

CHAPTER ...

TECHNICAL BARRIERS TO TRADE

ARTICLE 1: REAFFIRMATION OF THE WTO AGREEMENT ON TECHNICAL BARRIERS TO TRADE.

1. The Parties reaffirm their existing rights and obligations with respect to each other under the *WTO Agreement on Technical Barriers to Trade*, (hereinafter referred to as the “TBT Agreement”) which is incorporated into and made part of this Agreement.

ARTICLE 2: OBJECTIVES.

1. The objectives of this Chapter are to facilitate and increase bilateral trade in goods by preventing, identifying and eliminating unnecessary obstacles to trade within the scope of the TBT Agreement, and enhancing cooperation between the Parties.

2. The Parties undertake to establish and enhance technical capabilities and institutional infrastructure on matters concerning TBT.

ARTICLE 3: SCOPE AND DEFINITIONS.

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures as defined in the TBT Agreement, that may affect trade in goods between the Parties, except:

- (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; or
- (b) sanitary and phytosanitary measures as defined in Annex A of the *Agreement on the Application of Sanitary and Phytosanitary Measures* (hereinafter referred to as the “SPS Agreement”).

2. In accordance with this Chapter and the TBT Agreement, each Party has the right to prepare, adopt and apply standards, technical regulations and conformity assessment procedures.

3. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement shall apply.

ARTICLE 4: TECHNICAL REGULATIONS.

1. The Parties agree to make best use of good regulatory practices, as provided for in the TBT Agreement and in this Chapter. In particular, the Parties agree:

- (a) to assess the available regulatory and non-regulatory alternatives to the proposed technical regulation that may fulfil the Party's legitimate objective, in accordance with Article 2.2 of the TBT Agreement; and to endeavour to assess, inter alia, the impact of the envisaged technical regulation in the form of a regulatory impact assessment as recommended by the TBT Committee;

- (b) to use relevant international standards, such as those developed by ISO, IEC, ITU, the Codex Alimentarius Commission, as a basis for their technical regulations, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued; and where international standards have not been used as a basis, on request from the other Party, to identify any substantial deviation from the relevant international standard and to explain the reasons why such standards have been judged inappropriate or ineffective for the aim pursued;
 - (c) without prejudice to Article 2.3. of the TBT Agreement, to review technical regulations with a view to increasing their convergence with relevant international standards. In undertaking this review, the Parties shall, inter alia, take into account any new development in the relevant international standards and whether the circumstances that have given rise to divergences from any relevant international standard continue to exist;
 - (d) to specify technical regulations based on product performance requirements, rather than design or descriptive characteristics.
2. In accordance with Article 2.7 of the TBT Agreement, the Parties shall give positive consideration to accepting as equivalent, technical regulations of another Party, even if these regulations differ from its own, provided it is satisfied that these regulations adequately fulfil the objectives of its own regulations.
3. A party that has prepared a technical regulation that it considers to be equivalent to a technical regulation of the other party having compatible objective and product scope may request in writing that the other party recognise it as equivalent. Such a request shall be made in writing and set out the detailed reasons why the technical regulations should be considered to be equivalent, including reasons with respect to product scope. The Party which does not agree that the technical regulations are equivalent shall provide to the other Party, upon request, the reasons for its decision.

ARTICLE 5: STANDARDS

1. The Parties reconfirm their obligations under Article 4.1 of the TBT Agreement to ensure that their standardising bodies accept and comply with the Code of Good Practice for the preparation and Adoption of Standards in Annex 3 to the TBT Agreement, and also have regard to the principles set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/rev.12, , 21 January 2015, Annex to Part I (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) in the latest version*, issued by the WTO committee on Technical Barriers to Trade.
2. With a view to harmonizing standards on as wide a basis as possible, the Parties shall encourage their standardizing bodies, as well as the regional standardizing bodies of which they or their standardizing bodies are Members:
- (a) to participate within the limits of their resources, in the preparation of international standards by relevant international standardizing bodies;

- (b) to use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems;
 - (c) to avoid duplication of, or overlap with the work of international standardizing bodies;
 - (d) to review national and regional standards not based on relevant international standards at regular intervals, with a view to increasing their convergence with relevant international standards;
 - (e) to cooperate with the relevant standardization bodies of the other Party in international standardization activities. That cooperation may be undertaken in the international standardization bodies or at regional level.
3. The Parties undertake to exchange information on:
- (a) their use of standards in support of technical regulations;
 - (b) each other's standardization processes, and the extent of use of international standards, regional or sub-regional standards as a base for their national standards.
 - (c) co-operation agreements implemented by either Party on standardization for example on standardization issues in international agreements with third parties to the extent this is not explicitly prohibited by such agreements.
4. The Parties recognize that according to the Annex 1 of the TBT Agreement standards are voluntary. Where standards are made mandatory, through incorporation or referencing in a draft technical regulation or conformity assessment procedure, the transparency obligations set out in Article 7 shall be fulfilled.

ARTICLE 6: CONFORMITY ASSESSMENT PROCEDURES

1. Principles, provisions and procedures established in respect of development, adoption and application of technical regulations under Article 4.1., *mutatis mutandis*, with a view to avoiding unnecessary obstacles to trade and ensuring transparency and non-discrimination shall also apply in respect of mandatory conformity assessment procedures.
2. In line with Article 5.1.2. of the TBT Agreement, where a Party requires positive assurance of conformity with its applicable technical regulations, the Party shall require conformity assessment procedures that are not more strict or applied more strictly than necessary to give the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create.

3. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party, including:

- (a) the importing Party's reliance on a supplier's declaration of conformity;
- (b) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;
- (c) use of accreditation to qualify conformity assessment bodies located in the territory of either Party;
- (d) government designation of conformity assessment bodies, including bodies located in the territory of the other Party;
- (e) unilateral recognition by a Party of the results of conformity assessment procedures conducted in the other Party's territory;
- (f) voluntary arrangements between conformity assessment bodies in the territory of each Party;
- (g) use of regional and international multilateral recognition agreements and arrangements of which the Parties are members.

4. Having regard in particular to those considerations, the Parties undertake:

- (a) to intensify their exchange of information on these and similar mechanisms with a view to facilitating the acceptance of conformity assessment results;
- (b) to exchange information on conformity assessment procedures, and in particular on the criteria used to select appropriate conformity assessment procedures for specific products;
- (c) to consider a supplier's declaration of conformity as assurance of conformity among the options for showing conformance with domestic law;
- (d) to consider arrangements on mutual acceptance of the results of conformity assessment procedures according to the procedure set out in paragraph 5 of this Article;
- (e) to exchange information on accreditation policy and to consider how to make best use of international standards for accreditation, and international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF);
- (f) to consider joining or, as applicable, encourage their testing, inspection and certification bodies to join any functioning international agreements or

arrangements for harmonization and/or facilitation of acceptance of conformity assessment results;

- (g) to ensure that economic operators have a choice amongst conformity assessment facilities designated by the authorities to perform the tasks required by law to assure compliance;
- (h) to endeavour to use accreditation to qualify conformity assessment bodies;
- (i) to ensure that there is independence and there are no conflicts of interest between accreditation bodies and conformity assessment bodies;

5. Upon request from another Party, the Parties may decide to engage in consultation with a view of defining sectoral initiative regarding the use of conformity assessment procedures or the facilitation of acceptance of conformity assessment results that are appropriate for the respective sectors. The Party making the request should substantiate it with relevant information on how this sectoral initiative would facilitate trade. Where a Party declines such a request from the other Party, it shall upon request explain its reason.

6. The Parties reaffirm their obligation under Article 5.2.5 of the TBT Agreement that fees imposed for mandatory conformity assessment of imported products shall be equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body.

ARTICLE 7: TRANSPARENCY

The Parties acknowledge the importance of transparency with regard to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures. In this regard, the Parties reaffirm their transparency obligations under the TBT Agreement, and agree:

- (a) to take the other Party's views into account where a part of the process of developing a technical regulation is open to public consultation, and on request to provide written responses in a timely manner to the comments made by the other Party;
- (b) to ensure that economic operators and other interested persons of the other Party are allowed to participate in any formal public consultation process concerning the development of technical regulations, on terms no less favourable than those accorded to its own legal or natural persons;
- (c) further to Article 4.1(a), in cases where impact assessments are carried out, to inform the other Party, upon request, of the outcome of the impact assessment of the proposed technical regulation;
- (d) when making notifications in accordance with Article 2.9.2 or 5.6.2 of the TBT Agreement, to:

- (i) allow in principle at least 60 days following the notification for the other Party to provide comments in writing to the proposal; where practicable, to give appropriate consideration to reasonable requests for extending the comment period;
 - (ii) provide the electronic version of the notified text with the notification;
 - (iii) provide, in case the notified text is not in one of the official WTO languages, a detailed and comprehensive description of the content of the measure in the notification format;
 - (iv) reply in writing to written comments received from the other Party on the proposal, no later than the date of publication of the final technical regulation or conformity assessment procedure;
 - (v) provide information on the adoption and the entry into force of the notified measure and the adopted final text through an addendum to the original notification.
- (e) allow sufficient time between the publication of technical regulations and their entry into force for economic operators of the other Party to adapt, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise;
 - (f) ensure that all technical regulations and mandatory conformity assessment procedures adopted and in force are publicly available on official websites, and free of charge;
 - (g) ensure that the TBT Enquiry Point provides information and answers in one of the official WTO languages to reasonable enquiries from the other Party or from interested parties of the other Party on adopted technical regulations, conformity assessment procedures and standards

ARTICLE 9: MARKET SURVEILLANCE

The Parties undertake to:

- (a) exchange views on market surveillance and enforcement activities;
- (b) ensure that market surveillance functions are carried out by the competent authorities, and ensure that no conflicts of interest exist between the market surveillance function and the conformity assessment function;
- (c) ensure that there are no conflicts of interest between market surveillance bodies and the economic operators subject to control or supervision.

ARTICLE 10: MARKING AND LABELLING

1. The Parties note that a technical regulation may include or deal exclusively with marking or labelling requirements, and agree that where their technical regulations contain mandatory marking or labelling, they will observe the principles of Article 2.2 of the TBT

Agreement and, in particular, that technical regulations should not be prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and should not be more trade restrictive than necessary to fulfil a legitimate objective.

2. In particular, the Parties agree that where a Party requires mandatory marking or labelling of products:

- (a) the Party shall only require information which is relevant for consumers or users of the product and/or to indicate the product's conformity with the mandatory technical requirements;
- (b) unless necessary in view of the risk of the products to human, animal or plant health or life, the environment or national safety, such Party shall not require any prior approval, registration or certification of the labels or markings of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements. This provision is without prejudice to the right of the Party to require prior approval of the specific information to be provided on the label or marking in the light of the relevant domestic regulations;
- (c) where the Party requires the use of a unique identification number by economic operators, the Party shall issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (d) provided it is not misleading, contradictory or confusing in relation to the information required in the importing Party of the goods, the Party shall permit the following:
 - i. information in other languages in addition to the language required in the importing Party of the goods;
 - ii. internationally-accepted nomenclatures, pictograms, symbols or graphics;
 - iii. additional information to that required in the importing Party of the goods;
- (e) the Party shall accept that labelling, including supplementary labelling and/or corrections to labelling, take place, where relevant, in authorized premises (for example, in customs or bonded licensed warehouses at the point of import) in the importing Party prior to the distribution and sale of the product. The Party may require that the original labelling is not removed;
- (f) the Party shall, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

ARTICLE 11: JOINT CO-OPERATION AND TRADE FACILITATION

1. The Parties shall strengthen their co-operation in the field of standards, technical regulations and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and to facilitating trade between the Parties. To this end, they may establish regulatory dialogues at both the horizontal and sectoral levels.

2. The Parties shall seek to identify, develop and promote trade facilitating bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors. Such initiatives may include:

- (a) promoting good regulatory practices through regulatory cooperation, including the exchange of information, experiences and data with a view to improving the quality and effectiveness of their standards, technical regulations and conformity assessment procedures and making efficient use of regulatory resources;
- (b) using a risk-based approach to conformity assessment (for instance, relying on a supplier's declaration of conformity for low-risk products) and, where appropriate, reduce the complexity of technical regulations, standards and conformity assessment procedures;
- (c) increasing the convergence of their standards, technical regulations and conformity assessment procedures with relevant international standards, guides or recommendations;
- (d) avoiding unnecessary divergence of approach of standards, technical regulations and conformity assessment procedures where no international standards, guides or recommendations exist;
- (e) promoting or enhancing cooperation between the Parties' respective organisations, public or private, responsible for standardisation, conformity assessment and metrology;
- (f) ensuring efficient interaction and cooperation of regulatory authorities at regional or international level;
- (g) exchanging information, insofar as possible, about TBT-related agreements and arrangements subscribed to at international level.

3. Upon request, a Party shall give appropriate consideration to proposals that the other Party makes for co-operation under the terms of this Chapter. This cooperation shall be undertaken, inter alia, through dialogue in appropriate channels, joint projects, technical assistance and capacity-building programmes on standards, technical regulations and conformity assessment procedures in selected industrial areas, as mutually agreed.

ARTICLE 12: CONSULTATIONS

1. The Parties shall give prompt and positive consideration to any request from another Party for consultations on issues relating to the implementation of this Chapter.

2. In order to clarify or resolve such issues, the Parties concerned may establish an *ad hoc* working group with a view to identifying a workable and practical solution to facilitate trade. The *ad hoc* working group shall comprise representatives of the Parties concerned.

ARTICLE 13: IMPLEMENTATION

1. The Parties shall designate a Contact point in the Ministry of Science and Technology and the European Commission. They shall provide the other Party with the name and the contact details of relevant officials in that organization, including information on telephone, facsimile, e-mail and other relevant details.

2. The Parties shall notify the other Party promptly of any change of its Contact point and amendments to the information of the relevant officials.

3. The Contact point's functions shall include:

- (a) monitoring the implementation and administration of this Chapter;
- (b) facilitating cooperation activities, as appropriate, in accordance with Article 11;
- (c) promptly addressing any issue that a Party raises related to the development, adoption, application or enforcement of standards, technical regulations and conformity assessment procedures;
- (d) consulting on any matter arising under this Chapter, upon a Party's request;
- (e) taking any other actions the Parties consider will assist them in implementing this Chapter;
- (f) carrying out other functions as may be delegated by the Committee on Trade in Goods.

4. The respective WTO TBT Enquiry points shall perform the following functions under this Chapter:

- (a) to 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;
- (b) to refer enquiries from a Party to the appropriate regulatory authorities.