

CHAPTER 7

TECHNICAL BARRIERS TO TRADE

Article 7.1

Objectives

The objectives of this Chapter are to:

- (a) provide a framework and supporting mechanisms to facilitate and increase trade in goods by eliminating and preventing unnecessary barriers to trade while taking into account the legitimate objectives of the Parties, in accordance with Article 2.2 of the WTO Agreement on Technical Barriers to Trade (“TBT Agreement”), and the principle of non-discrimination, within the TBT Agreement;
- (b) ensure transparency in standards, technical regulations, and conformity assessment procedures, and also ensure that these do not create unnecessary obstacles to trade and are not more trade restrictive than necessary to fulfill a legitimate objective;
- (c) enhance joint cooperation between the Parties, and between regulatory authorities and conformity assessment bodies in the Parties, in order to resolve specific issues related to the development and application of standards, technical regulations and conformity assessment procedures, and establish a mechanism for expeditious recognition of equivalence and mutual recognition and that positive consideration is given to the requests of the exporting Party in this regard by the importing Party, thereby facilitating the conduct of trade in goods;
- (d) improve the capacity of the Parties to identify, prevent and eliminate unnecessary obstacles to trade between the Parties as a result of technical regulations, standards and conformity assessment procedures applied by either Party;
- (e) increase the capacity of the Parties to ensure compliance with international standards and with each other’s technical regulations, conformity assessment procedures and standards; and
- (f) provide a mechanism for expeditious resolution of issues, including disputes relating to standards, technical regulations and conformity assessment procedures.

Article 7.2

Scope

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations, and conformity assessment procedures.
2. Notwithstanding paragraph 1, this Chapter does not apply to:

- (a) technical specifications prepared by governmental bodies for production or consumption requirements of such bodies; or
- (b) sanitary and phytosanitary measures as defined in Annex 1A of the WTO Agreement on the application of Sanitary and Phytosanitary Measures.

Article 7.3

Definitions

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

Article 7.4

Affirmation of the TBT Agreement

1. The Parties reaffirm their existing rights and obligations with respect to each other under the TBT Agreement.
2. Each Party shall ensure compliance in the implementation of this Chapter by central government bodies within its territory that are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures. Each Party shall also take such reasonable measures as may be available to ensure compliance in the implementation of this Chapter, by local government and non-governmental bodies within its territory that are responsible for the preparation, adoption and application of standards, technical regulations and conformity assessment procedures. On request from the other Party, each Party shall make available the details of any measures taken by it in this direction.

Article 7.5

Joint Cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To this end, the Parties shall establish dialogue at both the horizontal and sectoral levels, as necessary, between the competent authorities and other regulators from their territories.
2. In their bilateral cooperation, the Parties shall work to identify, develop and promote trade facilitating measures which may include, but are not limited to:
 - (a) promoting regulatory cooperation through measures and steps such as the exchange of information, experience and data, and scientific and technical cooperation with a view to creating technical regulations, standards and conformity assessment procedures that are not more trade restrictive than necessary and making efficient use of regulatory

resources;

- (b) promoting good regulatory practices on risk management to improve the quality and effectiveness of regulations;
- (c) promoting and encouraging participation in international standard setting bodies, and reinforcing the role of international standards as a basis for technical regulations;
- (d) promoting and encouraging cooperation between their respective organisations, public or private, responsible for standardisation, testing, certification, inspection, accreditation and other related issues, both bilaterally and in international fora;
- (e) exchange information on regulatory concerns, including implementation issues, of the other Party in areas such as:
 - (i) transparency in the preparation, adoption and application of technical regulations, conformity assessment procedures and standards;
 - (ii) necessity and proportionality of regulatory measures and related conformity assessment procedures, including the use of suppliers declaration of conformity;
 - (iii) enforcement of technical regulations and market surveillance activities;
 - (iv) the necessary technical infrastructure, standardisation, testing, certification and accreditation, to support technical regulations; and
 - (v) mechanisms and methods for reviewing technical regulations and conformity assessment procedures; and
- (f) giving favourable consideration to any sector-specific proposal by the other Party for further cooperation under this Chapter.

Article 7.6

Standards

1. Each Party shall use relevant international standards as a basis for its technical regulations and relevant guides and recommendations issued by an international standardizing body as a basis for its conformity assessment procedures in accordance with Articles 2.4 and 5.4 of the TBT Agreement. Where relevant international standards or relevant international guides and recommendations have not been used as a basis, to explain on request to the other Party, in writing, the reasons why these have been judged inappropriate or ineffective for the aim pursued and, whenever possible, to identify the parts which in substance deviate

from relevant international standards.

2. The Parties shall cooperate with each other, where appropriate, in the context of their participation in regional and international standardizing bodies, to ensure that standards developed within such organizations, are trade facilitating and do not create unnecessary obstacles to international trade.

3. The Parties shall strengthen communications and coordination with each other, where appropriate, in the context of discussions on international standards and related issues in other international fora, such as the WTO Committee on Technical Barriers to Trade ("WTO TBT Committee").

