

CHAPTER 7

TECHNICAL BARRIERS TO TRADE

Article 7.1: Objectives

The objectives of this Chapter are to:

- (a) increase and facilitate trade among the Parties through furthering the implementation of the TBT Agreement;
- (b) deepen cooperation between the Parties in areas relating to technical barriers to trade;
- (c) ensure that standards, technical regulations and conformity assessment procedures do not create unnecessary technical barriers to trade.

Article 7.2: Scope of Application

1. The provisions of this Chapter apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures of the Parties¹, of central level of government bodies and local government bodies that may affect trade in goods between the Parties.
2. The provisions of this Chapter are not applicable to sanitary and phytosanitary measures which shall be covered by Chapter 6 (Sanitary and Phytosanitary Measures).
3. The procurement specifications developed by government bodies for the production or consumption requirements of those bodies, shall not be subject to the provisions of this Chapter and shall be covered by Chapter 14 (Government Procurement).

Article 7.3: Incorporation of the TBT Agreement

The TBT Agreement shall be incorporated into this Chapter and is an integral part of it, *mutatis mutandis*.

Article 7.4: International Standards, Guides and Recommendations

¹ Any reference made in this Chapter to standards, technical regulations and conformity assessment procedures, includes those related to metrology.

1. The Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary barriers to trade.

2. In this respect, and further to Articles 2.4 and 5.4 and Annex 3 of the TBT Agreement, to determine 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 apply 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 Committee on Technical Barriers to Trade.

Article 7.5: Cooperation and Trade Facilitation

1. The Parties shall seek to identify, develop and promote trade facilitation initiatives related to standards, technical regulations, and conformity assessment procedures. Such initiatives may include:

- (a) enhancing knowledge and understanding of the Parties' respective systems with the aim of facilitating market access;
- (b) promoting the compatibility or equivalence of technical regulations and conformity assessment procedures;
- (c) promoting alignment or harmonisation with international standards; or
- (d) recognising and accepting the results of conformity assessment procedures.

2. The Parties recognise the existence of a wide range of mechanisms to support greater regulatory alignment and eliminate unnecessary technical barriers to trade in the region, including:

- (a) encouraging regulatory dialogue and cooperation, through means such as:
 - (i) exchanging information on regulatory approaches and practices;
 - (ii) promoting the use of good regulatory practices to improve the efficiency and effectiveness of standards, technical regulations and conformity assessment procedures;
 - (iii) providing technical advice, assistance and cooperation, on mutually agreed terms and conditions, to:
 - (A) improve practices related to the development, implementation and review of technical regulations, standards and conformity assessment procedures;

- (B) improve competency and support the implementation of this Chapter; or
- (b) encouraging greater use of international standards, guides and recommendations as a basis for technical regulations and conformity assessment procedures.
3. With respect to paragraphs 1 and 2, the Parties recognise that the choice of the appropriate initiatives or mechanisms in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between the Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.
4. The Parties shall strengthen collaboration on mechanisms to facilitate the acceptance of the results of the conformity assessment procedures, to support greater regulatory alignment and eliminate unnecessary technical barriers to trade.
5. The Parties shall encourage cooperation between their respective organisations responsible for technical regulation, standardisation, conformity assessment, accreditation and metrology, whether they are governmental or non-governmental, with a view to addressing diverse issues covered by this Chapter.
6. When a Party detains at the point of entry a good originating in the territory of the other Party, due to non-fulfilment of a technical regulation, it must notify the importer, or when applicable, its agent, as soon as possible the reasons for the detention.
7. Upon request, a Party shall provide, to the extent possible, information on the standards used in a specific technical regulation.
8. Parties shall endeavour, to the extent possible, to cooperate in areas of mutual interest in international standardisation forums. This cooperation may include the exchange of positions.

Article 7.6: Technical Regulations

A Party that has prepared a technical regulation that it considers to be equivalent to a technical regulation of the other Party may request that the other Party recognise the technical regulation as equivalent. The Party shall make the request in writing and set out detailed reasons why the technical regulation should be considered equivalent, including reasons with respect to product scope. If a Party does not agree that the technical regulation is equivalent it shall provide to the other Party, upon request, the reasons for its decision.

