

CHAPTER 7: TECHNICAL BARRIERS TO TRADE

ARTICLE 7.1

Definitions

All general terms concerning standards and conformity assessment procedures used in this Agreement shall have the meaning given in the definitions contained in the International Organisation for Standardisation / International Electrotechnical Commission Guide 2 (1996), which cover goods, processes and services. This Chapter deals only with technical regulations, standards and conformity assessment procedures related to products or processes and production methods. In addition, the following terms and definitions shall apply for the purposes of this Chapter:

- (a) “conformity assessment procedure” means any procedure used, directly or indirectly, to determine that relevant requirements in technical regulations or standards are fulfilled;
- (b) “equivalence” means the state wherein mandatory requirements applied in the exporting Party, though different from the mandatory requirements applied in the importing Party, meet the legitimate objective of the mandatory requirements applied in the importing Party;
- (c) “Implementing Arrangements” are subsidiary documents that set out the details relating to the implementation of the Annexes to this Chapter;
- (d) “mandatory requirements” means all mandatory standards and technical regulations in the laws or regulations of a Party;
- (e) “standard” means a document approved by a recognised body that provides, for common and repeated use, rules, guidelines or characteristics for products or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method;
- (f) “technical regulation” means a document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method.

ARTICLE 7.2

Objectives

The objectives of this Chapter are:

- (a) to facilitate trade and investment between the Parties through collaborative efforts which minimise the impact of technical regulations and/or assessments of manufacturers or manufacturing processes on the goods traded between the Parties, in the most appropriate or cost-effective manner;
- (b) to complement bilateral agreements and arrangements between the Parties relating to technical regulations; and
- (c) to build on the mutual recognition arrangements developed by international and regional organisations including APEC.

ARTICLE 7.3

Scope and Obligations

1. This Chapter applies to standards, technical regulations and conformity assessment procedures that may, directly or indirectly, affect the sale of goods between the Parties other than those that:

- (a) relate to government procurement; and
- (b) are sanitary or phytosanitary measures as defined in Annex A, paragraph 1 of the SPS Agreement.

2. This Chapter shall apply to food standards which are not SPS measures. Notwithstanding this, Articles 6.5 to 6.10 of Chapter 6 of this Agreement shall apply to food standards which are not SPS measures.

3. The Parties affirm with respect to each other their existing rights and obligations relating to technical regulations under the TBT Agreement.

4. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its international rights and obligations and the conditions set out in the TBT Agreement:

- (a) technical regulations necessary to ensure its national security requirements; and
- (b) technical regulations necessary for the protection of human health or safety, animal or plant life or health, or the environment, or for the prevention of deceptive practices.

5. Each Party shall retain all authority under its legislation to take appropriate and timely measures for goods which pose an immediate risk to health, safety or the environment.

6. The Parties affirm their intention to adopt and to apply, with such modifications as may be necessary, the principles set out in the *APEC Information Notes on Good Regulatory Practice in Technical Regulation* with respect to conformity assessment and approval procedures in meeting their international obligations under the TBT Agreement.

ARTICLE 7.4

Origin

This Chapter applies to all goods traded between the Parties, regardless of the origin of those goods, unless otherwise specified by any technical regulations of a Party.

ARTICLE 7.5

Harmonisation and Equivalence

1. The Parties shall, where appropriate, endeavour to work towards harmonisation of their respective technical regulations, taking into account relevant international standards, recommendations and guidelines, in accordance with their international rights and obligations.

2. 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 it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

3. 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 to its own.

4. The Parties may cooperate with each other in the context of their participation in international standardising bodies to ensure that international standards developed within such organisations that are likely to become a basis for technical regulations are trade facilitating and do not create unnecessary obstacles to international trade.

ARTICLE 7.6

Conformity Assessment Procedures

1. The Parties shall, recognising the existence of differences in the structure, organisation and operation of conformity assessment procedures in their respective territories, make compatible those procedures to the greatest extent practicable.
2. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures.
3. Each Party shall, wherever possible, accept the results of a conformity assessment procedure conducted in the territory of the other Party, provided that it is satisfied that the procedure offers an assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory the results of which it accepts, that the relevant good complies with the applicable technical regulation or standard adopted or maintained in the Party's territory.
4. 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, as appropriate, on such matters as the technical competence of the conformity assessment bodies involved.
5. A Party shall, on the request of the other Party, explain its reasons where it does not accept the results of a conformity assessment procedure conducted in the territory of the other Party.
6. A Party shall, on the request of the other Party, take such reasonable measures as may be available to it to facilitate access in its territory for conducting conformity assessment procedures.
7. A Party shall give appropriate consideration to a request by the other Party to negotiate Annexes to this Chapter and Implementing Arrangements for the recognition of the results of that other Party's conformity assessment procedures in agreed sectors.
8. The Parties shall utilise to the maximum extent possible existing mutual recognition arrangements in relation to the acceptance of conformity assessment procedures.
9. The Parties shall give appropriate consideration, where possible, to participation in any future mutual recognition arrangements developed within APEC.

ARTICLE 7.7

Regulatory Cooperation

1. A Party that exercises the authority referred to in Article 7.3 (5) in relation to a product covered by an Annex shall advise the other Party in a timely manner of the action being taken.
2. The Parties acknowledge that either Party may enter, or have entered into, bilateral agreements with third Parties, and agree to consult on any matters that may arise due to the interaction of those bilateral agreements and arrangements on this Agreement or Implementing Arrangements.

ARTICLE 7.8

Technical Cooperation and Contact Points

1. Each Party shall establish a contact point with responsibility to implement and monitor the operation of this Chapter and, in particular, to:
 - (a) identify priority sectors for enhanced cooperation;
 - (b) establish work programmes in priority areas;
 - (c) take responsibility for coordinating with relevant persons and organisations in their respective territories their participation in work programmes; and
 - (d) monitor the work programmes.
2. The contact point for each Party shall designate key advisers within each of their regulatory agencies to:
 - (a) respond to inquiries related to their technical regulations, standards and conformity assessment procedures that may affect trade in goods;
 - (b) participate in technical consultations, if so requested by a contact point; and
 - (c) cooperate in agreed work programmes.
3. In designating key advisers, the contact points shall ensure that full telephone, fax, email and other relevant details are provided. The Parties shall notify each other promptly of any amendments to the details of the contact points or key advisers.

4. If as a result of a technical consultation, the Parties consider that a work programme would assist in resolving the concerns that gave rise to the technical consultation, the Parties shall establish a work programme with a view to resolving those concerns.

5. Unless they mutually determine otherwise, the Parties shall hold technical consultations within 30 working days of the request for technical consultations via email, teleconference, video-conference, or through any other means, as mutually determined by the Parties.

6. The contact points shall conduct meetings to promote and monitor the implementation and operation of this Chapter at least once a year, or more frequently on the request of either of the Parties, via teleconference, video-conference or any other means as mutually determined by the Parties.

7. The contact points shall report jointly to the CEP Joint Commission on the implementation and operation of this Chapter.

ARTICLE 7.9

Annexes and Implementing Arrangements

1. The Parties may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations, standards and conformity assessment procedures.

2. The Parties may conclude Implementing Arrangements setting out the details relating to the implementation of the Annexes to this Chapter.