

CHAPTER SEVEN

TECHNICAL BARRIERS TO TRADE

Article 7.1 Definitions

For the purposes of this Chapter, the definitions set out in Annex 1 of the WTO TBT Agreement shall apply. In addition, the following definitions shall apply:

- (a) **Designation** means the authorisation of a conformity assessment body to perform conformity assessment activities, by a body with the authority to designate, monitor, suspend or withdraw designation, or remove suspension of conformity assessment bodies within territories of the Parties;
- (b) **Technical regulations** has the meaning set out in the WTO TBT Agreement and also includes standards that regulatory authorities recognise as meeting the mandatory requirements related to performance based regulations; and
- (c) **WTO TBT Agreement** means the *WTO Agreement on Technical Barriers to Trade*.

Article 7.2 Objectives

The objectives of this Chapter are to:

- (a) increase and facilitate trade through furthering the implementation of the WTO TBT Agreement and building on the work of APEC on standards and conformance;
- (b) promote regulatory cooperation to manage risks to health, safety and the environment as a means of supporting trade-facilitation;
- (c) reduce, where possible, unnecessary transaction costs associated with trade between the Parties;
- (d) eliminate unnecessary technical barriers to trade in goods between the Parties;
- (e) promote mutual understanding of each Party's standards, technical regulations, and conformity assessment procedures;

- (f) strengthen information exchange and cooperation among the Parties in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;
- (g) strengthen cooperation among the Parties in the work of international bodies related to standardisation and conformity assessments; and
- (h) provide a framework to implement supporting mechanisms to realise these objectives.

Article 7.3 **Affirmation of WTO TBT Agreement**

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

Article 7.4 **Scope**

1. This Chapter applies to all standards, technical regulations and conformity assessment procedures that may affect the trade in goods between the Parties, except as provided in paragraphs 2 and 3.
2. This Chapter does not apply to purchasing specifications prepared by governmental entities for production or consumption requirements of such entities.
3. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 6 (Sanitary and Phytosanitary Measures).
4. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its rights and obligations under the WTO TBT Agreement, technical regulations or standards necessary to fulfil a legitimate objective taking into account the risks non-fulfilment would create. This shall include technical regulations necessary to ensure its national security requirements, the prevention of deceptive practices, the protection of human health or safety, animal or plant life or health, or the environment.

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 regulatory objectives.
2. The Parties shall cooperate with each other, where appropriate, in the context of their participation in international standardising bodies, to ensure that international standards developed within such organisations are trade facilitating and do not create unnecessary obstacles to international trade.

Article 7.6

Conformity Assessment Procedures

1. In accordance with the objective of facilitating trade, the Parties shall seek to increase efficiency, avoid duplication and ensure cost effectiveness by the use of a range of appropriate mechanisms, including but not limited to:
 - (a) promoting recognition of cooperative arrangements between accreditation agencies from each other's territory;
 - (b) implementing unilateral recognition by one Party of the results of conformity assessments performed in the other Party's territory;
 - (c) implementing mutual recognition of conformity assessment procedures conducted by bodies located in the respective territories of the Parties;
 - (d) recognising accreditation procedures for qualifying conformity assessment bodies;
 - (e) recognising government designation of conformity assessment bodies;
 - (f) utilising existing regional and international multilateral recognition agreements and arrangements; and
 - (g) accepting suppliers' declaration of conformity.
2. The Parties shall seek to ensure that conformity assessment procedures applied between them facilitate trade by ensuring that they are no more restrictive than is necessary to provide an importing Party with confidence that products conform with the applicable technical regulations, taking into account

the risk that non-conformity would create.

3. The Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, as appropriate, to enhance confidence in the continued reliability of each other's conformity assessment results.
4. A Party shall, on the request of the other Party, explain its reasons for not accepting the results of any conformity assessment procedure performed in the territory of that other Party.
5. A Party may accredit or otherwise recognise conformity assessment bodies in the territory of the other Party. The terms of accreditation or recognition shall be no less favourable than those it accords to conformity assessment bodies in its territory. If a Party accredits or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit or otherwise recognise a body of the other Party assessing conformity with that technical regulation or standard, it shall, on request, explain the reasons for its refusal.
6. The Parties shall cooperate with the objectives of reducing compliance and administrative costs and the effective monitoring of compliance with their legitimate regulatory objectives.
7. Where a Party declines a request from the other Party to enter into negotiations on facilitating recognition of the results of conformity assessment procedures conducted by bodies of the other Party, it shall, on request, explain its reasons.

