

CHAPTER 7

TECHNICAL BARRIERS TO TRADE

Article 7.1

Definitions

1. For the purposes of this Chapter, *TBT Agreement* means the *Agreement on Technical Barriers to Trade*, which is part of the *WTO Agreement*.
2. The definitions in Annex 1 of the *TBT Agreement* are incorporated into and made part of this Chapter, *mutatis mutandis*.

Article 7.2

Objectives

The objectives of this Chapter are to increase and facilitate trade by preventing and eliminating unnecessary obstacles to trade and enhancing bilateral cooperation in accordance with the rights and obligations of the Parties with respect to the *TBT Agreement*.

Article 7.3

Scope

1. Except as provided in paragraphs 2 and 3, this Chapter applies to all standards, technical regulations, and conformity assessment procedures, as defined in the *TBT Agreement* that may, directly or indirectly, affect trade in goods between the Parties.
2. Purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies are not subject to this Chapter but are addressed in Chapter 9 (Government Procurement), according to its coverage.
3. This Chapter does not apply to sanitary and phytosanitary measures as defined under paragraph 1 of Annex A of the *SPS Agreement*, which are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

Article 7.4

Affirmation of *TBT Agreement*

The Parties affirm their existing rights and obligations with respect to each other under the *TBT Agreement*.

Article 7.5

International Standards

1. The Parties shall use international standards, guides and recommendations, or the relevant parts of them, to the extent provided in Articles 2 and 5 and Annex 3 of the *TBT Agreement*, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards, guides and recommendations exist or their completion is imminent, except when they or their relevant parts are ineffective or inappropriate to fulfil the legitimate objectives.

2. In determining whether an international standard, guide or recommendation as mentioned in Articles 2 and 5 and Annex 3 of the *TBT Agreement* exists, each Party shall base its determination on the principles set out in relevant Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since January 1st, 1995.

Article 7.6

Trade Facilitation

The Parties shall work cooperatively in the fields of standards, technical regulations and conformity assessment procedures with a view to facilitating trade between the Parties, in particular, to identify bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include:

- (a) cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards;
- (b) alignment with international standards;
- (c) reliance on a supplier's declaration of conformity; and

- (d) use of accreditation to qualify conformity assessment bodies, as well as cooperation through recognition of conformity assessment procedures.

Article 7.7

Equivalence of Technical Regulations

1. Consistent with the *TBT Agreement*, each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.
2. A Party shall, at the request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

Article 7.8

Conformity Assessment Procedures

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance in the Area of a Party of the results of conformity assessment procedures conducted in the Area of the other Party. For example:
 - (a) accepting the declaration of conformity by a supplier in the Area of the other Party, preferably with the proof from accreditation agencies, where appropriate;
 - (b) promoting recognition of cooperative arrangements between accreditation bodies located in the Areas of the Parties;
 - (c) implementing mutual recognition of conformity assessment procedures conducted by bodies located in the Areas of the Parties;
 - (d) implementing unilateral recognition by one Party of the results of conformity assessment procedures performed in the Area of the other Party with respect to specific technical regulations;
 - (e) recognising accreditation procedures of the other Party for qualifying conformity assessment bodies in the Area of that Party;

- (f) designating conformity assessment bodies located in the Area of the other Party;
- (g) facilitating the consideration of a request by the other Party to recognise the results of conformity assessment procedures conducted by bodies in the Area of the other Party, including through negotiation of agreements in a sector nominated by that other Party; and
- (h) utilising relevant international multilateral recognition agreements and arrangements.

2. The Parties shall exchange information on the mechanisms referred in paragraph 1 and other similar mechanisms with a view to facilitating acceptance of conformity assessment results.

3. Each Party shall accredit, approve, license, or otherwise recognise conformity assessment bodies in the Area of the other Party on terms no less favorable than those it accords to conformity assessment bodies in its Area. Where a Party accredits, approves, licenses, or otherwise recognises a body in its Area assessing conformity with a specific technical regulation or standard and refuses to accredit, approve, license, or otherwise recognise a body in the Area of the other Party assessing conformity with that technical regulation or standard, it shall, at the request of that other Party, explain the reasons for its decision.

4. Each Party shall give positive consideration to a request by the other Party to negotiate and conclude arrangements to facilitate recognition of the results of conformity assessment procedures conducted by bodies located in the Area of the other Party. Where a Party declines such a request, it shall, at the request of that other Party, explain the reasons for its decision.

Article 7.9

Transparency

1. Each Party shall ensure that the information relating to technical regulations and conformity assessment procedures is published. Such information should be made available in printed or electronic form.

