

CHAPTER 7

TECHNICAL BARRIERS TO TRADE

ARTICLE 7.1

Objectives

The objectives of this Chapter are to facilitate and to increase trade in goods between the Parties by:

- (a) ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade;
- (b) enhancing joint cooperation between the Parties, including on the implementation of the TBT Agreement; and
- (c) pursuing appropriate ways to reduce unnecessary negative effects on trade by measures within the scope of this Chapter.

ARTICLE 7.2

Scope

1. This Chapter applies to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures of central government bodies, as defined in the TBT Agreement, that may affect trade in goods between the Parties.

2. Each Party shall take such reasonable measures as may be available to it to encourage the observance of the provisions of Articles 7.5 to 7.11 by local government bodies within its territory on the level directly below that of the central government¹, which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures.

3. This Chapter does not apply to:

- (a) purchasing specifications prepared by a governmental body for its production or consumption requirements; or
- (b) sanitary and phytosanitary measures as defined in Annex A to the SPS Agreement.

ARTICLE 7.3

Incorporation of certain provisions of the TBT Agreement

1. The Parties affirm their rights and obligations under the TBT Agreement.
2. Articles 2 to 9 of the TBT Agreement and Annexes 1 and 3 to the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.
3. Where a dispute arises regarding a particular measure of a Party which the other Party alleges to be exclusively in breach of the provisions of the TBT Agreement referred to in paragraph 2, that other Party shall, notwithstanding paragraph 1 of Article 22.27, select the dispute settlement mechanism under the WTO Agreement.

¹ For the purposes of this Chapter, for the United Kingdom, "local government bodies within its territory on the level directly below that of the central government" includes local government bodies on the level directly below that of the Government of the United Kingdom and the Devolved Administrations.

ARTICLE 7.4

Definitions

For the purposes of this Chapter, the terms and definitions set out in Annex 1 to the TBT Agreement apply.

ARTICLE 7.5

Technical regulations

1. The Parties recognise the importance of good regulatory practices with regard to the preparation, adoption and application of technical regulations, in particular of the work carried out by the WTO Committee on Technical Barriers to Trade on good regulatory practices. In this context, each Party undertakes to:

- (a) when developing a technical regulation:
 - (i) assess, in accordance with its laws and regulations or administrative guidelines, the available regulatory or non-regulatory alternatives to the proposed technical regulation that may fulfil its legitimate objective, in order to ensure that the proposed technical regulation is not more trade-restrictive than necessary to fulfil its legitimate objective, in accordance with paragraph 2 of Article 2 of the TBT Agreement; nothing in this provision shall affect the rights of each Party to prepare, adopt and apply measures without delay where urgent problems including safety, health, environmental protection or national security arise or threaten to arise;
 - (ii) endeavour to systematically carry out impact assessments for technical regulations with significant effect on trade, including an assessment of their impact on trade; and
 - (iii) specify, wherever appropriate, technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics; and

(b) review, without prejudice to paragraph 3 of Article 2 of the TBT Agreement, adopted technical regulations at appropriate intervals, preferably not exceeding five years, in particular with a view to increasing their convergence with relevant international standards. In undertaking this review, each Party shall, *inter alia*, take into account any new development in the relevant international standards and whether the circumstances giving rise to divergences of that Party's technical regulations from any relevant international standard continue to exist. The outcome of this review shall be communicated and explained to the other Party on its request.

2. When a Party considers that its technical regulation and a technical regulation of the other Party that have the same objectives and product coverage are equivalent, that Party may request in writing, providing detailed reasons, that the other Party recognise those technical regulations as equivalent. The requested Party shall give positive consideration to accepting those technical regulations as equivalent, even if they differ, provided that it is satisfied that the technical regulation of the requesting Party adequately fulfils the objectives of its own technical regulation. If the requested Party does not accept a technical regulation of the requesting Party as equivalent, the requested Party shall, on request of the requesting Party, explain the reasons for its decision.

3. On request of a Party that has an interest in developing a technical regulation similar to a technical regulation of the other Party, the requested Party shall, to the extent practicable, provide the requesting Party with relevant information, including studies or documents, except for confidential information, on which it has relied in developing its technical regulation.

4. Each Party shall uniformly and consistently apply requirements relating to the placement of products on the market which are established in technical regulations applicable to its whole territory. If a Party has substantiated reasons to believe that any of these requirements are not applied uniformly and consistently in the territory of the other Party, and that this situation leads to significant impact on bilateral trade, that Party may notify the other Party of those substantiated reasons with a view to clarifying the issue, and, if appropriate, addressing it in a timely manner by the contact point referred to in Article 7.15 or by other appropriate bodies established under this Agreement.

