

## Chapter 9

### Technical Barrier to Trade

#### Article 9.01 General Provisions

The Parties affirm the rights and obligations under the TBT Agreement and shall in addition apply the provisions contained in this Chapter.

#### Article 9.02 Scope and Coverage

1. This Chapter applies to standardization measures and authorization and metrology procedures, as well as relevant measures that may, directly or indirectly, affect trade between the Parties.

2. The provisions in this Chapter shall not apply to sanitary and phytosanitary measures.

#### Article 9.03 Basic Rights and Obligations

1. Each Party shall prepare, adopt, apply and maintain:

- (a) standardization measures and authorization and metrology procedures in accordance with the provisions contained in this Chapter; and
- (b) technical regulations and conformity assessment procedures that allow the Party to ensure achievement of its legitimate objectives.

2. In determining whether a standard, guide or international recommendation exists as mentioned in Articles 2 and 5, and Annex 3 of the TBT Agreement, each Party shall apply the principles of the *Decisions and Recommendations adopted by the Committee Since 1 January 1995, G/TBT/1/Rev.8 on 23 May 2002, Section IX (Decision of the Committee on the Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement)* issued by the WTO Committee on Technical Barriers to Trade.

#### Article 9.04 Risk Assessment

1. In pursuing its legitimate objectives, each Party conducting a risk assessment shall take into account:

- (a) the risk assessment conducted by international standardizing or metrology bodies;
- (b) available scientific evidence or technical information;
- (c) related processing technology; or

(d) intended end uses of goods.

2. When a Party establishes a level of protection that it considers appropriate and conducts a risk assessment, it should avoid arbitrary or unjustifiable distinctions between similar goods in the level of protection it considers appropriate, whenever said distinctions:

- (a) result in arbitrary or unjustifiable discrimination against goods from the other Party;
- (b) constitute a disguised restriction on trade between the Parties; or
- (c) discriminate between similar goods for the same use under the same conditions that pose the same level of risk and provide similar benefits.

3. A Party shall, upon request from the other Party, provide documentation that is relevant to its risk assessment processes, as well as the factors that influenced the assessment, and a definition of the levels of protection applied in accordance with Article 9.03.

#### **Article 9.05      Compatibility and Equivalence**

1. Without prejudice to the rights of any Party under this Chapter, and taking into account international standardization and metrology activities, the Parties shall, to the greatest extent practicable, make compatible their respective standardization and metrology measures, without thereby reducing the level of safety or protection of human, animal and plant life or health, the environment or consumers.

2. A Party shall accept as equivalent to its own the technical regulations adopted by the other Party, whenever in collaboration with the other Party, the importing Party determines that the technical regulations of the exporting Party adequately fulfill the legitimate objectives of the importing Party.

3. Upon request, the importing Party shall provide to the exporting Party, in writing, its reasons for not accepting a technical regulation as equivalent under paragraph 2.

#### **Article 9.06      Trade Facilitation**

1. The Parties shall intensify their joint work in the field of standardization and metrology measures, with a view toward facilitating trade between the Parties. In particular, the Parties shall endeavor to identify trade facilitation initiatives related to standardization and metrology measures suited to specific matters or sectors. These initiatives may include cooperation on standardization and metrology-related matters, such as convergence, alignment with international standards and the use of accreditation to certify conformity assessment bodies.

2. A Party shall, upon request by the other Party, give positive consideration to any proposal directed at a specific sector that the Party submits to promote increased cooperation under this Chapter.

#### **Article 9.07      Conformity Assessment**

1. A Party shall prepare, adopt and apply conformity assessment procedures so as to grants access to similar goods originating in the territory of the other Party under conditions no less favorable than those accorded to similar goods of national origin or originating in a non-Party country, in a comparable situation.

2. As regards its conformity assessment procedures, each Party is subject to the following:

- (a) initiate and complete the procedure as expeditiously as possible in a non-discriminatory manner;
- (b) publish the normal processing period for each such procedure or communicate such information to the applicant;
- (c) ensure that the competent body or authority, on receipt of an application, promptly examines the completeness of the documentation and transmits to the applicant, as soon as possible, the results of the assessment procedure in a precise and complete manner, so that the applicant may take any necessary corrective action; where the application is deficient, proceeds as far as practicable with the procedure when the applicant so requests; and informs the applicant, upon request, of the status of the application and the reasons for any delay;
- (d) limit the information the applicant is required to supply to the information necessary to conduct the procedure and to determine appropriate fees;
- (e) ensure that the confidentiality of the information regarding goods from the other Party, resulting from these procedures or that were made available in compliance with this Article, be respected in the same way as its own goods are respected by that Party, thus protecting the applicant's legitimate trade interests;
- (f) ensure that any fee imposed for conducting the procedure be equitable in comparison to any such fee imposed by the other Party for authorization procedures of similar goods, taking into account only communication, transportation and other costs derived from the applicant's facilities and authorization body being located in different premises; and
- (g) ensure that a procedure exists to examine claims relative to the implementation of a conformity assessment procedure and that

corrective measures are adopted when the claim is justified.

3. For the purpose of advancing in trade facilitation, a Party shall favorably consider a request by the other Party to enter into negotiations for the conclusion of mutual recognition agreements regarding the results of each other's conformity assessment procedures.

4. To the extent possible, a Party shall accept the results of conformity assessment procedures that are undertaken in the territory of the other Party, provided that such procedures are reliable enough, equivalent to the reliability of their own procedures, and that the good complies with the technical regulation or applicable standard adopted or maintained in the territory of said Party.

5. Prior to accepting the results of a conformity assessment procedure in accordance with provisions contained in paragraph 4, and for the purpose of strengthening the sustained reliability of the results of the conformity assessment undertaken by each Party, the Parties may consult on matters such as the technical capacity of the conformity assessment bodies in question, including the verified compliance regarding relevant international standards through such means as accreditation.

6. In recognizing that this will be of mutual benefit to the Parties involved, a Party shall accredit, approve or recognize the conformity assessment bodies in the territory of the other Party, in conditions that are not less favorable than those granted to the conformity assessment bodies in its territory.

7. For purposes of conformity assessment procedures, the Parties may use the technical infrastructure and capacity of accredited bodies established in their respective territory.

8. When a Party rejects the request of the other Party to enter into negotiations or conclude an agreement that facilitates recognition in its territory of the results of conformity assessment procedures implemented by bodies located in the territory of the other Party, it shall, at the request of that other Party, explain the reasons for its decision.

#### **Article 9.08 Authorization Procedures**

1. A Party shall prepare, adopt and apply authorization procedures in such a manner that it provides access to goods from the territory of the other Party under conditions that are not less favorable than those granted to like goods of national origin and to like goods originating in any other country.

2. Each Party shall, with respect to its authorization procedures:

- (a) initiate and complete the procedure as expeditiously as possible in a non-discriminatory manner;

- (b) publish the normal processing period for each such procedure or communicate such information to the applicant;
- (c) ensure that the competent body or authority, on receipt of an application, promptly examines the completeness of the documentation and transmits to the applicant, as soon as possible, the results of the authorization procedure in a precise and complete manner, so that the applicant may take any necessary corrective action; where the application is deficient, proceeds as far as practicable with the procedure when the applicant so requests; and informs the applicant, upon request, of the status of the application and the reasons for any delay;
- (d) limit the information the applicant is required to supply to the information necessary to conduct the procedure and to determine appropriate fees;
- (e) ensure that the confidentiality of the information regarding goods from the other Party, resulting from these procedures or that were made available in compliance with this Article, be respected in the same way as its own goods are respected by that Party, thus protecting the applicant's legitimate trade interests;
- (f) ensure that any fee imposed for conducting the procedure be equitable in comparison to any such fee imposed by the other Party for authorization procedures of similar goods, taking into account only communication, transportation and other costs derived from the applicant's facilities and authorization body being located in different premises; and
- (g) ensure that a procedure exists to examine claims relative to the implementation of an authorization procedure and that corrective measures are adopted when the claim is justified.

#### **Article 9.09 Metrology**

Each Party shall ensure, to the extent possible, the documented traceability of its standards and the calibration of its measuring instruments, in accordance with the recommendations of the Bureau International de Poids et Mesures (BIPM) and the International Organization of Legal Metrology (OIML), thus complying with the requirements set forth in this Chapter.

#### **Article 9.10 Notification**

1. In cases where a relevant international standard does not exist or that the technical content of a proposed technical regulation or a conformity assessment procedure does not conform to the technical content of relevant international standards, and if said technical regulation may have a significant effect on trade between the Parties, each Party shall notify the proposed measure in writing to the

other Party, at least 60 days before its adoption, in such a manner that it allows the interested Parties to formulate observations, discuss said observations on request, and take the comments and the results of the discussion into account.

2. Whenever a Party faces, or is threatened with facing, serious problems relating to safety, health, environmental protection or national security, that Party may omit prior notification of the project, but once it has been adopted, it must notify the other Party.

3. Notifications in paragraphs 1 and 2 shall be made in accordance with the established formats as established in the TBT Agreement.

4. Within 30 days following the entry into force of this Agreement, a Party shall notify the other Party regarding the body designated to make notifications in accordance with this Article.

5. A Party shall notify in writing the other Party of its standardization plans and programmes.

6. Whenever a Party administratively refuses a shipment, it shall promptly and in writing notify the technical justification for such refusal to the owner of the shipment.