2. The Parties acknowledge the importance of transparency in decision-making, including providing a meaningful opportunity for interested persons to provide comments on proposed technical regulations and conformity assessment

procedures. Where a Party publishes a notice under Article 2.9 or 5.6 of the *TBT Agreement*, it shall:

- (a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and
- (b) transmit the proposal electronically to the other Party through the enquiry point the Party has established under Article 10 of the *TBT Agreement* at the same time as it notifies WTO Members of the proposal pursuant to the *TBT Agreement*.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for the interested persons of the other Party and the other Party to make comments in writing on the proposal.

3. Where a Party makes a notification under Article 2.10 or 5.7 of the *TBT Agreement*, it shall at the same time transmit the notification to the other Party electronically through the enquiry point established under Article 10 of the *TBT Agreement*.

4. Each Party shall discuss comments received under paragraph 2 with the other Party upon request.

5. At the request of the other Party, a Party shall provide the other Party information regarding the objective of, and rationale for, a standard, technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

Article 7.10

Technical Cooperation

1. Recognising the important relationship between good regulatory practices and trade facilitation, the Parties shall cooperate in the areas of standards, technical regulations and conformity assessment procedures, on a case-by-case basis, including to:

- (a) promote good regulatory practice based on risk management principles;
- (b) improve the quality and effectiveness of their technical regulations;

- (c) develop joint initiatives for managing risks to health, safety and the environment; and
- (d) build understanding and capacity to promote better regulatory compliance.

2. The Parties shall implement this Article by establishing work programmes to, *inter alia*:

- (a) exchange information on, *inter alia*:
 - (i) regulatory systems;
 - (ii) incident analysis;
 - (iii) hazard alerts;
 - (iv) product bans and recalls; and
 - (v) procedures, strategies and programmes for product surveillance activities; and
- (b) cooperate as mutually determined, on, *inter alia*:
 - (i) the development of technical regulations;
 - (ii) regulatory reviews and implementation; and
 - (iii) the development and implementation of risk management principles, including product monitoring, safety, compliance and enforcement procedures.

Article 7.11

Institutional Arrangements

1. In order to facilitate communication, each Party shall designate a contact point and exchange the contact details of relevant officials of that contact point, including information on telephone, facsimile, e-mail and other relevant details, no later than 2 months following the date of entry into force of this Agreement.

2. Each Party shall notify the other Party promptly of any change of its contact point or any amendments to the information of the relevant officials.

3. The Parties hereby establish a Sub-Committee on Technical Barriers to Trade (“Sub-Committee on TBT”) under the Committee on Trade in Goods to promote and monitor the implementation and administration of this Chapter. The Sub-Committee on TBT shall be comprised of officials from the contact points designated under paragraph 1 and any other representatives of the Parties.

4. The Sub-Committee on TBT may address any matter related to the effective functioning of this Chapter. The responsibilities and functions of the Sub-Committee on TBT shall include:

- (a) promptly addressing any issue that a Party raises related to the preparation, adoption and application of standards, technical regulations or conformity assessment procedures by the other Party;
- (b) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures;
- (c) exchanging information on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party;
- (d) exchanging information, where appropriate, on developments in non-governmental, regional, and multilateral fora related to standardisation, technical regulations and conformity assessment procedures;
- (e) exploring any means aimed at improving access to the Parties’ respective markets through elimination of unnecessary technical barriers to trade and enhancing the functioning of this Chapter;
- (f) consulting⁴ on any matter arising under this Chapter, at a Party's request; and

⁴ It is understood that consultations held pursuant to paragraph 4 (f) shall be without prejudice to the rights and obligations of the Parties under Chapter 17 (Dispute Settlement) or under the *WTO Dispute Settlement Understanding*.

- (g) addressing any matter related to the effective functioning of this Chapter, including the monitoring, implementation and reviewing of this Chapter, in light of any developments under the *TBT Agreement*.

5. The Sub-Committee on TBT may meet at such venues and time as may be agreed by the Parties. Meetings may also be held via teleconference, videoconference or any other means agreed by the Parties.

6. The Sub-Committee on TBT may, by mutual agreement between the Parties, establish *ad hoc* working groups to undertake responsibilities or carry out functions set out in paragraph 4 if necessary.

7. The terms of reference of the Sub-Committee on TBT shall be determined in its first meeting.

8. The Sub-Committee on TBT shall report its activities to the Committee on Trade in Goods.

Article 7.12

Annexes and Implementing Arrangements

1. The Parties, in accordance with Article 16.1.4 (b) (iii), may conclude or amend Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessment procedures applicable to trade between them.

2. The Parties may develop implementing arrangements setting out details for the implementation of Annexes referred to in paragraph 1, or arrangements made in relation to any work under this Chapter.

3. The Parties shall seek to incorporate any existing arrangements concerning technical regulations and conformity assessment procedures that are specifically applicable to trade between the Parties into the Annexes and implementing arrangements.