

Chapter 7

Technical Barriers to Trade

Article 7.1: Definitions

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

Article 7.2: Objectives

The objectives of this Chapter are to increase and facilitate trade through the improvement of the implementation of the TBT Agreement, the elimination of unnecessary technical barriers to trade and the enhancement of bilateral cooperation.

Article 7.3: Scope and Coverage

For the mutual benefit of the Parties, this Chapter applies to all standards, technical regulations and conformity assessment procedures of the Parties that may, directly or indirectly, affect trade in goods between the Parties except:

- (a) purchasing specifications prepared by governmental bodies for the production or consumption requirements of such bodies; and
- (b) sanitary or phytosanitary measures as defined in Chapter 6 (Sanitary and Phytosanitary Measures).

Article 7.4: Affirmation of the TBT Agreement

The Parties affirm their rights and obligations with respect to each other Party under the TBT Agreement.

Article 7.5: Standards

1. With respect to the preparation, adoption and application of standards, each Party shall ensure that its standardising body or bodies accept and comply with Annex 3 of the TBT Agreement.

2. Each Party should encourage the standardising body or bodies in its territory to cooperate with the standardising body or bodies of other Party. Such cooperation may include:

- (a) exchange of information on standards;
- (b) exchange of information relating to standard setting procedures; and
- (c) cooperation in the work of international standardising bodies in areas of mutual interest.

Article 7.6: International Standards

In determining whether an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev.9, 8 September 2008, Annex B 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), issued by the WTO Committee on Technical Barriers to Trade.

Article 7.7: Trade Facilitation

The Parties shall work cooperatively in the fields of standards, technical regulations and conformity assessment procedures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify 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) cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards;
- (b) alignment with international standards; and
- (c) use of the approaches as defined in Article 7.9.

Article 7.8: Technical Regulations

1. 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 it is satisfied that these regulations adequately fulfill the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, upon request of the other Party, explain the reasons for its decision.

Article 7.9: Conformity Assessment Procedures

1. Each Party should seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party with a view to increasing efficiency, avoiding duplication and ensuring cost effectiveness of the conformity assessments. In this regard, each Party may choose, depending on the situation of the Party and the specific sectors involved, a broad range of approaches. These may include:

- (a) recognition by a Party of the results of conformity assessments performed in the other Party's territory;
- (b) recognition of arrangements between accreditation bodies in the territories of the Parties;

- (c) Mutual Recognition Agreements (MRAs) for conformity assessment to specific regulations: agreements on mutual acceptance of the results of conformity assessment procedures conducted by bodies located in the territory of the other Party;
- (d) use of accreditation to qualify conformity assessment bodies located in the territory of the other Party;
- (e) use of existing international multilateral recognition agreements and arrangements;
- (f) designating conformity assessment bodies located in the territory of the other Party;
- (g) suppliers' declaration of conformity; and
- (h) voluntary arrangements between conformity assessments bodies located in each Party's territory.

2. The Parties shall exchange information on these and other similar approaches with a view to facilitating acceptance of conformity assessment results.

3. 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 that other Party, explain the reasons for its decision.

4. Each Party may accredit, approve, license, 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, licenses, or otherwise recognises a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, 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.

5. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating recognition 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.

Article 7.10: Transparency

1. Each Party affirms its commitment to ensuring that information regarding proposed new or amended standards, technical regulations and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement.

2. Each Party shall ensure that the information relating to standards, technical regulations and conformity assessment procedures is published. Such information should be made available in printed form and, where possible, in electronic form. In the case of

voluntary standards, the access to the text is dependent upon the conditions of the standardisation bodies.

3. The Parties acknowledge the importance of transparency in decision-making, including providing a meaningful opportunity for persons to provide comments on proposed technical regulations and conformity assessment procedures. Where a Party publishes a notice under Article 2.9 or 5.6 of the TBT Agreement, it shall:

- (a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and
- (b) transmit the proposal electronically to the other Party through the enquiry point the Party has 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.

Each Party should allow at least sixty (60) days after it transmits a proposal under subparagraph (b) for the public and the other Party to make comments in writing on the proposal.

4. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party electronically through the enquiry point referenced in subparagraph 3 (b).

5. Each Party is encouraged to make available, upon request and where possible, to the other Party, in print or electronically, its responses to significant comments it receives under paragraph 1 no later than the date it publishes the final technical regulation or conformity assessment procedure.

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

Article 7.11: Technical Cooperation

With a view to fulfill the objectives of this Chapter, the Parties shall, on the request of the other Party, cooperate in mutually determined terms and conditions. This may include:

- (a) exchanging legislation, regulations, rules and other information and periodicals published by the national bodies responsible for technical regulations, standards, conformity assessment procedures, metrology and accreditation;
- (b) providing technical advice, information, assistance and exchanging experience to enhance the other Party's system for standards, technical regulations and conformity assessment procedures, and related activities;

- (c) examining the compatibility and/or equivalence of their respective technical regulations, standards and conformity assessment procedures;
- (d) cooperation between conformity assessment bodies, both governmental and non-governmental, in the territory of each Party, enhancing infrastructure in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;
- (e) increasing their bilateral cooperation in the relevant international organizations and fora dealing with the issues covered by this Chapter;
- (f) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures such as:
 - (i) cooperation in the development and promotion of good regulatory practice; and
 - (ii) transparency, including ways to promote improved access to information on standards, technical regulations and conformity assessment procedures;
- (g) giving favourable consideration, on request of the other Party, to any sector specific proposal for further cooperation; and
- (h) informing the other Party, as requested, about the agreements or programmes subscribed at international level in relation to Technical Barriers to Trade issues.

Article 7.12: Consultations

1. Each Party shall give prompt and positive consideration to any request from the other Party for consultations on issues relating to the implementation of this Chapter.
2. Where a matter covered under this Chapter cannot be clarified or resolved as a result of consultations, the Party concerned may refer the matter to the Committee on Technical Barriers to Trade.

Article 7.13: Committee on Technical Barriers to Trade

1. The Parties hereby agree to establish a Committee on Technical Barriers to Trade (hereinafter referred to as “the Committee”), which shall be composed of representatives of the Parties. The Committee shall report to the Commission of its activities.
2. For the purposes of this Article, the Committee shall be coordinated by:
 - (a) in the case of Chile, the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, or its successor; and
 - (b) in the case of Thailand, the Secretary-General of Thai Industrial Standards Institute, Ministry of Industry, or its successor.

3. In order to facilitate the communications, the Parties will designate a contact point no later than two (2) months following the date of entry into force of this Agreement.

4. Each Party shall ensure that its contact point or contact points 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.

5. The Committee may address any matter related to the effective functioning of this Chapter. The responsibilities and functions of the Committee shall include:

- (a) monitoring and reviewing the implementation and administration of this Chapter;
- (b) promptly addressing any issue that a Party raises related to the preparation, adoption and application of standards, technical regulations or conformity assessment procedures;
- (c) enhancing cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures;
- (d) providing a forum for discussions and exchanging information on Parties' systems for standards, technical regulations, and conformity assessment procedures;
- (e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardisation and conformity assessment procedures;
- (f) exploring any means aimed at improving access to the Parties' respective markets and enhancing the functioning of this Chapter;
- (g) consulting on any matter arising under this Chapter, upon a Party's request; and
- (h) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments.

6. Where the Parties have had recourse to consultations under paragraph 5 (g) such consultations shall, on the agreement of the Parties, constitute consultations under Article 14.3 (Consultations).

7. The Committee shall meet at least once a year, unless otherwise agreed by the Parties. Meetings may be held through any means, as mutually determined by the Parties. By mutual agreement, *ad hoc* working groups may be established if necessary.

8. The terms of reference of the Committee shall be determined on its first meeting.