

## **CHAPTER 7 TECHNICAL BARRIERS TO TRADE**

### ARTICLE 7.1: OBJECTIVES

The objectives of this Chapter are:

- (a) to increase and facilitate trade between the Parties;
- (b) to ensure that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade; and
- (c) to enhance joint cooperation, between the Parties.

### ARTICLE 7.2: GENERAL PROVISIONS

The Parties reaffirm their existing rights and obligations with respect to each other under the TBT Agreement, and to this end the TBT Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

### ARTICLE 7.3: DEFINITIONS

For the purposes of this Chapter the definitions shall be those contained in Annex 1 of the TBT Agreement.

### ARTICLE 7.4: SCOPE OF APPLICATION

1. This Chapter shall apply to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures, including any amendment or addition thereto, that may affect trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter shall not apply to:
  - (a) technical specifications prepared by governmental bodies for production or consumption requirements of such bodies, covered by Chapter 9 (Government Procurement), and
  - (b) sanitary and phytosanitary measures covered by Chapter 6 (SPS).

### ARTICLE 7.5: COOPERATION AND TRADE FACILITATION

1. The Parties shall strengthen their cooperation in the fields of standards, technical regulations, conformity assessment and metrology with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.
2. Pursuant to paragraph 1, the Parties shall seek to identify, develop and promote bilateral initiatives on cooperation and trade facilitation regarding standards, technical regulations, conformity assessment procedures and metrology that are appropriate for particular issues or sectors, taking into consideration, *inter alia*, the Parties' experience in regional and multilateral arrangements or agreements.
3. These initiatives may include:
  - (a) cooperation on regulatory issues, such as transparency, the promotion of good regulatory practices, harmonization with international standards, and use of accreditation to qualify conformity assessment bodies;
  - (b) technical assistance and cooperation regarding metrology;
  - (c) initiatives to develop common views on good regulatory practices such as transparency, the use of equivalency and regulatory impact assessment; and
  - (d) the use of mechanisms to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party's territory.
4. The Subcommittee on Technical Barriers to Trade shall define priority sectors for cooperation described in paragraph 3.
5. The Parties shall maintain effective communication between their respective regulatory authorities and between their respective standardization bodies.
6. Where a Party detains at a port of entry a good originating in the territory of the other Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

#### ARTICLE 7.6: INTERNATIONAL STANDARDS

1. The Parties shall:
  - (a) apply 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 Agreement adopted<sup>1</sup> by the WTO Committee on Technical Barriers to Trade (hereinafter referred to as the "TBT Committee"), when determining whether an international standard; guide or recommendation

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<sup>1</sup> G/TBT/1/Rev.10, 9 June 2011 Annex B to part I (original Decision: January 1<sup>st</sup>, 1995)

exists within the meaning of Articles 2 and 5 and the scope of Annex 3 of the TBT Agreement;

- (b) encourage its standardization bodies to cooperate with the relevant standardization bodies of the other Party in international standardization activities;
- (c) exchange information on their standardization processes as well as on the extent they use international, regional or sub-regional standards as the basis for national standards; and
- (d) exchange general information on cooperation agreements concluded on standardization matters with a non-Party.

2. Each Party shall use relevant international standards, guides and recommendations to the extent provided in Articles 2.4 and 5.4 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures.

#### ARTICLE 7.7: TECHNICAL REGULATIONS

1. The Parties shall use international standards as a basis for preparing their technical regulations, unless those international standards are ineffective or inappropriate to achieving the legitimate objective pursued. A Party shall, upon request of the other Party, provide the reasons for not having used international standards as a basis for preparing its technical regulations.

2. Upon request of the other Party interested in developing a similar technical regulation, and in order to minimize the duplication of costs, a Party shall, to the extent possible, provide the requesting Party with any information, technical study, risk assessment or other available relevant document, on which that Party has relied for the development for such technical regulation excluding confidential information.

3. Upon request of the other Party, a Party shall consider entering into negotiations in order to conclude an agreement for the acceptance of technical regulations of the other Party as equivalent, even if these regulations differ from its own, provided that those technical regulations produce outcomes equivalent to those produced by its own technical regulations in meeting its legitimate objectives and achieving the same level of protection.

