

CHAPTER 7
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;
- (b) eliminate unnecessary technical barriers to trade in goods between the Parties including to minimise unnecessary costs and delays to market for businesses;
- (c) further strengthen mutual understanding of each Party's standards, technical regulations and conformity assessment procedures;
- (d) promote greater regulatory cooperation to manage risks to health, safety and the environment as a means of supporting trade facilitation;
- (e) establish a framework to address the impacts of technical barriers to trade affecting trade in goods between the Parties; and
- (f) strengthen cooperation between the Parties in relation to international developments in the areas of standardisation and conformity assessment.

Article 2

Definitions

For the purposes of this Chapter, the definitions set out in Annex 1 of the the *Agreement on Technical Barriers to Trade* shall apply *mutatis mutandis*. In addition, the following definitions shall apply:

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 Parties;

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; and

TBT Agreement means the *Agreement on Technical Barriers to Trade*, which is part of the WTO Agreement.

Article 3

Scope

1. This Chapter applies to the preparation, adoption and application of all technical regulations, standards and conformity assessment procedures that may affect the trade in goods between the Parties, except as provided in paragraphs 2 and 3 of this Article.
2. This Chapter does not apply to technical specifications prepared by governmental entities for production or consumption requirements of

such entities. Such specifications are covered by Chapter 11 (Government Procurement).

3. This Chapter does not apply to sanitary and phytosanitary measures. Such measures are covered by Chapter 6 (Sanitary and Phytosanitary Measures).
4. For greater certainty, nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards or conformity assessment procedures, in accordance with its rights and obligations under the TBT Agreement including those necessary to fulfil a legitimate objective taking into account the risks non-fulfilment would create. Such legitimate objectives are, *inter alia*: security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology or intended end-uses of products.

Article 4

Incorporation of Certain Articles of TBT Agreement

Articles 1 through 9 inclusive of the TBT Agreement are incorporated into and made part of this Agreement *mutatis mutandis*.

Article 5

International Standards

1. The Parties acknowledge the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment amongst the Parties, good regulatory practice and reducing unnecessary barriers to trade.
2. Further to Articles 2.4 and 5.4 and Annex 3 of the TBT Agreement, 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 base its determination on 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*, issued by the WTO Committee on Technical Barriers to Trade and contained in WTO document number G/TBT/1/Rev.10.
3. The Parties shall cooperate with each other, where feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

Article 6

Conformity Assessment Procedures

1. Further to Article 6.4 of the TBT Agreement, each Party shall accord to conformity assessment bodies located in the other Party treatment no less favourable than that it accords to conformity assessment bodies

located in its own jurisdiction. In order to ensure that it accords such treatment, each Party shall apply to conformity assessment bodies located in the other Party the same or equivalent procedures, criteria and other conditions that it may apply where it accredits, approves, licenses, or otherwise recognises conformity assessment bodies in its own jurisdiction.

2. Paragraph 1 shall not preclude a Party from undertaking solely within specified government bodies located in its own jurisdiction or in the other Party, conformity assessment in relation to specific products, subject to its obligations under the TBT Agreement.
3. Further to Article 6.4 of the TBT Agreement, where a Party maintains procedures, criteria and other conditions as set out in paragraph 1 and requires test results, certifications, and/or inspections as positive assurance that a product conforms to a standard or technical regulation, it:
 - (a) shall not require the conformity assessment body responsible for testing or certifying the product or conducting an inspection to be located within that Party;
 - (b) shall not impose requirements on conformity assessment bodies located outside that Party that would effectively require such conformity assessment bodies to operate an office in that Party; and
 - (c) shall permit conformity assessment bodies located in the other Party to apply to the Party for a determination that they comply with any procedures, criteria and other conditions the Party

requires to deem them competent or otherwise approve them to test or certify the product or conduct an inspection.

4. Nothing in paragraphs 1 and 3 precludes a Party from verifying the results of conformity assessment procedures undertaken by such conformity assessment bodies.
5. In order to enhance confidence in the continued reliability of conformity assessment results from each other's jurisdictions, a Party may, at any time, request information and discussion on matters pertaining to conformity assessment bodies in the other Party. Such matters may include the process used to accredit, approve, license or otherwise recognise conformity assessment bodies and the technical competence of such bodies.
6. Further to Article 9.1 of the TBT Agreement, where a Party proposes to prepare or adopt procedures, criteria or other conditions to deem competent or otherwise approve conformity assessment bodies to demonstrate that a product conforms to a standard or technical regulation, it shall consider including provisions for deeming competent or otherwise approving a conformity assessment body if an accreditation body participating in an international or regional system of accreditation as agreed by the Parties has determined that the conformity assessment body:
 - (a) conforms to relevant international standards, guides or recommendations, pertaining to conformity assessment;
 - (b) is technically competent to demonstrate that the product complies with the standard or technical regulation; and

(c) holds an appropriate scope of accreditation.

7. Further to Article 9.2 of the TBT Agreement, a Party shall not refuse to accept, or take actions which have the effect of, directly or indirectly, requiring or encouraging the refusal of acceptance of conformity assessment results from a conformity assessment body because the accreditation body that accredited the conformity assessment body:

(a) operates in the other Party where there is more than one accreditation body;

(b) is a non-governmental body;

(c) is domiciled in the other Party and that Party does not maintain a procedure for recognising accreditation bodies;

(d) does not operate an office in the Party; or

(e) is a for-profit entity.

8. For greater clarity, nothing in paragraph 7 prohibits a Party from refusing to accept conformity assessment results from a conformity assessment body where it can substantiate such refusal, provided that such actions are not inconsistent with the TBT Agreement and this Chapter.

9. Where a Party accredits, approves, licenses or otherwise recognises bodies assessing conformity to a particular technical regulation or standard in its jurisdiction and refuses to accredit, approve, license or otherwise recognise a body assessing conformity with that technical

regulation or standard in the other Party or declines to use a mutual recognition arrangement, it shall, on request of the other Party, explain the reasons for its refusal.

10. Where a Party does not accept the results of a conformity assessment procedure conducted in the other Party, it shall, on the request of the other Party, explain the reasons for its decision.

11. Further to Article 6.3 of the TBT Agreement, where a Party declines a request of the other Party to enter into negotiations for the conclusion of agreements for mutual recognition of results of each other's conformity assessment procedures, it shall on the request of that other Party, explain the reasons for its decision.

12. Further to Article 5.2.5 of the TBT Agreement, any conformity assessment fees imposed by a Party including any costs arising from communication, transportation, and differences between location of facilities of the applicant and the conformity assessment body, shall be limited in amount to the approximate cost of services rendered.

13. No Party shall require that any documentation supplied in connection with conformity assessment be endorsed, certified or otherwise sighted or approved by its overseas representatives nor impose any related fees and charges.

Article 7

Trade Facilitation and Cooperation

1. Further to Articles 5, 6 and 9 of the TBT Agreement, the Parties recognise that a broad range of mechanisms exist to facilitate the

acceptance of conformity assessment results. In this regard, a Party may:

- (a) implement mutual recognition of the results of conformity assessment procedures performed by bodies located in the other Party with respect to specific technical regulations;
- (b) recognise existing regional, international and multilateral recognition agreements and arrangements between or among accreditation bodies or conformity assessment bodies;
- (c) use accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;
- (d) designate conformity assessment bodies or recognise the other Party's designation of conformity assessment bodies;
- (e) unilaterally recognise the results of conformity assessment procedures performed in the other Party; and
- (f) accept a supplier's declaration of conformity.

2. The Parties recognise that a wide range of mechanisms exist to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region including:

- (a) regulatory dialogue and cooperation to, *inter alia*:
 - (i) exchange information on regulatory approaches and practices;

- (ii) promote the use of good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards and conformity assessment procedures;
 - (iii) provide technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards, conformity assessment procedures and metrology;
 - (iv) provide technical assistance and cooperation, on mutually agreed terms and conditions, to build capacity and support the implementation of this Chapter;
- (b) promotion of the acceptance as equivalent technical regulations of the other Party;
- (c) greater alignment of domestic standards with relevant international standards, except where inappropriate or ineffective; and
- (d) facilitation of the greater use of relevant international standards, guides and recommendations as the basis for technical regulations and conformity assessment procedures.
3. With respect to the elements listed in paragraphs 1 and 2, the Parties recognise that the choice of the appropriate mechanism in a given regulatory context will depend on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.

4. The Parties shall intensify their exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade between them.
5. A Party shall, upon request of the other Party, give due consideration to any sector specific proposal to facilitate trade or for cooperation under this Chapter.
6. Further to Article 2.7 of the TBT Agreement, a Party shall, upon the request of the other Party, explain the reasons why it has not accepted a technical regulation of that Party as equivalent.
7. A Party shall give due consideration to a request from the other Party to negotiate and conclude agreements for achieving equivalence of technical regulations. Where a Party declines such a request, it shall, at the request of the other Party, explain the reasons for its decision.
8. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment, accreditation and metrology, whether they be public or private, with a view to addressing issues covered by this Chapter.

Article 8

Transparency and Information Exchange

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 the Party is proposing;
 - (b) at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement, transmit the notification electronically to the other Party through its enquiry point established under Article 10 of the TBT Agreement; and
 - (c) on request, make the text of any technical regulation and conformity assessment procedure based on a proposal available electronically to the other Party as soon as practicable after it becomes publicly available.
2. Each Party should allow at least 60 days from the transmission of the notification under paragraph 1(b) above 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 the notification to the other Party electronically, through its enquiry point referred to under paragraph 1(b).
 4. A Party shall, upon the request of the other Party, provide the relevant documents and other information regarding the objective of, and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

5. Either Party may request the other Party to provide information on any matter arising under this Chapter. The Party so requested shall provide such information within a reasonable period of time, and where possible, using electronic means.

