

CHAPTER 8

TECHNICAL BARRIERS TO TRADE

Article 1 **Objectives**

The objectives of this Chapter are to:

- (a) increase and facilitate trade through furthering the implementation of the *TBT Agreement* and building on the work of APEC on standards and conformance;
- (b) promote information exchange and strengthen regulatory cooperation to:
 - (i) enhance mutual understanding of each Party's standards, technical regulations and conformity assessment procedures;
 - (ii) enable cooperation between the Parties in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures; and
 - (iii) manage risks to health, safety and the environment as a means of supporting trade facilitation;
- (c) eliminate unnecessary technical barriers to trade in goods between the Parties and reduce, where possible, unnecessary transaction costs associated with trade between the Parties;
- (d) strengthen cooperation between the Parties in the work of international bodies related to standardisation and conformity assessments; and

- (e) provide a framework to implement supporting mechanisms to realise these objectives.

Article 2

Scope

1. This Chapter applies to all standards, technical regulations and conformity assessment procedures of the Parties that may directly or indirectly affect the trade in goods between the Parties, except as provided in Paragraphs 3 and 4.
2. This Chapter applies to all goods traded between the Parties, regardless of the origin of the goods.
3. This Chapter does not apply to purchasing specifications used in government procurement, which shall be subject to the provisions of Chapter 12 (Government Procurement) to the extent they apply.
4. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 7 (Sanitary and Phytosanitary Measures).

Article 3

Definitions

For the purposes of this Chapter:

- (a) the definitions in Annex 1 of the *TBT Agreement* are incorporated into and made part of this Chapter, *mutatis mutandis*;
- (b) **designation** means the authorisation of a conformity assessment body to perform conformity assessment procedures by a body with the authority to designate, monitor, suspend or withdraw designation, or remove suspension of conformity assessment bodies within the Areas of the Parties;

- (c) **TBT Agreement** means the *Agreement on Technical Barriers to Trade*, which is part of the *WTO Agreement*; and
- (d) **technical regulations** has the meaning set out in the *TBT Agreement* and includes standards that regulatory authorities of a Party recognise as meeting the mandatory requirements related to performance-based regulations.

Article 4 **Affirmation of the *TBT Agreement***

1. The Parties affirm their existing rights and obligations with respect to each other under the *TBT Agreement*.
2. Nothing in this Chapter shall prevent a Party from preparing, adopting or applying, in accordance with its rights and obligations under the *TBT Agreement*, technical regulations which are not more trade restrictive than necessary to fulfil a legitimate objective, taking into account the risks that non-fulfilment would create. Such legitimate objectives are, *inter alia*, national security requirements, the prevention of deceptive practices, the protection of human health or safety, animal or plant life or health, or the environment.

Article 5 **International Standards**

1. The Parties shall use relevant international standards, guides or recommendations, or the relevant parts of them, to the extent provided in Articles 2 and 5 and Annex 3 of the *TBT Agreement*, as a basis for their technical regulations and related conformity assessment procedures, except when such international standards, guides or recommendations or their relevant parts would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.

2. In determining whether an international standard, guide or recommendation as mentioned in Articles 2 and 5 and Annex 3 of the *TBT Agreement* exists, each Party shall base its determination on the principles set out in relevant Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995.

3. The Parties shall cooperate with each other, where appropriate, in the context of their participation in international standardising bodies, with a view to developing international standards that facilitate trade and do not create unnecessary obstacles to international trade.

Article 6 **Equivalence of Technical Regulations**

1. Consistent with the *TBT Agreement*, 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 that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

2. A Party shall, at the request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

3. Each Party shall give positive consideration to a request by the other Party to negotiate and conclude arrangements for achieving the equivalence of technical regulations as mentioned in Paragraph 1. Where a Party declines such a request, it shall, at the request of the other Party, give its reasons for doing so.

Article 7

Conformity Assessment Procedures

1. The Parties shall seek to use, on a case by case basis, a broad range of mechanisms to facilitate the acceptance of conformity assessment procedures conducted in the Area of the other Party, including:

- (a) promoting recognition of cooperative arrangements between accreditation agencies located in each other's Area;
- (b) implementing unilateral recognition by one Party of the results of conformity assessments performed in the other Party's Area;
- (c) implementing mutual recognition of conformity assessment procedures conducted by bodies located in the respective Areas of the Parties;
- (d) recognising accreditation procedures of the other Party for qualifying conformity assessment bodies in that Party's Area;
- (e) recognising the other Party's designation of conformity assessment bodies;
- (f) utilising relevant regional and international multilateral recognition agreements and arrangements; and
- (g) accepting the declaration of conformity by a supplier in the other Party's Area.

