

CHAPTER 7

TECHNICAL BARRIERS TO TRADE

Article 7.1: Definitions

For the purposes of this Chapter:

- (a) **TBT Agreement** means the *Agreement on Technical Barriers to Trade*, contained in Annex 1A of the WTO Agreement; and
- (b) **Technical regulations, standards and conformity assessment procedures** shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

Article 7.2: Objectives

The objectives of this Chapter are to increase and facilitate bilateral trade through 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

1. Except as provided in paragraphs 2 and 3, this Chapter applies to all standards, technical regulations, and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties.
2. This Chapter does not apply to sanitary and phytosanitary measures which are covered Chapter 6 (Sanitary and Phytosanitary Measures).
3. This Chapter does not apply to technical specifications prepared by governmental bodies for production or consumption requirements of such bodies.

Article 7.4: Reaffirmation of Agreement on Technical Barriers to Trade

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

Article 7.5: International Standards

1. The Parties shall use international standards, or the relevant parts of international standards, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards exist or their completion is imminent, except when such international standards or their relevant parts are ineffective or inappropriate to fulfil legitimate objectives.

2. For the purposes of paragraph 1, the Parties shall apply the principles set out in 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 by the WTO Committee on Technical Barriers to Trade since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, Section IX.

Article 7.6: 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 it is satisfied that these regulations adequately fulfil the objectives of its regulations.

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

Article 7.7: Trade Facilitation

1. 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.

2. To this end, 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;
- (c) reliance on a supplier's declaration of conformity;
- (d) use of accreditation to qualify conformity assessment bodies; and
- (e) cooperation through recognition of conformity assessment procedures.

Article 7.8: Conformity Assessment

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures, including:
 - (a) voluntary arrangements between conformity assessment bodies from each Party's territory;
 - (b) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified regulations conducted by bodies located in the other Party's territory;
 - (c) unilateral recognition by one Party of the results of conformity assessments performed in the other Party's territory;
 - (d) accreditation procedures for qualifying conformity assessment bodies and promotion of the recognition of accreditation and certification bodies under international mutual recognition arrangements;
 - (e) government designation of conformity assessment bodies;
 - (f) reliance on a supplier's declaration of conformity, where appropriate; and
 - (g) use of regional and international multilateral recognition agreements and arrangements which the Parties are members to.
2. The Parties shall exchange information on the mechanisms referred in paragraph 1 with a view to facilitating acceptance of conformity assessment results.
3. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved.
4. 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.
5. Each Party shall 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.
6. 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.

7. 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 7.9: Transparency

1. Each Party shall endeavour to ensure that relevant interested persons of the other Party are allowed to participate in any public consultative process, if organised, on the draft standards, technical regulations and conformity assessment procedures on terms no less favourable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental bodies in its territory observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.

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 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. On request of the other Party, a Party shall provide the other Party 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 7.10: Technical Cooperation

With a view to fulfil the objectives of this Chapter, the Parties shall, on the request of the other Party and where possible, cooperate towards:

- (a) exchanging legislation, regulations, rules and other information and periodicals published by the national bodies responsible for technical regulations, standards, conformity assessment, metrology and accreditation;
- (b) exchanging general information and publications on conformity assessment, certification bodies, including notified bodies, designation and accreditation of conformity assessment bodies;
- (c) providing technical advice, information and assistance on mutually agreed terms and conditions and exchanging experience to enhance the other Party's system for standards, technical regulations and conformity assessment procedures, and related activities;
- (d) increasing the information exchange, particularly regarding non-compliance of a product in bilateral trade with relevant technical regulations and conformity assessment procedures of a Party;
- (e) examining the compatibility and/or equivalence of their respective technical regulations, standards and conformity assessment procedures;
- (f) giving favourable consideration, on request of the other Party, to any sector specific proposal for further cooperation;
- (g) promoting and encouraging bilateral cooperation between respective organisations, public and/or private, of the Parties responsible for standardisation, testing, certification, accreditation and metrology;
- (h) increasing their bilateral cooperation in the relevant international organisations and fora dealing with the issues covered by this Chapter; and
- (i) informing the other Party, as far as possible, about the agreements or programs subscribed at international level in relation to TBT issues.

Article 7.11: Committee on Technical Barriers to Trade

1. The Parties hereby agree to establish a Committee on Technical Barriers to Trade (hereinafter referred to as "TBT Committee"), comprising representatives of each Party.

2. For purposes of this Article, the TBT 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 Malaysia, the Department of Standards Malaysia, Ministry of Science, Technology and Innovation.
3. In order to facilitate the communication and ensure the proper functioning of the TBT Committee, the Parties will designate a contact point no later than two months following the date of entry into force of this Agreement.
4. The functions of the TBT Committee shall include:
 - (a) monitoring the implementation and administration of this Chapter;
 - (b) promptly addressing any issue that a Party raises related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;
 - (c) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures;
 - (d) exchanging information on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from a Party;
 - (e) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;
 - (f) where appropriate, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the Parties' territories;
 - (g) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures;
 - (h) consulting on any matter arising under this Chapter, upon a Party's request;
 - (i) reviewing this Chapter in light of any development under the TBT Agreement and developing recommendations for amendments to this Chapter in light of those developments;

- (j) reporting to the Joint Committee on the implementation of this Chapter, as it considers appropriate; and
- (k) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them.

5. A Party shall, upon request, give favourable consideration to any sector-specific proposal the other Party makes for further cooperation under this Chapter.

6. The TBT Committee shall meet when and where it considers necessary, preferably once a year, with the presence of the representatives of each Party or held via teleconference, videoconference or through other means mutually determined by the Parties. By mutual agreement, *ad hoc* working groups may be established if necessary.

Article 7.12: Information Exchange

Any information or explanation provided upon request of a Party pursuant to the provisions of this Chapter, shall be provided in print or in electronic form within a reasonable period of time agreed between the Parties.