New Zealand, the SPS and TBT obligations can give rise to a complaint under the PTA’s dispute settlement chapter even if the SPS and TBT sections themselves make no provision for dispute resolution. The complaining party has the option of choosing whether to pursue a complaint under the WTO DSU or under the PTA dispute settlement provisions.

The implementation of the SPS chapter in the Chile–China FTA seems to have helped facilitate bilateral trade in certain products through expanded trade opportunities. Chile and China have successfully conducted their first bilateral meeting on the implementation of the SPS chapter. Three protocols on quarantine were signed during the official visit of the Chilean president to China in 2008; they deal with quarantine for exports of cherries and plums from Chile to China and for exports of citrus and shallots from China to Chile, and with inspection and quarantine for imports and exports of pork, milk, and dairy products between China and Chile.

Chile considers the conclusion of these protocols very positive developments in the relationship, since they formally open the Chinese market to Chilean exports of cherries, plums, and milk and dairy products and define the sanitary requirements for pork exports. For their part, the Chinese expect to see a growth in their exports to Chile of shallots and citrus.

Implementation Costs and Technical Assistance Needs

Implementing TBT and SPS provisions could be costly, especially for exporters. If a firm has to adjust its production facilities to comply with diverse technical requirements in individual markets, production costs per unit are likely to increase. This imposes handicaps, particularly for small and medium-size enterprises. Conformity assessments are also costly. Compliance with technical regulations generally needs to be confirmed, and this may be done through testing, certification, or inspection by laboratories or certification bodies, usually at the company’s expense. Information needs impose other costs, including the costs of evaluating the technical impact of foreign regulations, translating and disseminating product information, training experts, and so on. Finally, exporters may be subject to surprise costs because they are usually at a disadvantage vis-à-vis domestic firms, in terms of adjustment costs, when confronted with new regulations.

The major costs to governments and exporters in the TBT and SPS areas do not arise out of the technical implementation of the WTO or PTA agreements themselves but from compliance with trading partners’ SPS and TBT measures. Although data on the actual cost of compliance with PTA partner measures are not readily available, examples of the cost of compliance with specific TBT and SPS measures, and of the cost of technical assistance provided pursuant to specific PTAs, could be cited.

For instance, earlier in this chapter, mention was made of the need of Moroccan citrus and tomato exporters to meet various nongovernment standards in the EU market. One of these standards is the private standard GLOBALGAP, relating to good agricultural practices; its certificates are increasingly required by European retailers as a condition for accepting Moroccan products. Aloui and Kenny (2005) estimated the cost to a 10-hectare tomato farm of meeting the standard at US$71,000, or 3 percent of the free on board (FOB) value of the farm’s exports; of this amount, US$20,000 represents annually recurring costs.

The WTO Secretariat has attempted to measure more systematically the cost and need for technical assistance related to compliance with standards-related measures. The data collected show that these costs can be substantial but also that the costs to developing countries can be mitigated to a significant degree by technical and capacity-building assistance provided by developed countries (box 11.4).

Many of the PTAs reviewed in this chapter are living agreements in the sense that they create bilateral or regional institutions, such as the committees and working groups established in the U.S.–Australia FTA, the
New Zealand–China FTA, and others. Another good example is described in box 11.5. Often, the PTA committees are tasked with drawing up work plans or prioritizing issues for resolution.

Effective participation in the bilateral process implies the need for a certain amount of capacity building, at least in those developing countries that have less experience with TBT and SPS measures. For example, before ATIGA entered into force on 17 May 2010, according to the ASEAN Secretariat, a significant amount of technical assistance was already taking place within ASEAN to prepare for the implementation phase.

Over time, as government officials gain greater experience with implementation of the TBT and SPS provisions in PTAs, the incremental effect of participation in a new or expanded PTA should decrease considerably. For example, as Chinese officials become familiar with the operation of the agreement with New Zealand and their responsibilities under that PTA, they will be that much more prepared to take on whatever provisions are eventually agreed in their PTA negotiations with Australia.

In nearly all of the PTA provisions examined in this chapter, frequent reference is made to the WTO SPS and TBT Agreements and to the desirability of relying on international standards and procedures. In a very real sense, the many years of work and cooperation at the multilateral level in these areas have made it easier to manage implementation of PTA-level provisions. Of course, fundamentally different climatic, geographic, or technological factors in different countries will always limit the appropriateness of international standards and harmonization to some degree, particularly when the PTA partners are not neighbors.