Article 7.7: Conformity Assessment

1. Each Party recognises that there is a wide range of mechanisms to facilitate the acceptance of the results of the conformity assessment procedures carried out in the territory of the other Party, which may include:

- (a) voluntary arrangements between the conformity assessment bodies in the territory of the Parties;
- (b) agreements on the mutual recognition of the results of conformity assessment procedures performed by bodies located in its territory and the other Party's territory with respect to specific technical regulations;
- (c) use of accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;
- (d) recognition of regional and international mutual recognition arrangements between or among accreditation bodies or conformity assessment bodies.
- (e) government approval or designation of conformity assessment bodies;
- (f) unilateral recognition of the results of conformity assessment bodies located in the territory of the other Party; and
- (g) acceptance by the importing Party of a supplier's declaration of conformity.

2. The Parties shall strengthen the exchange of information in relation to these and similar mechanisms, in order to facilitate the acceptance of the results of the conformity assessment procedures. Parties recognise that the choice of the appropriate mechanisms in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between the Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.

3. If a Party does not accept the results of the conformity assessment procedures carried out in the other Party's territory, it shall, upon the other Party's request, explain the reasons for its decision.

4. Each Party shall accord to conformity assessment bodies located in the territory of the other Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory or in the territory of any other Party to the Pacific Alliance. In order to ensure that it accords such treatment, each Party shall apply the same or equivalent procedures, criteria and other conditions to accredit, approve, license or otherwise recognise conformity assessment bodies located in the territory of the other Party that it may apply to conformity assessment bodies in its own territory.

5. Paragraph 4 shall not preclude a Party from undertaking conformity assessment in relation to a specific product solely within specified government bodies located in its own territory or in the other Party's territory, in a manner consistent with its obligations under the TBT Agreement.

6. If a Party refuses to accredit, approve, license or otherwise recognise a body located in the territory of the other Party that assesses the conformity of a specific technical regulation, it shall, upon request, explain the reasons for its refusal.

7. Further to Article 5.2.5 of the TBT Agreement, each Party shall limit any conformity assessment fee imposed by the Party to the approximate cost of the services rendered to do the assessment.

8. Each Party shall give positive consideration to negotiating mutual recognition agreements for the results of its respective conformity assessment procedures carried out by bodies in the territory of the other Party. If either of the Parties refuses to begin these negotiations it shall, upon request, explain the reasons for its decision.

9. Further to Article 6.1 of the TBT Agreement, with the aim of building mutual confidence in the results of the conformity assessment procedures, the Parties may request information on conformity assessment bodies including aspects of technical competence, such as testing methods.

Article 7.8: Transparency

1. The Parties shall notify each other electronically, through the enquiry point established by each Party in accordance with Article 10 of the TBT Agreement, of proposals for new technical regulations and conformity assessment procedures, and amendments to existing technical regulations and conformity assessment procedures, as well as those adopted to address urgent problems on the terms established by the TBT Agreement, at the same time that they send the notification to the WTO Central Registry of Notifications. This notification shall include an electronic link to the notified document, or a copy of that document.

2. Each Party shall notify even those proposals for new technical regulations and conformity assessment procedures and amendments to existing technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards and that may have a significant effect on trade of the other Party.

3. Each Party shall respond in writing to the comments received from the other Party during the consultation period stipulated in the notification, no later than the date of publication of the final version of the technical regulation or conformity assessment procedure.

4. Each Party shall publish or make available to the public or the other Party, by printed or electronic means and no later than the date of publication of the final version of the technical regulation or conformity assessment procedure its responses or a summary of its responses to

significant or substantive issues presented in the comments received from the other Party during the consultation period stipulated in the notification.

5. Each Party shall publish preferably by electronic means, in a single official journal or website all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies, that a Party is required to notify or publish under the TBT Agreement or this Chapter, and that may have a significant effect on trade.²

6. Each Party shall endeavour to notify final versions of technical regulations and conformity assessment procedures as an addendum to the original notification at the same time they are adopted and made available to the public on a government website.

7. Each Party shall allow, in accordance with its own internal procedures, interested persons of the other Party to participate in the development of its standards, technical regulations and conformity assessment procedures, on terms no less favourable than those granted to its own nationals.³

8. Each Party shall recommend to non-governmental standardisation bodies recognised by that Party in its territory that they observe paragraph 7 with respect to consultation processes for the development of standards or voluntary conformity assessment procedures.