2. The Parties shall intensify their exchange of information on the mechanisms set out in Paragraph 1 and similar mechanisms with a view to facilitating the acceptance of conformity assessment procedures and 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 the importing Party with adequate confidence that products conform with the applicable technical regulations, taking into account the risk that non-conformity would create.

4. A Party may accredit or otherwise recognise conformity assessment bodies in the Area of the other Party. The terms of accreditation or recognition shall be no less favourable than those it accords to conformity assessment bodies in its Area. If a Party accredits or otherwise recognises a body assessing conformity with a particular technical regulation or standard and that Party refuses to accredit or otherwise recognise a body of the other Party assessing conformity with that technical regulation or standard, it shall, at the request of the other Party, give the reasons for its refusal.

5. To enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult, as appropriate, on matters such as the technical competence of conformity assessment bodies in the other Party.

6. A Party shall, at the request of the other Party, give the reasons why it has not accepted the results of any conformity assessment procedure performed in the Area of the other Party.

7. Each Party shall give positive consideration to a request by the other Party to negotiate and conclude arrangements to facilitate recognition of the results of conformity assessment procedures conducted by bodies located in the other Party. Where a Party declines such a request, it shall, at the request of the other Party, give its reasons for doing so.

Article 8

Cooperation for Regulatory Effectiveness

1. Recognising the important relationship between good regulatory practices and trade facilitation, the Parties shall cooperate in the areas of standards, technical regulations and conformity assessment, on a case by case basis, including to:

- (a) promote good regulatory practice based on risk management principles;
- (b) improve the quality and effectiveness of their technical regulations;
- (c) develop joint initiatives for managing risks to health, safety and the environment; and
- (d) build understanding and capacity to promote better regulatory compliance.

2. The Parties shall implement this Article by establishing work programmes under Article 10 to, *inter alia*:

- (a) exchange information on, *inter alia*:
 - (i) regulatory systems;
 - (ii) incident analysis;
 - (iii) hazard alerts;
 - (iv) product bans and recalls; and
 - (v) procedures, strategies and programmes for product surveillance activities; and
- (b) cooperate as mutually determined, on, *inter alia*:

- (i) the development of technical regulations;
- (ii) regulatory reviews and implementation; and
- (iii) the development and implementation of risk management principles, including product monitoring, safety, compliance and enforcement procedures.

Article 9 Transparency

1. In order to enhance the opportunity for the other Party and interested persons of the other Party to provide meaningful comments on a proposal to introduce a particular technical regulation or conformity assessment procedure, a Party publishing a notice under Article 2(9) or 5(6) of the *TBT Agreement* shall:

- (a) include in the notice a statement describing the objective of the proposal and the rationale for the approach that Party is proposing; and
- (b) transmit the notice via electronic communication to the other Party through its enquiry point established under Article 10 of the *TBT Agreement* at the same time as it notifies WTO members of the proposal pursuant to the *TBT Agreement*.

2. Each Party shall allow at least 60 days from the transmission of the notification under Paragraph 1(b) for the other Party and interested persons of the other Party to make written comments on the proposal.

3. Where a Party makes a notification under Article 2(10) or 5(7) of the *TBT Agreement*, it shall at the same time transmit that notification via electronic communication to the other Party through its enquiry point established under Article 10 of the *TBT Agreement*.

4. Where goods are covered by an Annex or an implementing arrangement to which Article 11 applies and a Party takes a measure to manage an immediate risk that it considers those goods may pose to health, safety or the environment, it shall notify immediately the other Party, through the contact point designated under Article 10 of the measure and the reasons for the imposition of the measure.