ARTICLE 7.6

International standards

1. For the purposes of applying this Chapter and the TBT Agreement, standards issued by international organisations such as the International Organisation for Standardisation (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU), the Codex Alimentarius Commission, the International Civil Aviation Organisation (ICAO), the World Forum for Harmonisation of Vehicle Regulations (WP.29) within the framework of the United Nations Economic Commission for Europe (UNECE), the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS), and the International Council for Harmonisation of Technical Requirements for Pharmaceuticals for Human Use (ICH) shall be considered as relevant international standards as referred to in this Chapter, Articles 2 and 5 of the TBT Agreement and Annex 3 to the TBT Agreement, provided that in their development, the principles and procedures set out in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations with Relation to Articles 2 and 5 of the TBT Agreement and Annex 3 to the TBT Agreement¹ have been followed, except when such standards or relevant parts of them would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued.
2. With a view to harmonising standards on as wide a basis as possible, each Party shall encourage national standardising bodies within its territory to:
 - (a) play a full part, within the limits of their resources, in the preparation by relevant international standardising bodies of international standards;
 - (b) use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems;

¹ Annex 4 to WTO Document G/TBT/9, dated 13 November 2000, as may be revised.

- (c) avoid duplication of, or overlap with, the work of international standardising bodies; and
 - (d) review their standards which are not based on relevant international standards at appropriate intervals, preferably not exceeding five years, with a view to increasing their convergence with relevant international standards.
3. When developing technical regulations or conformity assessment procedures:
- (a) each Party shall use relevant international standards, guides or recommendations, or the relevant parts of them, to the extent provided for in paragraph 4 of Article 2 and in paragraph 4 of Article 5 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures and avoid deviations from the relevant international standards or additional requirements when compared to those standards, except when the Party developing the technical regulation or conformity assessment procedure can demonstrate, based on relevant information, including available scientific or technical evidence, that such international standards would be ineffective or inappropriate for the fulfilment of legitimate objectives pursued, as referred to in paragraph 2 of Article 2 and paragraph 4 of Article 5 of the TBT Agreement; and
 - (b) if a Party does not use relevant international standards, guides or recommendations, or the relevant parts of them, as referred to in paragraph 1, as a basis for its technical regulations or conformity assessment procedures, that Party shall, on request of the other Party, explain the reasons why it considers such international standards to be ineffective or inappropriate for the fulfilment of legitimate objectives pursued, as referred to in paragraph 2 of Article 2 and paragraph 4 of Article 5 of the TBT Agreement, and provide the relevant information, including available scientific or technical evidence on which this assessment is based, as well as identify the parts of the technical regulation or conformity assessment procedure concerned which in substance deviate from the relevant international standards, guides or recommendations.

4. Each Party shall encourage national standardising bodies within its territory to cooperate with the relevant standardising bodies of the other Party in international standardising activities. Such cooperation may take place in international standardising bodies of which both Parties or standardising bodies of both Parties are members. Such bilateral cooperation could aim, *inter alia*, at promoting the development of international standards, facilitating the development of common standards for both Parties in areas of shared interest where there are no international standards, in particular as regards new products or technologies, or further enhancing the exchange of information between the standardising bodies of the Parties.

ARTICLE 7.7

Standards

1. The Parties affirm their obligations under paragraph 1 of Article 4 of the TBT Agreement to ensure that national standardising bodies within their territories accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to the TBT Agreement.
2. The Parties recall that, pursuant to the definition of a standard in Annex 1 to the TBT Agreement, compliance with standards is not mandatory. Where compliance with a standard is required in a Party through incorporation of, or reference to, that standard in a technical regulation or conformity assessment procedure, the Party shall, in developing the draft technical regulation or conformity assessment procedure, comply with the transparency obligations set out in paragraph 9 of Article 2 or paragraph 6 of Article 5 of the TBT Agreement, and in Article 7.9.
3. Each Party shall encourage, subject to its laws and regulations, national standardising bodies within its territory to ensure adequate participation of interested persons within the territory of that Party in the standard development process and to allow persons of the other Party to participate in consultation procedures, which are available to the general public, on terms no less favourable than those accorded to its own persons.

4. The Parties undertake to exchange information on:
 - (a) each Party's use of standards in support of demonstrating or facilitating compliance with technical regulations;
 - (b) their standard setting processes, in particular the manner and extent to which international or regional standards are used as a basis for their national standards; and
 - (c) cooperation agreements or arrangements on standardisation with third parties or international organisations.

ARTICLE 7.8

Conformity assessment procedures

1. With respect to the preparation, adoption and application of technical regulations, subparagraphs 1(a)(i), 1(a)(ii) and 1(b) of Article 7.5 also apply, *mutatis mutandis*, to conformity assessment procedures.
2. In conformity with paragraph 1.2 of Article 5 of the TBT Agreement, each Party shall ensure that conformity assessment procedures are not stricter or are not applied more strictly than is necessary to give the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking into account the risks associated with products, including the risks that non-conformity would create.
3. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures. Such mechanisms may include:
 - (a) mutual recognition agreements for the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;

- (b) cooperative and voluntary arrangements between conformity assessment bodies located in the territories of the Parties;
- (c) plurilateral and multilateral recognition agreements or arrangements to which both Parties are participants;
- (d) the use of accreditation to qualify conformity assessment bodies;
- (e) government designation of conformity assessment bodies, including conformity assessment bodies located in the other Party;
- (f) recognition by a Party of results of conformity assessment procedures conducted in the territory of the other Party; and
- (g) manufacturer's or supplier's declaration of conformity.

4. The Parties shall exchange information regarding the mechanisms covered by paragraph 3.

A Party shall, on request of the other Party, provide information on:

- (a) the mechanisms referred to in paragraph 3 and similar mechanisms with a view to facilitating the acceptance of the results of conformity assessment procedures;
- (b) factors, including assessment and management of risk, considered when selecting appropriate conformity assessment procedures for specific products; and
- (c) accreditation policy, including on international standards for accreditation, and international agreements and arrangements in the field of accreditation, including those of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF), to the extent possible and used by a Party in a specific area.

5. With regard to those mechanisms each Party shall:
- (a) use, whenever possible and in accordance with its laws and regulations, a supplier's declaration of conformity as assurance of conformity with the applicable technical regulations;
 - (b) use accreditation with authority derived from government or performed by government, as appropriate, as a means to demonstrate technical competence to qualify conformity assessment bodies;
 - (c) if accreditation is established by law as a necessary separate step to qualify conformity assessment bodies, ensure that accreditation activities are independent from conformity assessment activities and that there are no conflicts of interest between accreditation bodies and the conformity assessment bodies they accredit; the Parties may comply with this obligation by means of the separation of conformity assessment bodies from accreditation bodies;¹
 - (d) consider joining or, as applicable, not prohibit testing, inspection and certification bodies from joining, international agreements or arrangements for the facilitation of acceptance of conformity assessment results; and
 - (e) if two or more conformity assessment bodies are authorised by a Party to carry out conformity assessment procedures required for placing a product on the market, not prohibit economic operators from choosing among conformity assessment bodies.
6. The Parties shall cooperate in the field of mutual recognition in accordance with the Protocol on Mutual Recognition. The Parties may also decide, in accordance with relevant provisions of the Protocol on Mutual Recognition, to extend the coverage as regards to the products, the applicable regulatory requirements and the recognised conformity assessment bodies.

¹ Subparagraph (c) does not apply to the conformity assessment activities performed by a Party itself where that Party retains the final decision-making authority regarding the conformity of a product.

ARTICLE 7.9

Transparency

1. When developing a technical regulation or conformity assessment procedure which may have a significant effect on trade, each Party shall:

- (a) carry out consultation procedures, subject to its laws and regulations, which are available to the general public and make the results of such consultation procedures and any existing impact assessments publicly available;
- (b) allow persons of the other Party to participate in consultation procedures which are available to the general public on terms no less favourable than those accorded to its own persons;
- (c) take into account the other Party's views when carrying out consultation procedures which are available to the general public and, on request of the other Party, provide written responses in a timely manner to the comments made by that Party;
- (d) in addition to subparagraph 1(a)(ii) of Article 7.5, make publicly available the results of the impact assessment on a proposed technical regulation or conformity assessment procedure, if carried out, including of the impact on trade; and
- (e) endeavour to provide, on request of the other Party, a summary in English of the impact assessment referred to in subparagraph (d).

2. Each Party shall, when making notifications in accordance with paragraph 9.2 of Article 2 or paragraph 6.2 of Article 5 of the TBT Agreement:

- (a) allow in principle at least 60 days from the date of notification for the other Party to provide written comments to the proposal, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise and, where practicable, give appropriate consideration to reasonable requests for extending the comment period;

- (b) provide the electronic version of the full notified text together with the notification;
- (c) provide, in case the notified text is not in one of the official WTO languages, a detailed and comprehensive description of the content of the measure in the notification format, as well as, if already available, a translation of the notified text in one of the official WTO languages;
- (d) reply in writing to written comments received from the other Party on the proposal, no later than the date of publication of the final technical regulation or conformity assessment procedure;
- (e) provide information on the adopted final text through an addendum to the original notification;
- (f) allow a reasonable interval¹ between the publication of technical regulations and their entry into force for economic operators of the other Party to adapt; and
- (g) ensure that the enquiry points established in accordance with Article 10 of the TBT Agreement provide information and answers in one of the official WTO languages to reasonable enquiries from the other Party or from interested persons of the other Party on adopted technical regulations and conformity assessment procedures.

3. Each Party shall, on request of the other Party, provide information regarding the objectives of, and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.

4. Each Party shall ensure that all adopted technical regulations and conformity assessment procedures are publicly and freely available on official websites and, if already available, in English.

¹ For the purposes of this subparagraph, "reasonable interval" means normally a period of not less than six months, unless this would be ineffective for the fulfilment of the legitimate objectives pursued.

ARTICLE 7.10

Market surveillance

1. For the purposes of this Article, "market surveillance" is a public authority function separate from and carried out after conformity assessment procedures, and means activities conducted and measures taken by public authorities on the basis of procedures of a Party to enable that Party to monitor or address compliance of products with the requirements set out in its laws and regulations.
2. Each Party shall, *inter alia*:
 - (a) exchange information with the other Party on market surveillance and enforcement activities, for example on the authorities responsible for market surveillance and enforcement, or on measures taken against dangerous products;
 - (b) ensure the independence of market surveillance functions from conformity assessment functions with a view to avoiding conflicts of interest;¹ and
 - (c) ensure that there are no conflicts of interest between market surveillance authorities and the persons concerned, subject to control or supervision, including the manufacturer, the importer and the distributor.

¹ For greater certainty, this subparagraph does not apply to authorisation functions performed by a Party itself when it retains the final decision-making authority regarding the conformity of a product. A Party may comply with this obligation by means of separation of market surveillance authorities from conformity assessment bodies.

ARTICLE 7.11

Marking and labelling

1. The Parties note that a technical regulation may include or deal exclusively with marking or labelling requirements. Accordingly, if a Party develops marking or labelling requirements in the form of a technical regulation, that Party shall ensure that such requirements are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade and are not more trade restrictive than necessary to fulfil legitimate objectives as referred to in paragraph 2 of Article 2 of the TBT Agreement.
2. In particular, the Parties agree that, if a Party requires marking or labelling of product in the form of a technical regulation:
 - (a) information required for such marking or labelling of products shall be limited to what is relevant for persons concerned, including consumers, users of the product or authorities, for indicating the product's compliance with regulatory requirements;
 - (b) a Party shall not require any prior approval, registration or certification of markings or the labels of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless necessary to fulfil its legitimate objective;
 - (c) if that Party requires the use of a unique identification number for marking or labelling of products, it shall issue such number to the persons concerned, including the manufacturer, the importer and the distributor, without undue delay and on a non-discriminatory basis;
 - (d) provided that it is not misleading, contradictory or confusing, or that the Party's legitimate objectives are not compromised, the Party shall permit the following in relation to the information required in the country of destination of the goods:
 - (i) information in other languages in addition to the language required in the country of destination of the goods;

- (ii) international nomenclatures, pictograms, symbols or graphics; and
- (iii) information in addition to that required in the country of destination of the goods;
- (e) the Party shall accept that labelling and corrections to labelling take place in customs warehouses at the point of import as an alternative to labelling in the exporting Party unless such labelling is required to be carried out by approved persons for reasons of public health or safety; and
- (f) the Party shall, unless it considers that legitimate objectives under the TBT Agreement are compromised thereby, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

ARTICLE 7.12

Lot identification codes

1. A Party may impose penalties or take other appropriate measures against the removal or deliberate defacement of any lot identification code for wines and spirits that is provided by the supplier and placed on the container, provided that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on trade or investment.
2. The Parties shall exchange information, experiences and best practices regarding the prevention of the removal or deliberate defacement of lot identification codes for the supply of wines and spirits.
3. The Parties shall carry out activities for the exchange of information, experience and best practices with representatives of their business sectors and business-related organisations with the necessary expertise in the field of lot identification. The Parties shall commence such activities no later than two years after the date of entry into force of this Agreement.

ARTICLE 7.13

Cooperation

1. The Parties shall strengthen their cooperation in the field of technical regulations, standards and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. The Parties recognise that existing regulatory cooperation dialogues are important means to strengthen such cooperation.
2. The Parties shall seek to identify, develop and promote trade facilitating initiatives of mutual interest.
3. The initiatives referred to in paragraph 2 may include:
 - (a) improving the quality and effectiveness of their respective technical regulations, standards and conformity assessment procedures, and promoting good regulatory practices through regulatory cooperation between the Parties, including the exchange of information, experience and data;
 - (b) where appropriate, simplifying their respective technical regulations, standards and conformity assessment procedures;
 - (c) increasing the convergence of their respective technical regulations, standards and conformity assessment procedures with relevant international standards, guides or recommendations;
 - (d) ensuring efficient interaction and cooperation of their respective regulatory authorities at international or national level;
 - (e) promoting or enhancing cooperation between organisations in the Parties in charge of standardisation, accreditation and conformity assessment procedures; and
 - (f) exchanging information, to the extent possible, about international agreements and arrangements regarding technical barriers to trade to which one or both Parties are party.

ARTICLE 7.14

Committee on Technical Barriers to Trade

1. The Committee on Technical Barriers to Trade established pursuant to Article 23.3 shall be responsible for the effective implementation and operation of this Chapter.
2. The Committee on Technical Barriers to Trade shall have the following functions:
 - (a) reviewing the implementation and operation of this Chapter;
 - (b) reviewing the cooperation in the development and improvement of technical regulations, standards and conformity assessment procedures as provided for in Article 7.13;
 - (c) reviewing this Chapter in light of any developments under the WTO Committee on Technical Barriers to Trade established under Article 13 of the TBT Agreement, and if necessary, developing recommendations for amendments to this Chapter;
 - (d) taking any steps which the Parties may consider to be of assistance in their implementation of this Chapter and the TBT Agreement and in facilitating trade between the Parties;
 - (e) identifying and considering technical cooperation projects of mutual interests between the Parties in the area of technical regulations, standards and conformity assessment procedures, including those relating to third countries;
 - (f) discussing any matter covered by this Chapter, on request of a Party;
 - (g) promptly addressing any issue that a Party raises related to the development, adoption or application of technical regulations, standards or conformity assessment procedures of the other Party under this Chapter and the TBT Agreement;

- (h) establishing, if necessary to achieve the objectives of this Chapter, *ad hoc* technical working groups to deal with specific issues or sectors with a view to identifying a solution;
 - (i) exchanging information on the work in regional and multilateral fora engaged in activities relating to technical regulations, standards and conformity assessment procedures and on the implementation and operation of this Chapter;
 - (j) carrying out other functions as may be delegated by the Joint Committee pursuant to subparagraph 5(b) of Article 23.1; and
 - (k) reporting to the Joint Committee, as it considers appropriate, on the implementation and operation of this Chapter.
3. The Committee on Technical Barriers to Trade and any *ad hoc* technical working group under its auspices shall be coordinated by:
- (a) for the United Kingdom, the Department for International Trade; and
 - (b) for Japan, the Ministry of Foreign Affairs.
4. The authorities referred to in paragraph 3 shall be responsible for coordinating with the relevant institutions and persons in their respective territories as well as for ensuring that such institutions and persons are invited to the meetings of the Committee on Technical Barriers to Trade as necessary.
5. On request of a Party, the Committee on Technical Barriers to Trade and any *ad hoc* technical working group under its auspices shall meet at such times and places to be agreed between the representatives of the Parties. The meetings may take place by video conference or by other means.

ARTICLE 7.15

Contact points

1. Each Party shall, upon the entry into force of this Agreement, designate a contact point for the implementation of this Chapter and notify the other Party of the contact details including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.
2. The functions of the contact point shall include:
 - (a) exchanging information on technical regulations, standards and conformity assessment procedures of each Party or any other matters covered by this Chapter;
 - (b) providing any information or explanation requested by a Party pursuant to this Chapter, in print or electronically, within a reasonable period of time agreed between the Parties and, if possible, within 60 days of the date of receipt of the request; and
 - (c) promptly clarifying and addressing, where possible, any issue that a Party raises relating to the development, adoption or application of technical regulations, standards and conformity assessment procedures under this Chapter and the TBT Agreement.