

Chapter 7

Technical Regulations, Standards and Conformity Assessment Procedures

Article 7.1: Definitions

For the purposes of this Chapter:

technical regulation, standard 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 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

1. Except as provided in paragraphs 2 and 3 of this Article, this Chapter applies to all standards, technical regulations, and conformity assessment procedures of the central level of government that may, directly or indirectly, affect trade in goods between the Parties.
2. Each Party shall take such reasonable measures as may be available to it to ensure compliance by regional or local governments and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures in the implementation of the provisions of this Chapter.
3. Technical specifications prepared by governmental bodies for production or consumption requirements of such bodies are not subject to the provisions of this Chapter, but are addressed in Chapter 15 (Government Procurement), according to its coverage.
4. This Chapter does not apply to sanitary and phytosanitary measures as defined in Annex A, paragraph 1 of the SPS Agreement, which are covered in Chapter 6 (Sanitary and Phytosanitary Measures).

Article 7.4: Affirmation of Agreement on Technical Barriers to Trade

The Parties affirm their rights and obligations under the TBT Agreement.

Article 7.5: International Standards

1. Each Party shall use relevant international standards, to the extent provided in Article 2.4 of the TBT Agreement, as a basis for its technical regulations.
2. 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.8, 23 May 2002, Section IX (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 7.6: 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;
- (c) reliance on a supplier's declaration of conformity; and
- (d) use of accreditation to qualify conformity assessment bodies, as well as cooperation through recognition of conformity assessment procedures.

Article 7.7: 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 fulfil the objectives of its regulations.
2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, at the request of the other Party, explain its reasons.
3. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

Article 7.8: Conformity Assessment Procedures

1. 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. For example:

- (a) the importing Party may rely on a supplier's declaration of conformity;
- (b) conformity assessment bodies located in each Party's territory may enter into voluntary arrangements to accept the results of each other's conformity assessment procedures;
- (c) a Party may agree 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) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;
- (e) a Party may designate conformity assessment bodies located in the territory of the other Party; and
- (f) a Party may facilitate the consideration of a request by the other Party to recognise the results of conformity assessment procedures conducted by bodies in the other Party's territory, including through negotiation of agreements in a sector nominated by that other Party.

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

2. 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.

3. 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. 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.

4. 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 allow persons of the other Party to participate in the development of 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. Each Party shall publish, or otherwise make available to the public, in print or electronically, its responses to significant comments it receives under paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.
6. 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: Committee on Technical Barriers to Trade

1. In order to facilitate implementation of this Chapter and cooperation between the Parties, the Parties hereby establish a Committee on Technical Barriers to Trade, comprising representatives of each Party.
2. For the purposes of this Article, the Committee shall be coordinated by (“the Coordinators”):

- (a) in the case of Australia, the Department of Innovation, Industry, Science and Research, or its successor; and
 - (b) in the case of Chile, the General Directorate of International Economic Affairs, Ministry of Foreign Affairs, or its successor.
3. The Committee's functions 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 standards, technical regulations or conformity assessment procedures;
 - (c) enhancing cooperation in the development and improvement of standards, 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) providing technical advice, information and assistance on mutually agreed terms and conditions to enhance the Parties' standards, technical regulations and conformity assessment procedures;
 - (f) conducting joint studies and holding seminars on mutually agreed terms and conditions to enhance the Parties' understanding of technical regulations, standards and conformity assessment procedures;
 - (g) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;
 - (h) where appropriate, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the Parties' territories;
 - (i) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures;
 - (j) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them;
 - (k) at a Party's request, consulting on any matter arising under this Chapter;

- (l) 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; and
 - (m) as it considers appropriate, reporting to the Joint FTA Committee on the implementation of this Chapter.
- 4. Where the Parties have had recourse to consultations under paragraph 3(k) such consultations shall, on the agreement of the Parties, constitute consultations under Article 21.3 (Consultations - Dispute Settlement Chapter).
- 5. A Party shall, on request, give favourable consideration to any sector-specific proposal the other Party makes for further cooperation under this Chapter.
- 6. The Coordinators shall communicate with each other by any agreed method that is appropriate for the efficient and effective discharge of their functions.
- 7. The Committee shall meet at such venues and times as may be agreed by the Parties. Meetings may be held via teleconference, videoconference, or through any other means, as mutually determined by the Parties. By mutual agreement, *ad hoc* working groups may be established, if necessary.

Article 7.11: Information Exchange

Any information or explanation that is provided on request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable period of time.