4. The Parties shall exchange information on:

- (a) the Parties' use of standards in connection with technical regulation;
- (b) the Parties' standardisation processes and the extent of usage of international standards as a base for their national or local standards; and
- (c) cooperation agreements used by either Party in standardisation, for example on standardisation issues in free trade agreements with third parties.

5. At the request of a Party that has an interest in developing a standard similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, on which it or its standardizing bodies has relied in the development of such standards.

Article 7.7

Technical Regulations

1. Each Party shall give positive consideration for accepting as equivalent, technical regulations of the other Party, even if these regulations differ from its own, provided that those technical regulations produce outcomes that are equivalent to those produced by its own technical regulations in meeting its legitimate objectives and achieving the same level of protection.

2. Each Party shall, within thirty working days of a request from the other Party for acceptance of equivalence of technical regulations, commence consideration. Each Party shall conclude decisions regarding equivalence within six months of the request from the other Party. Where a Party declines a request from the other Party to engage in consideration of equivalence, it shall, on request of that other Party, explain the reasons for its decision, and explain the requirements under which consideration of equivalence can be commenced.

3. The list of products for which the technical regulations of the exporting Party is accepted by the importing Party as equivalent shall be recorded and attached as

Annex 7-1 (List of Products for which Equivalence of Technical Regulations Has Been Accepted).

4. At the request of a Party that has an interest in developing a technical regulation similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, which it has relied on for the development of the technical regulations.

5. As a general rule, the Parties shall not base their technical regulations on non-product-related process and production methods based standards. In exceptional cases, if such a regulation is required by either Party, the Party requiring such technical regulations shall, upon request by the other Party, provide justification for the same and consult the other Party before promulgating such a regulation.

Article 7.8

Conformity Assessment Procedures

1. The Parties agree to seek to increase efficiency, avoid duplication and ensure cost effectiveness through an appropriate range of mechanisms in order to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party. In this regard, the Parties recognise that a broad range of mechanisms exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory, including any or all of the following:

- (a) adoption of accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;
- (b) recognizing the results of certain conformity assessment procedures conducted in the territory of the other Party;
- (c) agreement with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;
- (d) designation or recognition of conformity assessment bodies located in the territory of the other Party;
- (e) facilitation of acceptance of results of each other's assessment procedures through agreements between conformity assessment bodies in their territories;
- (f) adoption of procedures for accepting supplier's declaration of conformity or any registration scheme based on the same; and
- (g) utilising the existing regional and international mutual recognition agreements ("MRA") of which both Parties are parties.

2. The Parties shall exchange information on mechanisms in paragraphs 1(a) to (g) and other similar mechanisms with a view to facilitating acceptance of conformity assessment results.

3. The Parties shall seek to ensure that conformity assessment procedures applied between them facilitate trade by ensuring that they are no more restrictive than is necessary to provide an importing Party with confidence that products conform with the applicable technical regulations, taking into account the risk that non-conformity would create.

4. Upon the request of a Party, Parties shall enter into negotiations for accepting results of conformity assessment procedures of the other Party, even if these procedures differ from its own, provided that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to their own conformity assessment procedures. The Parties may conclude agreements or arrangements on mutual recognition in accordance with Article 7.9 (Mutual Recognition Agreements).

5. The Parties shall cooperate by:

- (a) exchanging information on the range of mechanisms that exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory;
- (b) promoting the accreditation of conformity assessment bodies on the basis of relevant international standards and guides;
- (c) promoting the acceptance of results of conformity assessment bodies that have been recognized under a relevant multilateral agreement or an arrangement between their respective accreditation systems or bodies; and
- (d) encouraging their conformity assessment bodies, including accreditation bodies, to participate in cooperation arrangements, including mutual recognition agreements, that promote the acceptance of conformity assessment results.

6. Each Party shall accredit, approve, or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. Where a Party accredits, approves, or otherwise recognises a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of that other Party, explain the reasons for its decision, and the basis on which such accreditation, approval, or recognition may be achieved.

7. Each Party shall, within thirty working days of a request from the other Party for acceptance in its territory of results of conformity assessment procedures conducted by bodies in the other Party's territory, commence such negotiations. Each Party shall take a decision regarding acceptance of conformity assessment procedures within six months of the request from the other Party. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating acceptance in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of that other Party, explain the reasons for its decision.

8. The Parties agree to exchange information on accreditation policy and promote the use of accreditation to facilitate acceptance of conformity assessment results and consider how to make best use of international standards for accreditation and international agreements involving the Parties' accreditation bodies, for example, through the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement ("ILAC MRA") or the International Accreditation Forum Multilateral Arrangement ("IAF MLA"). For the purpose of complying with the requirements of the importing Party, the Parties shall consider accepting results of conformity assessment procedures by conformity assessment bodies accredited by the national accreditation body of the other Party, which is a member of the ILAC MRA or IAF MLA.

