

ANNEX 1
REPORT BY THE CHAIRMAN ON WORKSHOP ON GOOD REGULATORY PRACTICE

Report by the Chairman (Mr. Raiminder S. SIDHU)
at the Regular Meeting of the TBT Committee of 20 March 2008¹

1. At the Fourth Triennial Review of the TBT Agreement, concluded in November 2006, the TBT Committee agreed to share experiences on a number of aspects relevant to good regulatory practice with a view to deepening understanding of the contribution good regulatory practice can make to the implementation of the TBT Agreement. In this regard, a Workshop on Good Regulatory Practice was held at WTO Headquarters on 18 and 19 March 2008. Participation of 102 capital-based officials from developing countries was sponsored through the WTO Global Trust Fund.

2. Discussions at the Workshop were held in four panel sessions dealing with: general approaches of Members to good regulatory practice when implementing the disciplines of the TBT Agreement (Session 1); internal transparency and consultative mechanisms (Session 2); regulatory impact assessment (Session 3); and regulatory cooperation initiatives between Members (Session 4). The final programme is contained in document G/TBT/GEN/67/Rev.1 and a background note by the Secretariat is in document Job(08)/7.

3. A key message in the First Session – and one that recurred throughout the two days – was the importance of established processes and procedures as a means of giving effect to good regulatory practice. In other words, although there are many different ways of implementing the TBT Agreement, having a basic process backed by some form of legal instrument (such as a Decree in Chile, a Guide in Brazil, Acts or Executive Orders in the United States) can strengthen efforts to integrate good regulatory practice into Members' regulatory structures.

4. In the first session participants also discussed ways to reference standards in technical regulations, based on the Canadian experience, and several issues were raised in this regard, including: the advantages (and potential challenges) of directly referencing standards in legislation; the cost of using the standards; and how to adapt a standard to fulfil the legitimate objective of the regulatory measure. Some Members pointed at constraints for developing countries, such as difficulties in demonstrating compliance with standards – particularly in cases where accreditation infrastructure is lacking.

5. In the Second Session, it was observed that transparency, openness and accountability are relevant to many, if not all, aspects of good regulatory practice. The Session focussed particularly on mechanisms to enhance transparency in the development stage of proposed regulations. Benefits were highlighted. It was stressed, for instance, that participation by stakeholders helps ensure legitimacy to what the government does and the measures it chooses to implement. Consultative processes enhance predictability and clarity providing certainty for traders and also helps to increase awareness about government actions. There are challenges as well and sometimes traps that need to be avoided. It is important, for instance, that consultative processes are not dominated by particular interest groups. As well, consultation should *not* be considered by regulators as a burden but rather as an instrument that adds legitimacy to regulatory decision making.

6. The Third Session focused on how regulatory impact assessments can assist decision-making. As was stated by one participant: a regulatory impact assessment induces governments to think harder about how to solve problems; it is a decision-making *tool*. One important benefit of RIAs is

¹ A Summary Report of the Workshop on Good Regulatory Practice is contained in G/TBT/W/287.

that they facilitate the identification of the need for regulation. In this regard presenters stressed the importance of considering alternatives - and, perhaps, reconsidering the need for regulation in the first place. It was noted that RIAs do not need to be complex, they can be flexible and adaptable in nature. When functioning well, they can help filter the flow of new regulations and help ensure that these are less likely to create trade problems. It was also pointed out that because regulatory impact assessments are public, they boost accountability. In this sense, again, RIAs are also a tool for transparency. Finally, attention of participants was also drawn to the APEC-OECD Integrated Checklist on Regulatory Reform.

7. In the Fourth Session participants heard a number of examples of regulatory cooperation activities between Members. Many factors – all regarded as important to fostering cooperation between Members – were highlighted, including: promotion of dialogue (including at senior level); acting early to avoid trade problems before they arise; and providing resources to support cooperation and political commitment. It was pointed out that a fundamental component to regulatory cooperation is confidence-building: personal contacts are also essential. Cooperation also has a capacity building component in that it helps build up understanding of different systems thereby contributing to the convergence of regulations.

8. Looking back on the two days of the Workshop, one general message stands out: regulation is a legitimate part of government activity and a major and increasingly important policy tool of government today. Emphasis has shifted somewhat from de-regulation to "smart" or "better" regulation – it is the quality of regulation that matters. And this process of becoming better at regulating is an ongoing process – for *all* Members. In other words, although at different levels, all Members face challenges. There is scope here for Members to learn from each other in this regard and I can only encourage continued exchanges in this area between Members.

9. Let me again thank participants to the workshop for their engagement. I believe the discussions over the last two days have significantly contributed to deepening Members' understanding of the contribution good regulatory practice can make to the implementation of the TBT Agreement.