4. Where a Party does not accept entering into negotiations with the other Party as specified in paragraph 3, it shall, upon request of the other Party, explain in writing the reasons for its decision.

#### ARTICLE 7.8: CONFORMITY ASSESSMENT AND ACCREDITATION

1. The Parties recognize the existence of a broad range of mechanisms to facilitate acceptance of the results of conformity assessment procedures of the other Party.

Accordingly, the Parties may agree:

- (a) on the acceptance of a suppliers' declaration of conformity;
- (b) on the acceptance of the results of the conformity assessment procedures of the other Party, including those regarding specific technical regulations of the other Party;
- (c) that a conformity assessment body located in a Party's territory may enter into voluntary recognition agreements with a conformity assessment body located in the other Party's territory; and
- (d) on designation of conformity assessment bodies located in the other Party's territory.

2. To that end, the Parties shall:

- (a) exchange information on the range of mechanisms used in their territories;
- (b) promote the acceptance of results of conformity assessment procedures by bodies located in the territory of the Parties and recognized under a multilateral accreditation agreement or by an agreement reached between their relevant respective conformity assessment bodies;
- (c) consider initiating negotiations in order to conclude agreements to facilitate the acceptance in their territories of the results of conformity assessment procedures conducted by bodies located in the territory of the other Party, when it is in the interest of the Parties and it is economically justified; and
- (d) encourage their conformity assessment bodies to take part in agreements with the conformity assessment bodies of the other Party for the acceptance of conformity assessment results.

3. The Parties shall give positive consideration to a request by the other Party to negotiate agreements for the mutual recognition of the results of their respective conformity assessment procedures. Where a Party, declines such a request, it shall, upon request, explain in writing the reasons for its decision. The Parties shall work together to implement the mutual recognition agreements in which both Parties are members.

4. A Party may consider, unilaterally, the recognition of the results of the conformity assessment procedures of the other Party.

5. In order to enhance confidence, in the permanent reliability of each one of the conformity assessment results, prior to an agreement as described in paragraph 3, the Parties may consult and exchange information on matters such as the technical competence of the conformity assessment bodies involved.

## ARTICLE 7.9: TRANSPARENCY

1. Each Party shall, upon request of the other Party, provide information, including the objective of, and rationale for, a technical regulation or conformity assessment procedure which the Party has adopted or proposes to adopt.
2. A Party shall give appropriate consideration to the comments received from the other Party when a proposed technical regulation is submitted for public consultation and, upon request of the other Party, provide written answers to the comments made by such other Party.
3. Each Party shall electronically notify the other Party's TBT Enquiry Point referred to in Annex 7-A upon submission of its notification to the WTO Central Registry of Notifications in accordance with the TBT Agreement.
4. Each Party shall endeavor to inform the other Party's TBT Enquiry Point referenced in Annex 7-A of the following documents:
  - (a) new technical regulations and amendments to existing technical regulations that are based on relevant international standards;
  - (b) new conformity assessment procedures and amendments to existing conformity assessment procedures that are based on relevant international standards; and
  - (c) proposed new technical regulations and conformity assessment procedures in case there is a doubt on the significant effect on trade.
5. Upon a written request by one of the Parties showing a substantial trade interest, the notification of technical regulations and conformity assessment procedures shall include a link to or a copy of the complete text of the notified document, if those regulations and conformity assessment procedures are not based on relevant international standards. In this case, the Parties shall provide a link to or a copy of the complete text of the notified document in English.
6. If a Party adopts an international standard as a technical regulation or conformity assessment procedure with changes to its original version, shall inform the other Party of the changes. In this case it shall not be necessary to provide a complete copy of the text.
7. Each Party shall allow a period of at least 60 days (hereinafter referred to as the "comment period") following notification of proposed technical regulations and conformity assessment procedures for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall give positive consideration to a reasonable request for extending the comment period.
8. Each Party may consider to publish or otherwise make available to the public, in print or electronically, its responses or a summary of its responses, to official comments it receives from

the other Party, no later than the date it publishes the final technical regulation or conformity assessment procedure.