7. Once the information required under paragraph 5 is completed the Party shall immediately transmit it to the Enquiry Point mentioned in Article 9.11 of the other Party.

#### **Article 9.11 Enquiry Point**

1 The Parties shall exchange information regarding the standardization measures and authorization and metrology procedures adopted by governmental and non-governmental bodies through their respective Enquiry Points established in accordance with Article 10. 1 of the TBT Agreement.

2 If an Enquiry Point requests copies of the documents referred to in paragraph 1 they shall be delivered without cost, excepting those documents that have its own price established. The interested persons from the other Party shall receive copies of the documents at the same price as the nationals from this Party, plus the actual cost of shipment.

#### **Article 9.12 Committee on Standardization, Metrology and Authorization Procedures**

1. The Parties hereby establish a Committee on Standardization, Metrology and Authorization Procedures as set out in Annex 9.12.

2. The Committee shall hear matters relative to this Chapter and perform the following functions:

- (a) monitor the implementation and administration of this Chapter;
- (b) analyze and recommend avenues for solution to such standardization measures, metrology and authorization procedures that a Party considers a technical obstacle to trade;
- (c) facilitate sector cooperation between governmental and non-governmental bodies for conformity assessment in the territories of the Parties;
- (d) facilitate cooperation in the development and improvement of standardization and metrology measures, and propose technical assistance mechanisms in accordance with the provisions contained in Article 11 of the TBT Agreement;
- (e) provide assistance in risk assessments undertaken by the Parties;
- (f) collaborate in the development and strengthening of the Parties' standardization and metrology; and
- (g) the committee shall meet as mutually agreed.

3. All Committee decisions shall be adopted by mutual agreement.

### **Article 9.13 Technical Cooperation**

1. Each Party shall promote technical cooperation between its standardizing and metrology bodies by providing technical information or assistance to the extent of its possibilities and in mutually agreed-upon terms, for the purpose of contributing to compliance with this Chapter and in order to strengthen standardization and metrology activities, processes, systems and measures.

2. The Parties shall undertake joint efforts with the objective of negotiating technical cooperation from countries that are not Party to this Agreement.

3. The Parties shall endeavour to develop technical cooperation programs with the objective of achieving effective compliance with the obligations agreed upon in this Chapter, taking into account the various levels of development in the standards, accreditation procedures, certification, and metrology institutions of the other Party. For this purpose, the Parties agree to strengthen their respective authorities on the issues of standards, including metrology, and to carry out the following activities to bolster their respective processes and systems in this field:

- (a) preparation, implementation and review of technical cooperation and institutional programs;
- (b) promotion of bilateral exchange of institutional and regulatory information; and

- (c) promotion of bilateral cooperation through the respective agencies in international and multilateral fora on standards, including metrology.

#### **Article 9.14 Definitions**

For purposes of this Chapter:

**authorization procedures** means any mandatory administrative procedures for registration or obtaining a permit, license or any other authorization, with the aim that a good may be produced, marketed or used for defined purposes or according to established conditions;

**conformity assessment procedure** means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled. Conformity assessment procedures include, *inter alia*, procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; registration, accreditation and approval as well as their combinations;

**international standard** means a standard or guide or recommendation adopted by an international standardizing body and made available to the public;

**international standardizing and metrology bodies** means a standardizing or metrology body open to the participation of at least all WTO Members, including the International Organization for Standardization, the International Electrotechnical Commission, the Codex Alimentarius Commission, the International Organization of Legal Metrology and the International Commission on Radiation Units and Measurements or any other body designated by the Parties;

**legitimate objectives** means *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;

**risk assessment** means assessment of the potentially negative effects on the legitimate objectives pursued that may create obstacles to trade;

**standardization measures** means technical regulations, standards and procedures for assessment of conformity;

**standard** means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a good, process or production method;

**TBT Agreement** means the WTO Agreement on Technical Barriers to Trade; and

**technical regulation** means

- (a) a document that lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labeling requirements as they apply to a good, process or production method; and
- (b) except as defined in paragraph (a), the Parties shall use the terms of the ISO/IEC Guide 2:1996 titled “Standardization and Related Activities-General Vocabulary.”

## **Annex 9.12**

### **Committee on Standardization, Metrology, and Authorization Procedures**

The Committee on Standardization, Metrology, and Authorization Procedures established in Article 9.12 (1) shall be composed of:

- (a) in the case of the Republic of Nicaragua, the Ministerio de Fomento, Industria y Comercio (MIFIC) through the Direccion de Tecnologia, Normalizacion y Metrologia; and
- (b) in the case of the Republic of China (Taiwan), the Ministry of Economic Affairs (MOEA) through the Bureau of Standards, Metrology and Inspection,

or their successors.