9. At the request of a Party that has an interest in developing conformity assessment procedures similar to that of the other Party, the other Party shall provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, on which it or its conformity assessment bodies has relied in the development of such procedures.

10. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision so that necessary corrective actions may be taken, by the requesting Party to secure such acceptance.

Article 7.9

Mutual Recognition Agreements

1. The Parties shall, within sixty days upon the request of the other Party, enter into negotiations for possible MRAs on the results of conformity assessment procedures, conducted by conformity assessment bodies of the exporting Party to assess conformity to importing Party's requirements, in the sectors which both Parties agree upon. Both Parties shall take a decision on the conclusion of such agreements within twelve months of commencement of negotiations.

2. With a view to facilitating the negotiation for possible MRA referred to in paragraph 1:

- (a) the Parties shall take into consideration that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures;
 - (b) the Parties shall, recognizing the existence of differences in the structure and operation of conformity assessment procedures in their respective territories, endeavour to make compatible the conformity assessment procedures to the greatest extent practicable; and
 - (c) in order to build confidence in the reliability of results of conformity assessment procedures conducted by conformity assessment bodies of the other Party, a Party may consult with the other Party, as appropriate, on such matters as the technical competence of the conformity assessment bodies of the other Party.
3. Any MRAs concluded between the Parties shall be attached as Annex 7-2 (Mutual Recognition Agreements).

Article 7.10 Fees and Processing Periods

1. In regard to fees charged and processing periods for assessing the conformity of products, both Parties reaffirm their obligations under Article 5.2 of the TBT Agreement. Each Party shall also ensure that any fees imposed for assessing the conformity of products originating in the territory of the other Party are proportionate to the costs of the authorities conducting such assessment, taking into account communication, transportation and the costs arising from differences between location of facilities of the applicant and the conformity assessment body.
2. The Parties shall mutually discuss and resolve issues relating to the quantum of fees and ensure that fees and processing times reflect the actual costs incurred and processing activities required.
3. The Parties, on request, shall notify each other of:
- (a) any fees imposed for mandatory conformity assessments; and
 - (b) the processing period for any mandatory conformity assessments.

Article 7.11 Trade Facilitation

1. The Parties reaffirm Article V of GATT 1994 and agree that there shall be freedom of transit for goods in transit. The inspection of goods may be carried out only in the event of identifiable risks.
2. Wherever appropriate, the importer or his representative should be given the opportunity to contribute any relevant information to assist the importing Party in taking a decision concerning the consignment that are subject to technical regulations and conformity assessment procedures.

3. The importing Party may return, seize or destroy any consignment not in compliance with its technical regulations and conformity assessment procedures. The destruction shall take place only in cases of clearly identifiable risk to human, animal or plant life or health or of environment.

Article 7.12 Labelling

1. The Parties recognize that labelling requirements may be necessary to inform consumers of certain essential characteristics of products, and consistent with the TBT Agreement, shall not be used to create unnecessary obstacles to trade.

2. The Parties agree that where a Party requires mandatory labelling of products:

- (a) the Party shall endeavour to minimise its requirement for labelling relevant to consumers or users of the product. Where labelling for other purposes is required, such requirement shall be formulated in a manner that is not more trade restrictive than necessary to fulfil the legitimate objective;
- (b) where a Party requires the use of a unique identification number by economic operators, the Party shall issue such a number to the other Party's economic operators without undue delay and under conditions no less favourable than those applied to domestic operators;
- (c) the Party shall accept that labelling and corrections to labelling takes place in customs warehouses at the point of import and prior to distribution and sales, subject to the responsibility of the exporter or of the importer, as an alternative to labelling in the country of origin; and
- (d) where permanent labels are required, Parties shall ensure that such labelling requirements are consistent with the legitimate objectives of the Parties in accordance with Article 2.2 of the TBT Agreement.

Article 7.13 Implementation

The Sub-Committee on Technical Barriers to Trade established under Article 15.2 (Sub-Committees) shall consider matters relating to the implementation of this Chapter.

Article 7.14 Transparency

In addition to the Parties' affirmation in Article 7.4 (Affirmation of the TBT Agreement), the Parties shall endeavour to inform each other at an early stage of proposals to modify or introduce technical regulations, conformity assessment procedures or standards that are especially relevant to trade between the Parties.

Article 7.15 Technical Consultations

1. Either Party may request technical consultations on issues relating to this Chapter. Unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within thirty days from the request for technical consultations by e-mail, by teleconference, by video-conference, or through any other means, as mutually determined by the Parties.

2. Where a Party has requested technical consultations on the application of any technical regulations or conformity assessment procedures, the Parties may, with mutual consent agree to establish a technical working group with a view to identify a workable and practical solution. The Parties may, subject to mutual agreement, establish any mechanisms as deemed necessary to resolve any issues that arise.

3. Technical consultations held pursuant to this Article are without prejudice to the rights and obligations of the Parties under Chapter 14 (Dispute Settlement).