

CHAPTER 8

TECHNICAL BARRIERS TO TRADE

Article 8.1: Definitions

1. For the purposes of this Chapter:

equivalence of technical regulations means that one or more of the Parties accepts that the technical regulations of another Party fulfil the legitimate objectives of its own regulations;

regulatory authority means the authority that is responsible for preparing or adopting technical regulations and conformity assessment procedures applicable to goods;

technical regulations also includes standards that regulatory authorities recognise as meeting the mandatory requirements related to performance based regulation;

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

2. The definitions in Annex I of the TBT Agreement are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis*.

Article 8.2: Objectives

The objectives of this Chapter are to increase and facilitate trade through furthering the implementation of the TBT Agreement and building on the work of APEC on standards and conformance. Wherever possible, the Parties shall aim to reduce compliance costs by:

- (a) eliminating unnecessary technical barriers to trade in goods among the Parties;
- (b) enhancing cooperation among the Parties' regulatory agencies responsible for standards, technical regulations and conformity assessment procedures applicable to goods; and
- (c) providing a framework to address the impact of technical barriers to trade.

Article 8.3: Scope

1. This Chapter applies to all standards, technical regulations and conformity assessment procedures that may, directly or indirectly, affect the trade in goods among the Parties, except as provided in Paragraphs 2 and 3.
2. This Chapter does not apply to technical specifications prepared by governmental entities for production or consumption requirements of such entities which are covered by Chapter 11 (*Government Procurement*).
3. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 7 (*Sanitary and Phytosanitary Measures*).
4. Nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations or standards, in accordance with its rights and obligations under the TBT Agreement 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 8.4: Affirmation of the Agreement on Technical Barriers to Trade

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

Article 8.5: Origin

1. This Chapter applies to all goods traded among the Parties, regardless of the origin of those goods.
2. Notwithstanding Paragraph 1, a Party may give special consideration to goods of a non-Party through the application of a technical regulation, due to the need to avoid the introduction of costly surveillance procedures and as long as the technical regulation is compatible with the TBT Agreement. This shall be notified to the other Parties through the contact points established in Article 8.11(2).

Article 8.6: Trade Facilitation

1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating access to each other's market. In particular, the Parties shall seek to identify initiatives among them that are appropriate for particular issues or sectors. Such

initiatives may include cooperation on regulatory issues, such as harmonisation or equivalence of technical regulations and standards, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies, as well as cooperation through mutual recognition.

2. Initiatives identified by the Parties shall be focused on the promotion of the use of international standards, transparency, exchange of information and reducing compliance costs.

Article 8.7: 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 objectives.

2. In this respect, the Parties shall apply the decision of the WTO Committee on Technical Barriers to Trade set out in 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"*.

3. 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 bodies that are likely to become a basis for technical regulations are trade facilitating and do not create unnecessary obstacles to international trade.

Article 8.8: Equivalency of Technical Regulations

1. Each Party shall give positive consideration to accepting as equivalent, technical regulations of another 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 another Party, explain the reasons why it has not accepted a technical regulation of that Party as equivalent.

Article 8.9: Conformity Assessment Procedures

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results, including:

- (a) the importing Party's reliance on a supplier's declaration of conformity;
- (b) unilateral recognition by one Party of the results of conformity assessments performed in another Party's territory;
- (c) cooperative arrangements among conformity assessment bodies from each other's territory;
- (d) mutual recognition of conformity assessment procedures conducted by bodies located in the territory of another Party;
- (e) accreditation procedures for qualifying conformity assessment bodies;
- (f) government designation of conformity assessment bodies; and
- (g) devising solutions to increase administrative efficiency, that avoid duplication and are cost effective.

2. The Parties shall intensify their exchange of information on the range of mechanisms to facilitate the acceptance of conformity assessment results.

3. The Parties shall seek to ensure that conformity assessment procedures applied among 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.

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 on such matters as the technical competence of the conformity assessment bodies involved, as appropriate.

5. A Party shall, on the request of another Party, explain its reasons for not accepting the results of a conformity assessment procedure performed in the territory of that other Party.

6. Each Party shall accredit, approve, license, or otherwise recognise conformity assessment bodies in the territory of another Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. If a Party accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory and it

refuses to accredit, approve, license, or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of another Party, it shall, on request, explain the reasons for its refusal.

7. Where a Party declines a request from another Party to enter into negotiations on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the territory of either of the other Parties, it shall, on request, explain its reasons.

Article 8.10: Transparency

1. In order to enhance the opportunity for persons to provide meaningful comments, 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 the Party is proposing; and
- (b) transmit the proposal electronically to the other Parties through the enquiry point 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.

2. Each Party should allow at least 60 days from the transmission under Paragraph 1(b) for persons and the other Parties to make comments in writing 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 Parties, electronically, through the enquiry point referred to in Paragraph 1(b).

Article 8.11: Technical Cooperation and Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade (the Committee), which shall comprise officials from the contact points of the Parties.

2. The Parties shall provide each other with the name of the governmental organisation that shall be their contact point and the contact details of relevant officials on that organisation, including telephone, fax, email and other relevant details. The Parties shall notify each other promptly of any change of their contact points or any amendments to the details of the relevant officials.

3. The Committee shall have the responsibility for implementing and monitoring the operation of this Chapter, and in particular:

- (a) identifying priority sectors for enhanced cooperation;
- (b) establishing work programmes in priority areas;
- (c) coordinating participation in work programmes with interested persons and organisations in the territories of the Parties;
- (d) monitoring the work programmes;
- (e) addressing any issue that a Party may raise related to the development, adoption, application or enforcement of technical regulations and conformity assessment procedures;
- (f) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures;
- (g) where appropriate, facilitating sectoral cooperation among governmental and non-governmental accreditation agencies and conformity assessment bodies in the Parties' territories;
- (h) exchanging information on developments in non-governmental, regional and multilateral forums engaged in activities related to standardisation, technical regulations and conformity assessment procedures;
- (i) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods among them;
- (j) 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
- (k) reporting to the Commission on the implementation of this Chapter, as it considers appropriate.

4. A Party shall, on request, give favourable consideration to any sector-specific proposal another Party makes for further technical cooperation under this Chapter.

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

6. Where a Party takes a measure to manage an immediate risk that it considers goods covered by an Annex to this Chapter may pose to health, safety or the environment, it shall notify the measure and the reasons for the imposition of the measure to the other Parties, with the time limit as specified in the implementing arrangements.

Article 8.12: Technical Consultations

1. A Party may initiate technical consultations with another Party through the respective contact points with the aim of resolving any matter arising under this Chapter.
2. Unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within a reasonable period of time from the request for technical consultations by email, teleconference, video-conference, or through any other means, as mutually determined by the Parties. The Parties shall, from time to time, stipulate in writing the length of time that they consider to be reasonable.
3. If a Party considers it necessary, it may request that the Committee facilitate such technical consultations.
4. Such technical consultations are without prejudice to the rights and obligations of the Parties under Chapter 15 (*Dispute Settlement*).

Article 8.13: Annexes and Implementing Arrangements

1. The Parties, in accordance with Chapter 17 (*Administrative and Institutional Provisions*), may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessment applicable to trade among them.
2. The Parties, in accordance with Article 8.11, may develop Implementing Arrangements setting out details for the implementation of Annexes referred to in Paragraph 1, or arrangements made in relation to any work programmes established under Article 8.11.
3. The Parties shall seek to incorporate any existing arrangements concerning technical regulations and conformity assessment procedures that are specifically applicable to trade between two or more of the Parties into Annexes and Implementing Arrangements.