In only about half of the PTAs surveyed for this chapter did the parties make the agreements’ TBT and SPS provisions legally binding and enforceable through dispute settlement, and in a number of cases, provisions relating to SPS were specifically excluded from the possibility of dispute settlement. Where dispute settlement does apply to TBT or SPS provisions, the parties to the agreement usually have the choice of bringing a dispute before the WTO DSU or the PTA-specific dispute settlement mechanism. Parties to the Andean Community, for instance, have relied heavily on the Community settlement mechanism for their TBT and SPS disputes (box 11.6). Yet, in general, PTAs favor dispute avoidance (i.e., working out

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**Box 11.4. WTO Assessment of TBT Implementation Costs**

In 2002, the World Trade Organization (WTO) surveyed 45 developing countries’ priorities for technical assistance and capacity building in the area of technical barriers to trade (TBTs). Although the survey was conducted with reference to the implementation of the multilateral TBT Agreement, in many cases the survey results would apply as well to the implementation of TBT provisions in PTAs.

The responses enabled the WTO Secretariat to identify seven main areas of needs and specific technical assistance activities to help meet these needs. In the order of frequency of response, the perceived needs are:

- Assistance in infrastructure and capacity building: 43 out of 45 responses (96 percent)
- Improved knowledge of the TBT Agreement, including Annex 3 (the Code of Good Practice for the Preparation, Adoption, and Application of Standards), and dissemination and increased awareness of the agreement: 33 responses (73 percent)
- Exchange of experience among members, and bilateral contact and cooperation: 33 responses (73 percent)
- Assistance with the effective implementation of the TBT Agreement: 32 responses (71 percent)
- National and regional coordination and strategy: 29 responses (64 percent)
- Assistance in participating in the work of the WTO TBT Committee and other organizations: 20 responses (44 percent)
- Help with market access questions arising out of TBT measures: 16 responses (36 percent).

**Source:** For the survey, C/TBT/W/178, July 18, 2002; for the results, C/TBT/W/193, February 10, 2003.

**Box 11.5. Using the PTAs Living Agreement Institutions for Capacity Building: An Example**

The United States has entered into a PTA with the Central America Free Trade Agreement plus the Dominican Republic (CAFTA-DR). Article 7.8 of this PTA establishes a Committee on Technical Barriers to Trade. Among the explicitly stated functions of the committee are “enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures and, as appropriate, designing and proposing mechanisms for technical assistance of the type described in Article 11 of the TBT Agreement, in coordination with the Committee on Trade Capacity Building, as appropriate.”

The committee’s discussions and procedure are supplemented by regularly updated national action plans for trade capacity building prepared by the developing-country parties to the PTA. As TBT and SPS issues or implementation problems arise, they can be added to the updated action plan.

Box 11.6. Dispute Settlement of TBT and SPS Measures in the WTO and within the Andean Community

Over the period 1995–2004, just 12 cases involving TBT or SPS measures were brought under the WTO’s Dispute Settlement Understanding. In a roughly comparable period (1997–2004), 24 cases out of a total of 104 legal cases brought to dispute settlement in the Andean Community involved TBT or SPS measures, with 88 percent of these disputes related to SPS matters. Commonly noted procedural issues at dispute included:

- Delays of more than five months in granting SPS permissions, whereas the maximum time frame for granting permission is 10 days.
- Validity limited to 60 days on SPS permissions, although the minimum validity period established by Andean Community regulations is 90 days.
- Establishment of complementary requirements for granting SPS permission, beyond Andean Community legislation.
- Grants of permissions for only a small portion of the products, with other products subject to indefinitely pending deliberation without any stated objections on SPS grounds.

In some instances, it was indicated that the complainant perceived the procedural problem in granting SPS approval as intentional or as a hidden restriction.


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differences through consultation or within a technical group) over litigation, even if litigation is an option. In some cases, implementing committees are charged with pursuing resolution of disputes—implicitly, through cooperative consultation.

**Conclusions**

Research into the practice of addressing TBT and SPS measures in PTAs suggest that such agreements converge with, and support, the multilateral trading system. To ensure that this does happen, PTAs should include, where feasible, a number of important best-practice provisions.