Article 9

Technical Discussions

1. Either Party may request technical discussions with the other Party with the aim of resolving any matter arising under this Chapter. A request for technical discussions shall be directed to the other Party's contact point established under Article 10 (Committee on Technical Barriers to Trade and Contact Points). Unless the Parties mutually determine otherwise, the Parties shall hold technical discussions within 60 days from the request.
2. The Parties shall ensure that the persons and organisations in their respective jurisdictions that have responsibility for the relevant technical regulations, standards or conformity assessment procedures that are the subject of the technical discussions participate in those discussions.
3. Technical discussions may be conducted in person or via email, teleconference, video-conference or any other means, as mutually determined by the Parties.
4. Where a Party has requested technical discussions pursuant to paragraph 1, the requested Party shall:

- (a) investigate the issues that gave rise to the request for discussions, including whether there are any irregularities in the implementation of its technical regulations, standards 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 requesting Party on the outcome of its investigations, stating its reasons.
5. Technical discussions held pursuant to this Article are without prejudice to the rights and obligations of the Parties under Chapter 21 (Dispute Settlement), the WTO Agreement or any other agreement to which both Parties are party.

Article 10

Committee on Technical Barriers to Trade and Contact Points

1. The Parties hereby establish the Committee on Technical Barriers to Trade ("TBT Committee"), which shall comprise representatives of each Party.
2. Through the TBT Committee, the Parties shall intensify their joint work in the fields of technical regulations, conformity assessment procedures and standards with a view to facilitating trade between and among the Parties.
3. The TBT Committee's functions may include:

- (a) monitoring the implementation and operation of this Chapter and any other commitments agreed under this Chapter;
- (b) monitoring any technical discussions on matters arising under this Chapter requested pursuant to Article 9 (Technical Discussions);
- (c) agreeing to priority areas of mutual interest for future work under this Chapter and considering proposals for new sector specific or other initiatives;
- (d) encouraging cooperation between the Parties in matters pertaining to this Chapter, including the development, review and/or modification of technical regulations, standards and conformity assessment procedures;
- (e) encouraging cooperation between and among non-governmental bodies in the Parties, as well as cooperation between governmental and non-governmental bodies in the Parties in matters pertaining to this Chapter;
- (f) encouraging the exchange of information between Parties and their relevant non-governmental bodies, where appropriate, on the development of common approaches regarding matters under discussion in non-governmental, regional, plurilateral and multilateral bodies or systems that develop standards, guides, recommendations, policies or other procedures relevant to this Chapter;
- (g) at a Party's request, encouraging the exchange of information regarding specific technical regulations, conformity assessment procedures and standards of non-Parties with a view to fostering a common understanding and approach to such issues;

- (h) taking any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement;
 - (i) 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
 - (j) reporting to the Joint Commission on the implementation and operation of this Chapter.
4. The TBT Committee may establish working groups to carry out these functions.
5. Each Party shall designate a contact point, and shall provide the other Party with the name of its designated contact point, the contact details of the relevant officials in that organisation, including telephone numbers, fax numbers, email addresses and other relevant details.
6. 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.
7. The responsibilities of each contact point shall include:
- (a) communicating with the other Party's contact points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;
 - (b) communicating with and coordinating the involvement of a Party's agencies, including regulatory authorities, on relevant matters pertaining to this Chapter;

- (c) consulting and, where appropriate, coordinating with interested persons in that Party on relevant matters pertaining to this Chapter; and
 - (d) any additional responsibilities as the TBT Committee may specify.
8. The TBT Committee shall meet within one year of the date of entry into force of this Agreement and thereafter as agreed by the Parties. The TBT Committee shall carry out its work through communication means agreed by the Parties, which may include e-mail, teleconference, video-conference, in meetings at the margins of other regional or international fora, or other means.
9. Decisions of the TBT Committee shall be taken by consensus.
10. In determining what activities the TBT Committee shall undertake, the Parties shall consider work that is being undertaken in other fora, with a view to ensuring that any activities undertaken by the TBT Committee do not unnecessarily duplicate that work.

Article 11

Implementing Arrangements on Sectoral Initiatives

1. The Parties affirm the following existing bilateral arrangements:
- (a) The Arrangement between the New Zealand Commerce and Industry Office and the Taipei Economic and Cultural Office in New Zealand in Relation to Facilitating Trade in Electrical and Electronic Products signed on 15 July 2005; and

(b) The Regulatory Cooperation Arrangement on Standards, Technical Regulations and Conformity Assessment between the Taipei Economic and Cultural Office in New Zealand and the New Zealand Commerce and Industry Office signed on 4 March 2010.

2. The Parties may conclude further implementing arrangements to this Chapter, including on specific product sectors of mutual interest to the Parties² as agreed by the TBT Committee established under Article 10 of this Chapter. Such implementing arrangements will set out agreed principles and procedures relating to technical regulations and conformity assessment procedures applicable to goods traded between them.
3. In developing implementing arrangements the Parties shall take account of any existing bilateral, regional and multilateral agreements or arrangements concerning technical regulations and conformity assessment procedures that both Parties already participate in.

² Chinese Taipei's interests in that regard include medical devices and pharmaceuticals.