Article 7.7 **Equivalence of Technical Regulations**

1. Consistent with the WTO 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 that those technical regulations produce outcomes that are equivalent to those produced by its own technical regulations in meeting its legitimate objectives and achieving the same level of protection.
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 7.8

Cooperation for Regulatory Effectiveness

1. Recognising the important relationship between good regulatory practices and trade-facilitation, the Parties shall cooperate in the areas of standards, technical regulations, and conformity assessment to:

- (a) promote good regulatory practice based on risk management principles;
- (b) improve the quality and effectiveness of their regulations;
- (c) develop joint initiatives for managing risks to health, safety and the environment; and
- (d) build understanding and capacity to promote better regulatory compliance.

2. The Parties shall seek to implement paragraph 1 by establishing work programmes under Article 7.10 (Implementation) to:

- (a) exchange information on, *inter alia*:
 - (i) regulatory systems;
 - (ii) incident analysis;
 - (iii) hazard alerts;
 - (iv) product bans and recalls;
 - (v) protocols, strategies and programmes for product surveillance activities; and
 - (vi) related market information material; and
- (b) cooperate on, *inter alia*:
 - (i) the development of technical regulations;
 - (ii) regulatory reviews and implementation; and
 - (iii) the development and implementation of risk management principles including product monitoring, safety, compliance and enforcement protocols.

3. Where goods are covered by an Annex or an Implementing Arrangement to this Chapter and a Party takes a measure to manage an immediate risk that it considers those goods may pose to health, safety or the environment, it shall immediately notify the other Party, through the Contact Points established under Article 7.10 (Implementation), of the measure and the reasons for the imposition of the measure.

Article 7.9 Transparency

1. In order to enhance the opportunity for the Parties and interested persons to provide meaningful comments, a Party publishing a notice under Article 2.9 or 5.6 of the WTO TBT Agreement shall:

- (a) include in the notice a statement describing the objective of the proposal and the rationale for the approach that Party is proposing; and
- (b) transmit the proposal electronically to the other Party through its enquiry point established under Article 10 of the WTO TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the WTO TBT Agreement.

2. Each Party shall allow at least 60 days from the transmission of the notification under paragraph 1(b) for the other Party and interested persons to make comments on the proposal in writing.

3. Where a Party makes a notification under Article 2.10 or 5.7 of the WTO TBT Agreement, it shall at the same time transmit the notification to the other Party electronically, through its enquiry point established under Article 10 of the WTO TBT Agreement.

Article 7.10 Implementation

1. Each Party shall designate a Contact Point which shall have responsibility to coordinate the implementation of this Chapter.

2. The Parties shall provide each other with the name of the designated organisation that shall be their Contact Point and the contact details of relevant official in that organisation, including telephone, fax, e-mail and other relevant details.

3. The Parties shall notify each other promptly of any change of their Contact Points or any amendments to the details of the relevant officials.

4. The Parties shall establish a Committee on Technical Barriers to Trade ("TBT Committee") consisting of the Contact Points and any other representatives of the Parties to promote and monitor the implementation and administration of this Chapter. The TBT Committee shall meet within one year of entry into force of this Agreement and at least once a year thereafter or more frequently if the Contact Points agree. Meetings may be conducted in person, by teleconference, by video-conference or any other means mutually determined by the Parties.

5. The TBT Committee shall:

- (a) identify priority sectors for enhanced cooperation, including giving favourable consideration to any sector specific proposal made by either Party;
- (b) establish work programmes with clear targets, design structures and timelines in priority areas;
- (c) monitor the progress of work programmes;
- (d) consult with a view to resolving any matter arising under this Chapter, in accordance with Article 7.11 (Technical Consultations);
- (e) review this Chapter in light of any developments under the WTO TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments; and
- (f) report to the Joint Commission on the implementation of this Chapter, as it considers appropriate.

