

## **Chapter Seven**

### **Technical Barriers to Trade**

#### *Objectives*

The objectives of this Chapter are to increase and facilitate trade and obtain effective market access through the improved 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 1.2 (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 the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of central government bodies that may, directly or indirectly, affect trade in goods between the Parties,<sup>1</sup> including any amendments<sup>2</sup> thereto and any addition to their rules or the product coverage thereof, except amendments and additions of an insignificant nature.
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.

#### **Articles 7.3: 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, develop, and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors, taking into consideration the Parties' experience in other bilateral, regional, and multilateral agreements, as appropriate. Such initiatives may include cooperation on regulatory issues, such as convergence, alignment with international standards, reliance on a supplier's declaration of conformity, the recognition and acceptance of

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<sup>1</sup> 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.

<sup>2</sup> "Any amendments" includes the elimination of technical regulations.

the results of conformity assessment procedures, and the use of accreditation to qualify conformity assessment bodies.

2. 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.

3. Where a Party detains at a port of entry a good originating in the territory of another Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

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

#### **Article 7.4: 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 another 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 another Party to accept the results of each other's assessment procedures;
- (c) a Party may agree with another 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 another Party;
- (e) a Party may designate conformity assessment bodies located in the territory of another Party; and
- (f) a Party may recognize the results of conformity assessment procedures conducted in the territory of another 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 another Party, it shall, on request of that other Party, explain the reasons so that corrective action may be taken, if necessary.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territories of the other Parties 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 another Party, it shall, on request of that other Party, explain the reasons for its decision so that corrective action may be taken, if necessary.

4. Where a Party declines a request from another 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 that other Party, explain the reasons for its decision.

#### **Article 7.5: 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 another Party as equivalent to that technical regulation, it shall, at the request of that other Party, explain the reasons for its decision. A Party seeking the acceptance of its technical regulation as equivalent should provide, as appropriate, information regarding the relationship of its technical regulation to international standards referenced in the technical regulation of the other Party, the circumstances which gave rise to the adoption of its technical regulation, and the similarity of the respective conformity assessment procedures.

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

3. At the request of a Party which may have an interest in developing a similar technical regulation, and in order to minimize duplicate expenses, the other Party shall provide any available information, studies, or other relevant documents, except for confidential information on which it has relied in the development of a technical regulation.

#### **Article 7.6: Transparency**

1. Each Party shall allow persons of the other Parties to participate in the development of its standards, technical regulations, and conformity assessment procedures. Each Party shall permit

persons of the other Parties to participate in the development of such measures on terms no less favorable than those accorded to its own persons and to persons of any other Party.

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 be aware of, and to understand, proposed technical regulations and conformity assessment procedures, and to be able to provide meaningful comments on such regulations and procedures, a Party publishing a notice and filing a notification under Article 2.9, 3.2, 5.6 or 7.2 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 Parties through the inquiry points each Party has established under Article 10 of the TBT Agreement at the same time as it notifies other WTO Members of the proposal pursuant to the TBT Agreement.

Each Party shall publish and notify those technical regulations that are in accordance with the technical content of any relevant international standards.

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and the other Parties to provide comments in writing on the proposal. A Party shall give favorable consideration to reasonable requests for extending the comment period.

4. Each Party shall publish or otherwise make available to the public, either in print or electronically, its responses to significant comments that it receives from persons or the other Parties 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, 3.2, 5.7, or 7.2 of the TBT Agreement because urgent problems have arisen or threaten to arise, the notifying Party shall at the same time transmit the notification electronically to the other Parties through the inquiry points referenced in subparagraph 3(b).

Each Party also shall notify those technical regulations that are in accordance with the technical content of any relevant international standards.

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

7. Each Party shall implement this Article as soon as is practicable and under no circumstance later than three years from the date of entry into force of this Agreement.

#### **Article 7.7: 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 7.7.

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 territories of two or more Parties;
- (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) 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;
- (h) taking any other steps the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade;
- (i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter;
- (j) establishing, if necessary, for particular issues or sectors, working groups for the treatment of specific matters related to this Chapter and the TBT Agreement; and

- (k) exchanging information, at a Party's request, on the Parties' respective views regarding third party issues concerning standards, technical regulations, and conformity assessment procedures so as to foster a common approach to their resolution.
3. When a Party requests consultations under subparagraph 2(f), the Parties shall make every effort to obtain a mutually satisfactory solution within 60 days .
  4. Where the Parties have had recourse to consultations under subparagraph 2(f), such consultations shall constitute consultations under Article 21.4 (Consultations).
  5. The Committee shall meet at least once a year unless the Parties otherwise agree. The Committee shall carry out its work through the communication channels agreed to by the Parties, which may include electronic mail, videoconferencing, or other means.
  6. All decisions of the Committee shall be made by consensus unless the Committee decides otherwise.

#### **Article 7.8: Information Exchange**

1. 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.
2. With respect to information exchanges, in compliance with Article 10 of the TBT Agreement, each Party shall apply the recommendations set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev. 8, 23 May 2002, Section IV (Procedure for information exchanges) issued by the WTO Committee on Technical Barriers to Trade.

#### **Article 7.9: 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 7.7**

### **Committee on Technical Barriers to Trade**

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

- (a) in the case of Peru, the *Ministerio de Comercio Exterior y Turismo*; and
- (b) in the case of the United States, the Office of the U.S. Trade Representative,

or their successors.