

## **CHAPTER 7**

### **TECHNICAL BARRIERS TO TRADE**

#### **Article 7.1**

##### **Definitions**

For the purposes of this Chapter, the terms and their definitions set out in Annex 1 of the TBT Agreement shall apply.

#### **Article 7.2**

##### **Objectives**

The objective of this Chapter is 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 international trade;
- (b) furthering cooperation on matters related to the TBT Agreement;
- (c) promoting mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures and enhancing transparency;
- (d) facilitating information exchange and cooperation among the Parties in the field of standards, technical regulations and conformity assessment procedures including in the work of relevant regional and international bodies; and
- (e) addressing the issues that may arise under this Chapter.

#### **Article 7.3**

##### **Scope**

1. This Chapter shall apply to standards, technical regulations and conformity assessment procedures at the central level of government that may affect trade in goods between the Parties.
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.

4. The Chapter shall not apply to:
  - (a) sanitary and phytosanitary measures which are covered in Chapter 6 (Sanitary and Phytosanitary Measures); and
  - (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies.

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

Each Party affirms its rights and obligations under the TBT Agreement.

#### **Article 7.5 Standards**

1. 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 apply the principles set out in the *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 TBT Agreement* (G/TBT/9, 13 November 2000, Annex 4).
2. Whenever modifications of contents or structure of the relevant international standards are necessary in developing national standards, upon request of a Party, the other Party shall encourage its standardising bodies to provide the differences in the contents and structure and reasons for those differences in English if this information has not already been provided within the standard. Any fees charged for this service shall, apart from the real cost of delivery, be the same for foreign and domestic parties.
3. Each Party shall ensure that its standardising bodies ensure that standards are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade.
4. Each Party shall encourage its standardising bodies in its territory to cooperate with the standardising bodies of the other Party, including through:
  - (a) exchange of information on standards;
  - (b) exchange of information relating to standard setting procedures; and
  - (c) cooperation in the work of regional and international standardising bodies in areas of mutual interest.

5. The Parties shall, as 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.

## **Article 7.6**

### **Technical Regulations**

1. Where technical regulations are required and relevant international standards exist or their completion is imminent, each Party shall use them, or relevant parts of them, as a basis for its technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems. Where a Party does not use such international standards, or their relevant parts, as a basis for its technical regulations and these may have a significant effect on its trade with the other Party, it shall, upon request of the other Party, explain the reasons therefore.
2. Upon request, 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 it is satisfied that these regulations adequately fulfil the objectives of its own regulations.<sup>1</sup>
3. Except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise, the Parties shall allow a reasonable interval<sup>2</sup> between the publication of technical regulations and their entry into force in order to provide sufficient time for producers in the exporting Party to adapt their products or methods of production to the requirements of the importing Party.
4. At the request of a Party that has an interest in developing a technical regulation similar to a technical regulation of the other Party, the other 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.

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<sup>1</sup> The Party's request should identify the specific technical regulations it considers to be equivalent and any data or evidence that supports its position.

<sup>2</sup> The term "reasonable interval" means normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or the conformity assessment procedure. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.

## **Article 7.7**

### **Conformity Assessment Procedures**

1. In cases where a positive assurance is required that products conform with technical regulations or standards, and relevant guides or recommendations issued by international standardising bodies exist or their completion is imminent, each Party shall ensure that central government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request, such international standards, guides or recommendations or relevant parts are inappropriate for the Party concerned, for, *inter alia*, such reasons as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; fundamental technological or infrastructural problems.
2. Each Party shall ensure, whenever possible, that results of conformity assessment procedures in the other Party<sup>3</sup> are accepted, even when those procedures differ from its own, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.
3. A Party shall, upon request of the other Party, explain its reasons for not accepting the results of a conformity assessment procedure conducted in the other Party.
4. 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;

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<sup>3</sup> For greater certainty, this may include results of the conformity assessment procedures conducted by conformity assessment bodies accredited by the national accreditation body of the other Party where that national accreditation body is a member of relevant multilateral agreements or arrangements.

- (e) unilateral recognition by a Party of results of conformity assessment procedures conducted in the other Party; and
  - (f) manufacturer's or supplier's declaration of conformity.
5. Upon reasonable request by a Party, the other Party shall exchange information or share experiences on the mechanisms referred to in paragraph 4, including their development and application, with a view to facilitating the acceptance of the results of conformity assessment procedures, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.
  6. 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 of the other Party in facilitating this cooperation.
  7. 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.
  8. Each Party shall, whenever 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.
  9. Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies in the other Party in its conformity assessment procedures, it shall, on request of that other Party, explain the reason for its refusal decision.

### **Article 7.8** **Cooperation**

1. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment and accreditation, with a view to facilitating trade.
2. Each Party shall, upon 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. Such cooperation, which 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, 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, upon request of the other Party, give consideration to sector specific proposals, for cooperation under this Chapter on matters of mutual benefit.

#### **Article 7.9**

##### **Information Exchange and Technical Discussions**

- 1. A Party may request the other Party provide information on any matter arising under this Chapter, and the other Party shall provide such information within a reasonable period of time.
- 2. A Party may make a written request for technical discussions with the other Party with the aim of resolving an issue relating to trade or any other matter that arises under this Chapter. The other Party shall respond as early as possible to such a request.
- 3. The Parties shall enter into technical discussions within 60 days, unless otherwise mutually determined, with a view to reaching a mutually satisfactory solution. Technical discussions may be conducted via any means mutually agreed by the Parties.
- 4. Requests for information or technical discussions shall be made through the Parties' respective contact points designated pursuant to Article 7.11 (Contact Points).
- 5. This Article is without prejudice to the rights and obligations of the Parties under Chapter 13 (Dispute Settlement).

## **Article 7.10 Transparency**

Each Party affirms its commitment to ensuring that information regarding proposed new or amended standards, technical regulations and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement as well as the *Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995* (G/TBT/1/Rev.13), and any subsequent revisions.

## **Article 7.11 Contact Points**

1. Within 60 days of the date of entry into force of this Agreement, each Party shall designate a contact point or contact points responsible for coordinating the implementation of this Chapter.
2. Each Party shall provide the other Party with the name of the designated contact point or contact points and the contact details of the relevant official or officials in that organisation, including telephone, email and any other relevant details.
3. Each Party shall notify the other Party promptly of any change in their contact points.
4. 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 a Party.

## **Article 7.12 Subcommittee on Standards, Technical Regulations and Conformity Assessment Procedures**

1. The Parties hereby establish a Subcommittee on Standards, Technical Regulations and Conformity Assessment Procedures ("Subcommittee"), consisting of representatives of the Parties.
2. The Subcommittee 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 Subcommittee 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 Subcommittee on Goods; and
- (e) carrying out other functions as may be delegated by the Subcommittee on Goods.