

## CHAPTER 7

### TECHNICAL BARRIERS TO TRADE

#### Article 7.1 Definitions

For the purposes of this Chapter, the terms and their definitions provided in Annex 1 of the *Agreement on Technical Barriers to Trade*, set out in Annex 1A to the WTO Agreement (“TBT Agreement”) shall apply.

#### Article 7.2 Objectives

The objectives of this Chapter are to facilitate trade in goods between the Parties by:

- (a) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade;
- (b) furthering the implementation of the TBT Agreement;
- (c) promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;
- (d) facilitating information exchange and cooperation between the Parties in the field of standards, technical regulations, and conformity assessment procedures including in the work of relevant international bodies; and
- (e) addressing the issues that may arise under this Chapter.

#### Article 7.3 Scope

1. This Chapter shall apply to the standards, technical regulations, and conformity assessment procedures of central government bodies that may affect trade in goods between the Parties. This Chapter shall not apply to:
  - (a) any sanitary or phytosanitary measure, which is covered by Chapter 6 (Sanitary and Phytosanitary Measures); and

- (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.
- 2. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter by local government bodies, and non-governmental bodies within its territory which are responsible for the preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures.
- 3. Nothing in this Chapter shall prevent a Party from preparing, adopting, applying, or maintaining standards, technical regulations, and conformity assessment procedures in a manner consistent with the TBT Agreement and this Chapter.

#### **Article 7.4 Reaffirmation of the TBT Agreement**

The Parties reaffirm their rights and obligations under the TBT Agreement.

#### **Article 7.5 Standards**

- 1. The Parties recognise the important role that international standards, guides, and recommendations can play in supporting greater alignment of technical regulations, conformity assessment procedures, and national standards, and in reducing unnecessary barriers to trade.
- 2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall base its decision on the principles set out in the relevant *Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement* (G/TBT/9, 13 November 2000, Annex 4), and subsequent relevant decisions and recommendations in this regard, adopted by the WTO Committee on Technical Barriers to Trade (“WTO TBT Committee”).
- 3. With respect to the preparation, adoption and application of standards, each Party shall ensure that its standardising body or bodies that prepare, adopt and apply national standards accept and comply with Annex 3 of the TBT Agreement.
- 4. The Parties shall, where appropriate, strengthen coordination and communication with each other in the context of discussions on

international standards and related issues in other international fora, such as the WTO TBT Committee.

5. Where modifications to the contents or structure of the relevant international standards were necessary in developing a Party's national standards, that Party shall, on request of the other Party, encourage its standardising body or bodies to provide information on the differences in the contents and structure, and the reason for those differences. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic persons.
6. Further to paragraph 5, each Party shall ensure that its standardising body or bodies do not prepare, adopt or apply standards with a view to, or with the effect of, creating unnecessary obstacles to international trade.
7. Each Party shall encourage cooperation between its standardising body or bodies in its territory and the standardising body or bodies of the other Party, in areas such as:
  - (a) exchange of information on standards;
  - (b) exchange of information relating to standard setting procedures; and
  - (c) international standardising activities in areas of mutual interest.

### **Article 7.6 Technical Regulations**

1. Each Party shall use relevant international standards or the relevant parts of them, to the extent provided in paragraph 4 of Article 2 of the TBT Agreement, as a basis for its technical regulations. Where a Party does not use such international standards, or their relevant parts, as a basis for its technical regulations, and these may have an effect on the trade of the other Party, it shall, on request from the other Party, explain the reasons why such standards have been considered inappropriate or ineffective to achieve the aims of its technical regulations.
2. In implementing paragraph 2 of Article 2 of the TBT Agreement, each Party shall consider available alternatives in order to ensure that the proposed technical regulations to be adopted are not more trade-restrictive than necessary to fulfil a legitimate objective.
3. Each Party shall give positive consideration to accepting as equivalent, technical regulations of the other Party, even if those regulations differ from its own, provided it is satisfied that those regulations adequately fulfil the objectives of its own regulations.

4. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, on request of the other Party, explain the reasons for its decision.
5. In implementing paragraph 8 of Article 2 of the TBT Agreement, where a Party does not specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics, the Party shall endeavour to, on request of the other Party, provide its reasons for doing so.
6. Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, each Party shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to provide sufficient time for producers in an exporting Party to adapt their products or methods of production to the requirements of an importing Party. For the purposes of this paragraph, the Parties understand that “reasonable interval” shall mean normally a period of not less than six months, except where this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation.
7. On request of a Party that has an interest in developing a technical regulation similar to a technical regulation of the other Party, the requested Party shall endeavour to provide, to the extent practicable, relevant information, including studies or documents, except for confidential information, on which it has relied in its development.
8. Each Party shall uniformly and consistently apply its technical regulations that are prepared and adopted by its central government bodies to its territory.

#### **Article 7.7** **Conformity Assessment Procedures**

1. Further to paragraph 4 of Article 5 of the TBT Agreement, each Party shall ensure that central government bodies use relevant international standards or their relevant parts as a basis for their conformity assessment procedures, except where, as duly explained upon request, such international standards or relevant parts are inappropriate for the Party concerned.
2. Each Party recognises the importance of accepting the results of conformity assessment procedures conducted in the other Party with a view to increasing efficiency, avoiding duplication, and ensuring cost effectiveness of conformity assessments.
3. Each Party shall ensure, wherever possible, that results of conformity assessment procedures in the other Party are accepted, even when those procedures differ from its own, unless those procedures do not

offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

4. A Party shall, on request of the other Party, explain its reasons for not accepting the results of a conformity assessment procedure conducted in the other Party.
5. Each Party recognises that, depending on the situation of the Party and the specific sectors involved, a broad range of mechanisms exists to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party. Such mechanisms may include:
  - (a) mutual recognition agreements for the results of conformity assessment procedures conducted by bodies in the other Party;
  - (b) cooperative voluntary arrangements between accreditation bodies or those between conformity assessment bodies in the other Party;
  - (c) the use of accreditation to qualify conformity assessment bodies, including through relevant multilateral agreements or arrangements, to recognise the accreditation granted by the other Party;
  - (d) the designation of conformity assessment bodies in the other Party;
  - (e) unilateral recognition by a Party of results of conformity assessment procedures conducted in the other Party; and
  - (f) a manufacturer's or supplier's declaration of conformity.
6. Upon reasonable request by a Party, the other Party shall exchange information or share experiences on the mechanisms referred to in paragraph 5, including their development and application, with a view to facilitating the acceptance of the results of conformity assessment procedures.
7. The Parties recognise the important role that relevant international, including regional, organisations can play in cooperation in the area of conformity assessment. In this regard, each Party shall take into consideration the participation status or membership in such organisations of relevant bodies in the Parties in facilitating this cooperation.
8. The Parties agree to encourage cooperation between their relevant conformity assessment bodies in working closer with a view to facilitating the acceptance of conformity assessment results between the Parties.

9. Each Party shall, wherever possible, permit the participation of conformity assessment bodies of the other Party in its conformity assessment procedures under conditions no less favourable than those accorded to conformity assessment bodies in that Party.
10. Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies of the other Party in its conformity assessment procedures, it shall, on request of that other Party, explain the reason for its decision to refuse.

### **Article 7.8 Cooperation**

1. The Parties shall strengthen their cooperation between their respective organisations responsible for standards, technical regulations and conformity assessment procedures, consistent with the objectives of this Chapter.
2. Each Party shall, on request of the other Party, give positive consideration to proposals for cooperation on matters of mutual interest on standards, technical regulations and conformity assessment procedures.
3. The cooperation referred to in paragraph 2 shall be on mutually determined terms and conditions, may include:
  - (a) advice, technical assistance or capacity building relating to the development and application of standards, technical regulations and conformity assessment procedures;
  - (b) cooperation between conformity assessment bodies, both governmental and non-governmental, in the Parties, on matters of mutual interest;
  - (c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation in the frameworks for mutual recognition developed by relevant regional and international bodies;
  - (d) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; and
  - (e) strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora.

4. Each Party shall, on request of the other Party, give consideration to sector-specific proposals for mutual benefit for cooperation under this Chapter.

### **Article 7.9 Technical Discussions**

1. Where a Party considers the need to resolve an issue related to trade and provisions under this Chapter, it may make a written request for technical discussions. The other Party shall respond as early as possible to such a request.
2. The Parties shall enter into technical discussions within 60 days of the written request referred to in paragraph 1, unless otherwise mutually determined, with a view to reaching a mutually satisfactory solution. Technical discussions may be conducted through any means mutually agreed by the Parties.
3. Requests for technical discussions shall be made through the Parties' respective contact points designated pursuant to Article 7.14 (Contact Points).
4. This Article is without prejudice to the rights and obligations of the Parties under Chapter 19 (Dispute Settlement).