9. A Party may give positive consideration to a reasonable request from the other Party, to extend the period of time between the adoption of technical regulation and its entry into force, if the request is received prior to the end of the comment period following notification of a proposed technical regulation.

10. Except for urgent circumstances, the Parties shall allow a reasonable interval<sup>2</sup> between the publication of technical regulations and their entry into force in order for producers in the exporting Party to adapt their products or methods of production to the requirements of the importing Party.

11. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are publicly available.

#### ARTICLE 7.10: INFORMATION EXCHANGE

1. Any information or explanation that a Party provides upon request of the other Party pursuant to this Chapter shall be provided in print or electronically within a reasonable period of time. A Party shall endeavor to respond to such a request within 60 days.

2. The contact point referred to in Annex 7-A shall be responsible for facilitating communication between the Parties on any matter covered by this Chapter, including administrative notifications and information submitted under this Chapter, as set forth under Article 7.9. On the request of the other Party, the contact point shall identify the office or the official responsible for the matter and assist, as necessary, in facilitating communications with the requesting Party.

3. The TBT enquiry point referred to in Annex 7-A shall be responsible for providing information regarding technical regulations or conformity assessment procedures, to transmitting the comments related to technical regulations or conformity assessment procedures that a Party has adopted or intends to adopt, and responding to any other information demanded pursuant to Article 7.9.

#### ARTICLE 7.11: SUBCOMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Subcommittee on Technical Barriers to Trade established pursuant to Chapter 13 (Institutional Provisions) shall have the following functions:

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<sup>2</sup> “Reasonable interval” shall be understood to normally mean a period of no less than six months, except when such period would be ineffective in fulfilling the legitimate objectives pursued, in accordance with paragraph 5 of the Implementation –Related Issues and Concerns, Decision of 14 November 2001(WT/MIN(01)/17).

- (a) working in order to facilitate implementation of this Chapter and cooperation between the Parties in all matters pertaining to this Chapter;
- (b) monitoring the implementation, enforcement and administration of this Chapter;
- (c) promptly addressing any issue that a Party raises related to the development, adoption, application or enforcement of standards, technical regulations, or conformity assessment procedures;
- (d) improving joint cooperation between the Parties in the areas mentioned in Article 7.5;
- (e) conducting negotiations for mutual recognition agreements;
- (f) exchanging information, at a Party's request, on standards, technical regulations, and conformity assessment procedures, including the Parties' respective views regarding non-Party issues;
- (g) exchanging information on developments in non-governmental, regional and multilateral *fora* engaged in activities related to standards, technical regulations and conformity assessment procedures;
- (h) consulting, at a Party's written request, with the aim of solving any matter arising under this Chapter within a reasonable period of time;
- (i) reviewing this Chapter in light of any developments under the TBT Committee and, if necessary, developing recommendations for amendments to this Chapter;
- (j) establishing issue or sector-specific ad hoc working groups, if necessary to achieve the objectives of this Chapter; and
- (k) taking any other steps that the Parties consider will assist them in implementing this Chapter.

2. The Subcommittee shall meet upon request of a Party. Meetings may be conducted in person, via teleconference, videoconference, or any other means as mutually determined by the Parties.

3. In a dispute on matters covered by this Chapter, consultations pursuant to paragraph 1(h) shall be mandatory in order to activate the procedures provided in Chapter 12 (Dispute Settlement).

4. The contact points set out in Annex 7-A shall be responsible for coordinating with the relevant authorities and persons in their respective countries as well as ensuring that such authorities and persons are in contact.

## ARTICLE 7.12: BORDER CONTROL AND MARKET SURVEILLANCE

The Parties shall:

- (a) exchange information and experiences on their border control and market surveillance activities, except in those cases in which the information is confidential; and
- (b) ensure that border control and market surveillance activities are undertaken by the competent authorities, to which end these authorities may use accredited, designated or delegated bodies, avoiding conflicts of interest between those bodies and the economic operators subject to control or supervision.