9. Each Party shall normally allow a period of at least 60 days, from the date it submits a notification under this Article, in order to enable the other Party or interested person from the other Party to make written comments on the proposed technical regulations and conformity assessment procedures, except when urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Each Party shall positively consider reasonable requests of the other Party to extend the comment period.

10. Subject to the conditions specified in Articles 2.12 and 5.9 of the TBT Agreement, regarding the reasonable interval between the publication of the technical regulations and conformity assessment procedures and their entry into force, the Parties shall interpret the expression “reasonable interval” as meaning, normally, a period of no less than six months, except when this would be ineffective to fulfil the legitimate objectives pursued.

² For greater certainty, a Party may comply with this obligation by ensuring that the proposed and final measures in this paragraph are published on, or otherwise accessible through, the WTO’s official website.

³ A Party satisfies this obligation by, for example, providing interested persons a reasonable opportunity to provide comments on the measure it proposes to develop and taking those comments into account in the development of the measure.

11. In the case of the existence of yearly or half-yearly work programmes related to technical regulations, each Party shall, if it deems appropriate, endeavour to disclose to the public this information through printed or electronic publications.

Article 7.9: Administration of this Chapter

1. Matters relating to administration of this Chapter shall be considered by the Parties through the Trade in Goods Committee established under Article 22.5(a) (Establishment of Cross-Cutting Committees).

2. The Trade in Goods Committee shall have the following additional functions under this Chapter:

- (a) discussing any issue that a Party raises under this Chapter related to the preparation, adoption or application of standards, technical regulations or conformity assessment procedures;
- (b) encouraging cooperation between the Parties in matters that are relating to this Chapter, including the development, review or modification of technical regulations, standards and conformity assessment procedures;
- (c) facilitating, as appropriate, regulatory cooperation between the Parties and sectoral cooperation between governmental and non-governmental bodies in the field of standards, technical regulations and conformity assessment procedures in the Parties' territories;
- (d) exchanging information on the work carried out in non-governmental, regional and multilateral forums and cooperation programmes involved in activities related to standards, technical regulations and conformity assessment procedures;
- (e) reviewing this Chapter in the light of any developments within the WTO's Committee on Technical Barriers to Trade and developing recommendations for amendments to this Chapter, if necessary;
- (f) at a Party's written request, facilitating technical discussions on any matter arising under this Chapter;
- (g) establishing roundtables, special sessions or workshops with experts in order to cover topics of mutual interest in the field of regulatory cooperation;
- (h) carrying out any other action that the Parties consider necessary to help in the implementation of this Chapter and the TBT Agreement; and

- (i) giving positive consideration to any request made by a Party to deepen cooperation in accordance with this Chapter. Requests may include proposals for specific sectoral initiatives or other initiatives, such as annexes.

3. To determine what activities the Trade in Goods Committee will undertake under this Chapter, the Trade in Goods Committee shall consider work that is being undertaken in other fora, with a view to ensuring that any activities undertaken by the Trade in Goods Committee do not unnecessarily duplicate that work.

Article 7.10: Information Exchange

Any information or explanation requested by a Party, under the provisions of this Chapter, must be provided by the Party receiving the request, in writing or by electronic means, within a 60-day period following the initial request. The Party receiving the request shall endeavour to respond every request within a 30-day period following the submission. The responding Party may extend the period of time for answering, by providing such notice to the inquiring Party, prior to the end of the 60-day period.

Article 7.11: Implementation Annexes

The Parties may negotiate annexes to deepen the disciplines of this Chapter. The annexes resulting from such negotiation shall constitute an integral part of this Agreement.

Article 7.12: Technical Discussions

1. Each Party shall give prompt and positive consideration to any request by the other Party to hold technical discussions on specific trade concerns, related to the implementation of this Chapter.

2. Unless the Parties agree otherwise, the discussions and any information exchanged in the course of the discussions shall be confidential and without prejudice to the rights and obligations of the Parties under this Agreement, the WTO Agreement or any other agreement to which both Parties are party.

3. When the Parties have concluded the technical discussions under paragraph 1, such technical discussions, by consent of the Parties shall constitute the consultations referred in the Article 23.6 (Consultations).