6. The Parties shall ensure that the persons and organisations in the respective territories that have responsibility for accreditation or relevant regulations, shall participate in work programmes and technical consultations where the TBT Committee has:

- (a) identified a priority sector for enhanced cooperation under paragraph 5(a);
- (b) established a work programme under paragraph 5(b); or
- (c) been requested to undertake technical consultations under Article 7.11 (Technical Consultations).

7. For the purposes of implementing this Chapter, the Contact Point of each Party shall:

- (a) coordinate participation in work programmes with persons and

organisations in their respective territories that have responsibility for accreditation or relevant regulations;

- (b) ensure appropriate steps are taken to address any issue that a Party may raise related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;
- (c) enhance cooperation in the development and improvement of technical regulations and conformity assessment procedures in conjunction with the Contact Point of the other Party;
- (d) facilitate, where appropriate, sectoral cooperation between governmental and non-governmental regulatory authorities, accreditation agencies and conformity assessment bodies in the Parties' territories;
- (e) exchange information on developments in non-governmental, regional and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures; and
- (f) take any other steps the Parties consider will assist them in implementing the WTO TBT Agreement and in facilitating trade in goods between them.

8. Both Parties recognise the need to develop cooperation in the field of technical barriers to trade for the purposes of implementing this Chapter. Such cooperation may include, but is not limited to:

- (a) joint studies, seminars and symposia;
- (b) where appropriate, effectively using the existing framework for mutual recognition developed by relevant regional and international bodies;
- (c) exchange of information;
- (d) exchange of Government officials for training purposes;
- (e) enhanced cooperation in the development and improvement of technical regulations and conformity assessment procedures; and
- (f) any other form of cooperation as agreed by both Parties.

Article 7.11

Technical Consultations

1. Either Party may request technical consultations in accordance with Article 7.10(5)(d) (Implementation) and, unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within 60 days from the request for technical consultations by e-mail, by teleconference, by video-conference, or through any other means, as mutually determined by the Parties.
2. Where a Party has requested technical consultations on the application of any technical regulation or the recognition of any standard or conformity assessment procedure, the other Party shall investigate the issues that gave rise to the request for consultations, shall address any irregularities in the implementation of its technical regulations or conformity assessment procedures, and shall report back to the other Party on the outcome of its investigations stating its reasons.
3. Technical consultations held pursuant to this Article are without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement).

Article 7.12

Agreements or Arrangements

1. The Parties shall seek to identify trade-facilitating initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors.
2. Such trade-facilitating initiatives may include agreements or arrangements on regulatory issues, such as alignment of standards, convergence or equivalence of technical regulations, conformity assessment procedures and compliance issues.
3. The Parties may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessments applicable to goods traded between them.
4. The Parties may conclude Implementing Arrangements setting out:
 - (a) details for the implementation of the Annexes to this Chapter; and
 - (b) arrangements resulting from work programmes established under Article 7.10 (Implementation).
5. The Parties acknowledge that Annexes and Implementing Arrangements concluded in accordance with this Chapter may take the form of a variety of

mechanisms. This may include the use of asymmetrical approaches, where appropriate.

6. The Parties shall reflect any existing bilateral, regional and multilateral arrangements concerning technical regulations and conformity assessment procedures that both Parties participate in when developing Annexes and Implementing Arrangements.

7. Where only one Party is party to agreements or arrangements identified as trade-facilitating initiatives under paragraphs 1 and 2, that Party shall consider extending such agreements or arrangements to the other Party, at the request of the other Party. Such consideration may be subject to appropriate confidence-building processes to ensure equivalency of relevant standards, technical regulations and/or conformity assessment procedures

8. Where a Party declines a request of the other Party to consider extending the application of an existing agreement or arrangement, it shall, upon request of that Party, explain the reasons for its decision.

9. The Parties agree to maintain a programme of ongoing review and enhancement of Annexes and Implementing Arrangements.