1. The parties to the PTA should undertake to use international standards whenever possible, as doing so guarantees a high level of protection in the integrated market and makes it easier for third parties to trade in that market.
2. If the parties to the PTA decide on an approach of harmonizing their standards and conformity assessment procedures, they should accept that it might be necessary to limit harmonization to essential health and safety standards and rely on mutual recognition and equivalence techniques for other areas.
3. If one partner is less developed than the other, the PTA should incorporate technical assistance and capacity-building measures to assist the institutions and exporters of the developing-country partner. In negotiating a PTA, governments should recognize that deeper integration and the resolution of standards-related problems will take time and will require considerable bilateral work. A PTA that aims to be effective should incorporate bilateral institutions (committees and the like) that have a mandate to deal with standards-related questions over time through harmonization, equivalence, or mutual recognition techniques. Ideally, the institutions established in the PTA should also be capable of helping to resolve trade-related problems arising out of exporters’ need to comply with private standards in an importing country’s market.
4. If technical regulations and conformity assessment procedures cannot be harmonized, it is important for the purposes of the PTA that the parties work to eliminate duplicate or multiple measures or mandatory tests for the same product. This is particularly crucial for small and medium-size enterprises that cannot afford the high cost of meeting differing regulations and testing regimes. Mutual recognition agreements are important tools in this respect.
5. Transparency regarding SPS standards in international trade is very important for businesses and consumers. PTA partners should consider enacting WTO+ notification obligations and a commitment not to implement any technical regulation or SPS measure until it has been published and comments from the PTA partners have been taken into account.
6. The PTA should be a living agreement with a commitment to a work plan or to prioritization of problem resolution through harmonization, equivalence, or mutual recognition, equivalence measures, and other policy tools that enable elimination or mitigation of trade-related problems over time. Ideally, the work program should also be capable of addressing problems relating to compliance with private standards.
7. PTA provisions on TBT and SPS matters should be legally binding through a judicious combination of soft and hard law. The agreement should provide a pathway that permits an evolution and deepening of integration over time by allowing the gradual resolution of TBT and SPS issues in the bilateral relationship. Such a pathway should be considered an integral part of any PTA that aims to deal effectively with standards, certification, and conformity assessment problems. Eventual recourse to the PTA dispute settlement provisions should be an option, in addition to recourse to the WTO Dispute Settlement Understanding.
8. PTA parties should agree to an overall commitment whereby technical regulations and conformity assessment procedures are always applied on a national treatment basis. Third parties whose technical regulations and conformity assessment procedures can be demonstrated as being equivalent to the level agreed to by the PTA partners should be permitted to benefit from the arrangements between the partners. A commitment to open regionalism would help to ensure that PTAs would support the multilateral system.

Notes

1. The terms "standard" and "technical regulation" are used throughout this chapter. The difference is that whereas conformity with standards is voluntary, technical regulations are by nature mandatory. The two types of provision have different implications for international trade. If an imported product does not fulfill the requirements of a technical regulation, it will not be allowed to be put on sale. In the case of standards, non-complying imported products will be allowed on the market, but their market share may be affected if consumers prefer products that meet local standards, such as quality or color standards for textiles and clothing. The WTO Web site pages offer a detailed presentation of technical barriers to trade (http://www.wto.org/english/tratop_e/sps_e/spsund_e.htm).


5. Ibid., 6.


12. Article 103 provided for a review of the TDCA within five years of the agreement’s entering into force.


14. The standard had been called EUREPGAP; the name was changed to EUREGAP; the name was changed to EUREGAP in 2007.

15. Andrew L. Stoler


20. Ibid., 5.


23. Ibid.


28. The Codex Alimentarius, which comes under the auspices of the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO), is a collection of internationally recognized standards, codes of practice, guidelines, and other recommendations relating to foods, food production, and food safety. OIE is the intergovernmental organization responsible for improving animal health worldwide. COSAVE is a regional organization established by agreement between the governments of the Mercosur parties within the framework of the International Plant Protection Convention.

29. The Trade Commission assists the Mercosur executive body in applying the instruments of common trade policy agreed to by the member states for the operation of customs unification.

30. For Brazil, CCM XVII, Acta No 06/08, Consultation No 08/07; for Uruguay, CCM XVII, Acta No 08/07; http://www.mercosur.int/mswebportal%20intermediario/es/index.htm.


34. The standard had been called EUREPGAP; the name was changed in 2007.

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