### **Article 7.10 Transparency**

1. The Parties recognise the importance of the provisions relating to transparency in the TBT Agreement. In this respect, the Parties shall take into account relevant decisions and recommendations in the Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995 (G/TBT/1/Rev.13), as may be revised, issued by the WTO TBT Committee.
2. Upon written request, a Party shall provide to the other Party, if already available, the full text or summary of its notified technical regulations and conformity assessment procedures in the English language. If unavailable, the Party shall provide to the other Party a summary stating the requirements of the notified technical regulations and conformity assessment procedures in the English language, within a reasonable period of time agreed by the Parties and, if possible, within 30 days after the date of receipt of the written request. The Party writing the summary shall determine the contents of the summary.
3. Each Party shall endeavour to normally allow 60 days from the date of notification to the WTO in accordance with paragraph 9 of Article 2 and paragraph 6 of Article 5 of the TBT Agreement for the other Party to

provide comments in writing, except where urgent problems of safety, health, environmental protection, or national security arise, or threaten to arise. Each Party shall take the comments of the other Party into account and shall endeavour to provide responses to those comments upon request.

4. Each Party shall allow persons of the other Party to participate in consultation procedures that are available to the general public for the development of technical regulations, national standards and conformity assessment procedures by the Party, subject to its laws, regulations and procedures, on terms no less favourable than those accorded to its own persons.
5. The Parties shall ensure that all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures are publicly available.
6. Unless otherwise provided in this Chapter, any information or explanation requested by a Party pursuant to this Chapter shall be provided by the requested Party, electronically and in the English language, within a reasonable period of time agreed by the Parties and, if possible, within 60 days.

#### **Article 7.11 Marking and Labelling**

If a Party requires marking or labelling of products in the form of a technical regulation:

- (a) the importing Party shall accept that labelling, including supplementary labelling or corrections to labelling, take place in the territory of the importing Party in accordance with its relevant laws, regulations, and customs procedures, as an alternative to labelling in the exporting Party, unless that labelling is necessary in view of the legitimate objectives referred to in Article 2.2 of the TBT Agreement;
- (b) the importing Party shall, unless it considers that legitimate objectives under the TBT Agreement are compromised as a result, endeavour to accept supplementary, non-permanent, or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product; and
- (c) provided that it is not misleading, contradictory, inconsistent, or confusing, or that the importing Party's legitimate objectives are not compromised, the importing Party shall permit the following in relation to the information required in the importing Party:

- (i) information in other languages in addition to the language required in the importing Party;
- (ii) internationally accepted nomenclatures, pictograms, symbols, or graphics in addition to those required in the importing Party; and
- (iii) additional information to that required in the importing Party.

### **Article 7.12 Implementing Arrangements**

The Parties may develop arrangements to set out areas of cooperation of mutual interest for applying this Chapter, including, where appropriate, in conjunction with other related Chapters.

### **Article 7.13 Committee on Technical Barriers to Trade**

1. The Parties hereby establish a Committee on Technical Barriers to Trade ("Committee"), consisting of representatives of the Parties.
2. The Committee shall meet at such venues and times as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.
3. The functions of the Committee may include:
  - (a) monitoring the implementation and operation of this Chapter;
  - (b) coordinating cooperation pursuant to Article 7.8 (Cooperation);
  - (c) facilitating technical discussions;
  - (d) reporting, where appropriate, its findings to the Joint Commission; and
  - (e) carrying out other functions as may be delegated by the Joint Commission.

### **Article 7.14 Contact Points**

1. Each Party shall, within 60 days of the date of entry into force of this Agreement, designate a contact point or contact points responsible for coordinating the implementation of this Chapter, and notify the other

Party of that contact point or contact points and relevant details, including an email address. Each Party shall promptly notify the other Party of any change to those contact details.

2. Each Party shall ensure that its contact point or contact points facilitate the exchange of information between the Parties on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from the other Party.
3. The contact point or contact points may agree to refer issues concerning the implementation of this Chapter to the Committee on Technical Barriers to Trade for consideration.