5. A Party shall, at the request of the other Party, provide information regarding the objective of, and rationale for, a standard, technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

Article 10 Implementation

1. Each Party shall designate a contact point which shall have responsibility to work collaboratively with the contact point of the other Party to:

- (a) coordinate participation in work programmes with persons and organisations in their respective Areas that have responsibility for accreditation of conformity assessment bodies or relevant technical regulations;
- (b) ensure appropriate steps are taken to address any issue that the other Party may raise related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;
- (c) enhance mutual cooperation in the development and improvement of technical regulations and conformity assessment procedures;
- (d) facilitate, where appropriate, sectoral cooperation among governmental and non-governmental

regulatory authorities, accreditation agencies and conformity assessment bodies in the Parties' Areas;

- (e) exchange information, where appropriate, on developments in non-governmental, regional and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures; and
- (f) take any other steps the Parties consider will assist them in implementing the *TBT Agreement*, implementing this Chapter and in facilitating trade in goods between them.

2. Each Party shall provide the other Party with the name of the designated organisation that shall be its contact point and the contact details of relevant officials in that organisation, including telephone, facsimile, email and other relevant details.

3. Each Party shall notify the other Party promptly of any change in its contact point or any amendments to the details of the relevant officials.

4. The Parties shall establish a Committee on Technical Barriers to Trade ("TBT Committee") consisting of officials from the contact points and any other representatives of the Parties to promote and monitor the implementation and administration of this Chapter. The TBT Committee shall meet within one year of entry into force of this Agreement and thereafter once every two years or as otherwise mutually determined by the Parties. Meetings may be conducted in person or via teleconference, video-conference or any other means mutually determined by the Parties. The TBT Committee may also address issues through correspondence, including via electronic communication.

5. The functions of the TBT Committee shall include to:

- (a) identify and agree priority sectors and areas for enhanced cooperation, including giving due consideration to any sector-specific proposal made by either Party;
- (b) where priority sectors or areas have been agreed, establish work programmes with clear targets, design structures and timelines;
- (c) monitor the progress of work programmes established under subparagraph (b);
- (d) consult with a view to resolving any matter arising under this Chapter, in accordance with Article 12;
- (e) review this Chapter in light of any developments in relation to the *TBT Agreement*, and develop recommendations to the Joint Commission for amendments to this Chapter in light of those developments; and
- (f) report to the Joint Commission on the implementation of this Chapter, as it considers appropriate.

6. The Parties shall ensure, to the extent possible, that the persons and organisations in their respective Areas that have responsibility for relevant accreditation of conformity assessment bodies or relevant technical regulations participate in work programmes and technical consultations where the TBT Committee has:

- (a) established a work programme under Paragraph 5(b); or
- (b) been requested to undertake technical consultations under Article 12.

Article 11

Agreements or Arrangements

1. The Parties shall seek to identify trade-facilitating initiatives regarding standards, technical regulations and conformity assessment procedures, including those that are appropriate for particular issues or sectors. Such initiatives may include:

- (a) agreements or arrangements on regulatory issues, such as alignment of standards, convergence or equivalence of technical regulations, conformity assessment procedures and compliance issues; and
- (b) the use of asymmetrical approaches, where appropriate.

2. The Parties may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessments applicable to goods traded between them.

3. The Parties may conclude implementing arrangements setting out:

- (a) details for the implementation of the Annexes to this Chapter; or
- (b) arrangements resulting from work programmes established under Article 10.

4. The Parties shall take into account any existing bilateral, regional and multilateral arrangements concerning technical regulations and conformity assessment procedures that both Parties participate in when developing Annexes and implementing arrangements.

5. The Parties agree to maintain a programme of ongoing review and enhancement of Annexes and implementing arrangements.

Article 12 Technical Consultations

1. Either Party may request technical consultations with the other Party with the aim of resolving any matter arising under this Chapter. Unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within 60 days from the request for technical consultations. The technical consultations may be conducted in person or via email, teleconference, video-conference or any other means mutually determined by the Parties.

2. Where either Party has requested technical consultations pursuant to Paragraph 1, the other Party shall:

- (a) investigate the issues that gave rise to the request for consultations including whether there are any irregularities in the implementation of its technical regulations or conformity assessment procedures;
- (b) give positive consideration to any request to address any irregularities identified under subparagraph (a); and
- (c) report back to the other Party on the outcome of its investigations, stating its reasons.

3. Technical consultations may be referred to the TBT Committee by either Party for further consideration.

4. Any action taken pursuant to this Article and consultations held pursuant to Paragraph 5(d) of Article 10 shall be without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement) or under the *WTO Dispute Settlement Understanding*.