

CHAPTER 5

TECHNICAL BARRIERS TO TRADE

ARTICLE 5.1

Objectives

The objectives of this Chapter are to:

- (a) further the implementation of the TBT Agreement;
- (b) facilitate bilateral trade and access to respective markets for goods within the scope of this Chapter;
- (c) facilitate information exchange and cooperation in the field of technical regulations, standards and conformity assessment between the Parties, and enhance mutual understanding of each Party's regulatory system;
- (d) prevent, eliminate or reduce unnecessary obstacles related to trade between the Parties, in particular to avoid duplications in conformity assessment procedures;
- (e) further the implementation of good regulatory practice in the area of product safety, including market surveillance; and
- (f) effectively solve trade concerns affecting trade between the Parties within the scope of this Chapter.

ARTICLE 5.2

Scope

1. This Chapter shall apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, which may affect trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter shall not apply to:
 - (a) sanitary and phytosanitary measures as defined in Chapter 4 (Sanitary and Phytosanitary Measures); nor
 - (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

ARTICLE 5.3

Affirmation of the TBT Agreement

Except as otherwise provided for in this Chapter, the TBT Agreement shall apply and is hereby incorporated and made part of this Agreement, *mutatis mutandis*.

ARTICLE 5.4

International Standards

For the purposes of this Chapter, standards issued by international standardising bodies, in particular, but not limited to the International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and the Codex Alimentarius Commission (CAC) shall be considered relevant international standards in accordance with Article 2.4. of the TBT Agreement.

ARTICLE 5.5

Movement of Products, Border Control and Market Surveillance

1. The Parties shall ensure that goods fully complying with the relevant technical regulations of an importing Party can freely move within their respective territories, once placed on the market.
2. Where, a Party detains, at a port of entry, goods exported from another Party due to an alleged failure to comply with a technical regulation, the reasons for the detention shall be promptly notified to the importer or his representative.
3. Where a Party withdraws, from its market, goods exported from another Party, the reasons shall be promptly notified to the importer, his representative or a person responsible for placing the goods on the market.

ARTICLE 5.6

Conformity Assessment Procedures

1. The Parties acknowledge 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 another Party's territory, but not limited to:
 - (a) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified technical regulations conducted by recognised conformity assessment bodies;
 - (b) voluntary arrangements between conformity assessment bodies in each

Party's territory;

- (c) use of accreditation based on international standards, to qualify conformity assessment bodies;
- (d) government designation of conformity assessment bodies;
- (e) recognition by a Party of the results of conformity assessments performed in the territory of another Party;
- (f) use of regional or international arrangements and regional or international recognition agreements to which the Parties are parties; and
- (g) the importing Party's acceptance of a supplier's declaration of conformity, based on international standards.

2. The Parties shall not prepare, adopt or apply conformity assessment procedures, which are likely to create unnecessary obstacles to trade and shall to this end:

- (a) reinforce the role of international standards as a basis for technical regulations, including conformity assessment procedures;
- (b) promote the accreditation of conformity assessment bodies on the basis of relevant Standards and Guidelines of ISO and IEC; and
- (c) encourage the mutual acceptance of conformity assessment results of bodies accredited in accordance with paragraph (b), which have been recognised under the relevant international agreement.

3. Insofar as the Parties require a positive assurance of conformity with domestic technical regulations, the Parties shall, where applicable, encourage the acceptance of supplier's declarations of conformity, based on international standards as a documentation declaring conformity with domestic technical regulations.

ARTICLE 5.7

Cooperation

With a view to increasing the mutual understanding of each other's systems and facilitating access to respective markets, the Parties shall strengthen their cooperation, in particular in the following areas:

- (a) activities of international standardisation bodies and the WTO Committee on Technical Barriers to Trade;
- (b) communication between the competent authorities of the Parties, exchange of information in respect of technical regulations, good regulatory practice, standards, conformity assessment procedures, border control and market surveillance;

- (c) encouraging their respective standardisation bodies to cooperate; and
- (d) on request of a Party, make available, promptly, the full text or summary of technical regulations notified to WTO members, in English.

ARTICLE 5.8

Consultations

Consultations shall be held at the request of a Party, which considers that another Party has taken a measure which is likely to create, or has created, an obstacle to trade. Such consultations shall take place within 40 days from the receipt of the written request with the objective of finding a mutually acceptable solution. The consultations shall take place in the Joint Committee if a Party so requests. The consultations may be conducted by any agreed method.⁸

ARTICLE 5.9

Review

1. The Parties shall no later than four years from the entry into force of this Agreement, and thereafter upon request by a Party, jointly review this Chapter with a view to extending treatment granted to a non-party, with whom all Parties have established arrangements concerning standards, technical regulations and conformity assessment procedures, to the Parties.
2. The Parties may conclude Annexes or side agreements to this Agreement to prevent, eliminate, or reduce unnecessary obstacles, including to avoid duplicative and unnecessarily burdensome conformity assessment procedures in specific product sectors.

ARTICLE 5.10

Contact Points

The Parties shall exchange names and addresses of contact points for this Chapter in order to facilitate communication and the exchange of information.

⁸ It is understood that consultations pursuant to this Article shall be without prejudice to the rights and obligations of the Parties under Chapter 13 (Dispute Settlement) or under the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes.