

Chapter Seven

Technical Barriers to Trade

Objectives

The objectives of this Chapter are to increase and facilitate trade through the improvement of the implementation of the TBT Agreement, the elimination of unnecessary technical barriers to trade, and the enhancement of bilateral cooperation.

Article 7.1: Affirmation of the TBT Agreement

Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

Article 7.2: Scope and Coverage

1. This Chapter applies to all standards, technical regulations, and conformity assessment procedures of the Parties' central government bodies that may, directly or indirectly, affect trade in goods between the Parties.¹
2. Notwithstanding paragraph 1, this Chapter does not apply to:
 - (a) technical specifications prepared by governmental bodies for production or consumption requirements of such bodies; and
 - (b) sanitary and phytosanitary measures.

Article 7.3: International Standards

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 apply the principles set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, 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*) issued by the WTO Committee on Technical Barriers to Trade.

¹ For greater certainty, the Parties understand that any reference in this Chapter to a standard, technical regulation, or conformity assessment procedure includes those related to metrology.

Article 7.4: 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 trade between the Parties. In particular, 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. Such initiatives may include cooperation on regulatory issues, such as convergence, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies.

2. On request of a Party, the other Party shall give favorable consideration to any sector-specific proposal the requesting Party makes for further cooperation under this Chapter.

Article 7.5: Conformity Assessment

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. For example:

- (a) the importing Party may rely on a supplier's declaration of conformity;
- (b) a conformity assessment body located in the territory of a Party may enter into a voluntary arrangement with a conformity assessment body located in the territory of the other Party to accept the results of each other's assessment procedures;
- (c) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;
- (d) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;
- (e) a Party may designate conformity assessment bodies located in the territory of the other Party; and
- (f) a Party may recognize the results of conformity assessment procedures conducted in the territory of the other Party.

The Parties shall intensify their exchange of information on these and other similar mechanisms.

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

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those it accords to

conformity assessment bodies in its territory. Where a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

4. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of the other Party, explain the reasons for its decision.

Article 7.6: Technical Regulations

1. Where a Party provides that foreign technical regulations may be accepted as equivalent to a specific technical regulation of its own, and the Party does not accept a technical regulation of the other Party as equivalent to that technical regulation, it shall, at the request of the other Party, explain the reasons for its decision.

2. Where a Party does not provide that foreign technical regulations may be accepted as equivalent to its own, it may, at the request of the other Party, explain its reasons for not accepting the other Party's technical regulations as equivalent.

Article 7.7: Transparency

1. Each Party shall allow persons of the other Party to participate in the development of its standards, technical regulations, and conformity assessment procedures. Each Party shall permit persons of the other Party to participate in the development of such measures on terms no less favorable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.

3. In order to enhance the opportunity for persons to provide meaningful comments on proposed technical regulations and conformity assessment procedures, 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 proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and
- (b) transmit the proposal electronically to the other Party through the inquiry points each Party has 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.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and the other Party to make comments in writing on the proposal.

4. Each Party shall publish or otherwise make available to the public, in print or electronically, its responses to significant comments it receives from persons or the other Party under paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.
5. 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 electronically to the other Party through the inquiry points referenced in paragraph 3(b).
6. Each Party shall, on request of the other Party, provide information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.
7. Where a Party detains at a port of entry a good originating in the territory of the other Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.
8. Each Party shall implement this Article as soon as is practicable and in no event later than five years from the date of entry into force of this Agreement.

Article 7.8: Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, as set out in Annex 7.8.
2. The Committee's functions shall include:
 - (a) monitoring the implementation and administration of this Chapter;
 - (b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
 - (c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures and, as appropriate, designing and proposing mechanisms for technical assistance of the type described in Article 11 of the TBT Agreement, in coordination with the Committee on Trade Capacity Building, as appropriate;
 - (d) where appropriate, facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies in the Parties' territories;
 - (e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;

- (f) at a Party's request, consulting on any matter arising under this Chapter;
- (g) at a Party's request, consulting on any matter arising under the TBT Agreement;
- (h) 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;
- (i) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade; and
- (j) as it considers appropriate, reporting to the Commission on the implementation of this Chapter.

3. Where the Parties have had recourse to consultations under paragraph 2(f), such consultations shall, on the agreement of the Parties, constitute consultations under Article 20.4 (Consultations).

4. The Committee shall meet at least once a year unless the Parties otherwise agree.

5. All decisions of the Committee shall be taken by mutual agreement.

Article 7.9: Information Exchange

If a Party requests any information or explanation pursuant to the provisions of this Chapter, the other Party shall provide such information or explanation in print or electronically within a reasonable time. A Party shall endeavor to respond to each such request within 60 days.

Article 7.10: Definitions

For purposes of this Chapter:

central government body, conformity assessment procedures, standard, and technical regulation shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement; and

TBT Agreement means the *WTO Agreement on Technical Barriers to Trade*.

Annex 7.8

Committee on Technical Barriers to Trade

The Committee on Technical Barriers to Trade shall be coordinated by:

- (a) in the case of Panama, the *Ministerio de Comercio e Industrias*; and
- (b) in the case of the United States, the Office of the United States Trade Representative,

or their successors.