

## CHAPTER 7

### TECHNICAL BARRIERS TO TRADE

#### Article 7.1: Definitions

1. The definitions of the terms used in this Chapter contained in Annex 1 to the WTO *Agreement on Technical Barriers to Trade*, set out in Annex 1A to the WTO Agreement, including the chapeau and explanatory notes of Annex 1, are incorporated into, and shall form part of, this Chapter, *mutatis mutandis*;

2. In addition, for the purposes of this Chapter:

**mutual recognition agreement** means a binding government-to-government agreement for recognition of the results of conformity assessment conducted against the appropriate technical regulations or standards in one or more sectors, including government-to-government agreements to implement the *APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment* of May 8, 1998 and the *Electrical and Electronic Equipment Mutual Recognition Arrangement* of July 7, 1999 and other agreements that provide for the recognition of conformity assessment conducted against appropriate technical regulations or standards in one or more sectors;

**mutual recognition arrangement** means an international or regional arrangement (including a multilateral recognition arrangement) between accreditation bodies recognising the equivalence of accreditation systems (based on peer review) or between conformity assessment bodies recognising the results of conformity assessment; and

**TBT Agreement** means the *Agreement on Technical Barriers to Trade*, set out in Annex 1A to the WTO Agreement.

#### Article 7.2: Objective

The objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice.

#### Article 7.3: Scope

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of the central

level of government, as defined in the TBT Agreement, that may, directly or indirectly, affect trade in goods between the Parties.

2. Each Party shall take reasonable measures as may be available to it to ensure compliance with this Chapter by regional or local governments and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures.

2. All references in this Chapter to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments to them and any addition to the rules or the product coverage of those technical regulations, standards and procedures, except amendments and additions of an insignificant nature.

3. This Chapter shall not apply to technical specifications prepared by a governmental entity for its production or consumption requirements. These specifications are covered by Chapter 14 (Government Procurement).

4. This Chapter shall not apply to sanitary and phytosanitary measures. These are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

#### **Article 7.4: Affirmation of the TBT Agreement**

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

#### **Article 7.5: International Standards, Guides and Recommendations**

1. The Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary barriers to trade.

2. In this respect, and further to Articles 2.4 and 5.4 and Annex 3 of the TBT Agreement, to determine whether there is an international standard, guide or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, each Party shall apply the *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995* (G/TBT/1/Rev.13), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

3. The Parties shall cooperate with each other, when feasible and appropriate, to ensure that international standards, guides and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

## **Article 7.6: Conformity Assessment**

1. Further to Article 6.4 of the TBT Agreement, each Party shall accord to conformity assessment bodies located in the territory of the other Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory. In order to ensure that it accords such treatment, each Party shall apply the same or equivalent procedures, criteria and other conditions to accredit, approve, license or otherwise recognise conformity assessment bodies located in the territory of the other Party that it may apply to conformity assessment bodies in its own territory.

2. Further to Article 9.1 of the TBT Agreement, a Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement. The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

3. A Party shall publish, preferably by electronic means, any procedures, criteria and other conditions that it may use as the basis for determining whether conformity assessment bodies are competent to receive accreditation, approval, licensing or other recognition, including accreditation, approval, licensing or other recognition granted pursuant to a mutual recognition agreement.

4. If a Party:

(a) accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory, and refuses to accredit, approve, license or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other Party; or

(b) declines to use a mutual recognition arrangement,

it shall, on request of the other Party, explain the reasons for its decision.

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

6. Further to Article 6.3 of the TBT Agreement, if a Party declines the request of the other Party to enter into negotiations to conclude an agreement for mutual recognition of the results of each other's conformity assessment procedures, it shall, on request of the other Party, explain the reasons for its decision.

## **Article 7.7: Transparency**

1. Each Party shall allow persons of the other Party to participate in the development of technical regulations, standards and conformity assessment procedures by its central government bodies<sup>1</sup> on terms no less favourable than those that it accords to its own persons.
2. Each Party is encouraged to consider methods to provide additional transparency in the development of technical regulations, standards and conformity assessment procedures, including through the use of electronic tools and public outreach or consultations.
3. If appropriate, each Party shall encourage non-governmental bodies in its territory to observe the obligations in paragraphs 1 and 2.
4. Each Party shall publish all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies.
5. Each Party shall publish preferably by electronic means, in a single official journal or website, all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies, that a Party is required to notify or publish under the TBT Agreement or this Chapter, and that may have a significant effect on trade.<sup>2</sup>
6. Each Party shall notify proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides or recommendations, if any, and that may have a significant effect on trade, according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.
7. Notwithstanding paragraph 6, if urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may notify

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<sup>1</sup> A Party satisfies this obligation by, for example, providing interested persons a reasonable opportunity to provide comments on the measure it proposes to develop and taking those comments into account in the development of the measure.

<sup>2</sup> For greater certainty, a Party may comply with this obligation by ensuring that the proposed and final measures in this paragraph are published on, or otherwise accessible through, the WTO's official website.

a new technical regulation or conformity assessment procedure that is in accordance with the technical content of relevant international standards, guides or recommendations, if any, upon the adoption of that regulation or procedure, according to the procedures established under Article 2.10 or 5.7 of the TBT Agreement.

8. For the purposes of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and should be notified in accordance with Article 2.9, 2.10, 3.2, 5.6, 5.7 or 7.2 of the TBT Agreement or this Chapter, a Party shall consider, among other things, the relevant *Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade Since 1 January 1995* (G/TBT/1/Rev. 13), as may be revised.

9. A Party that publishes a notice and that files a notification in accordance with Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter shall:

- (a) include in the notification an explanation of the objectives of the proposal and how it would address those objectives; and
- (b) transmit the notification and the proposal electronically to the other Party through their enquiry points established in accordance with Article 10 of the TBT Agreement, at the same time as it notifies WTO Members.

10. Each Party shall normally allow 60 days from the date it transmits a proposal under paragraph 13 for the other Party or an interested person of the other Party to provide comments in writing on the proposal. A Party shall consider any reasonable request from the other Party or an interested person of the other Party to extend the comment period. A Party that is able to extend a time limit beyond 60 days, for example 90 days, is encouraged to do so.

11. Each Party is encouraged to provide sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure, for its consideration of, and preparation of responses to, the comments received.

12. Each Party shall endeavour to notify the final text of a technical regulation or conformity assessment procedure at the time the text is adopted or published, as an addendum to the original notification of the proposed measure filed under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter.

13. A Party that files a notification in accordance with Article 2.10 or 5.7 of the TBT Agreement and this Chapter shall, at the same time, transmit the notification and text of the technical regulation or conformity assessment procedure electronically to the other Party through the enquiry points referred to in paragraph 9(b).

## **Article 7.8: Compliance Period for Technical Regulations and Conformity Assessment Procedures**

1. For the purposes of applying Articles 2.12 and 5.9 of the TBT Agreement the term “reasonable interval” means normally a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation or by the requirements concerning the conformity assessment procedure.
2. If feasible and appropriate, each Party shall endeavour to provide an interval of more than six months between the publication of final technical regulations and conformity assessment procedures and their entry into force.
3. In addition to paragraphs 1 and 2, in setting a “reasonable interval” for a specific technical regulation or conformity assessment procedure, each Party shall ensure that it provides suppliers with a reasonable period of time, under the circumstances, to be able to demonstrate the conformity of their goods with the relevant requirements of the technical regulation or standard by the date of entry into force of the specific technical regulation or conformity assessment procedure. In doing so, each Party shall endeavour to take into account the resources available to suppliers.

## **Article 7.9: Cooperation and Trade Facilitation**

1. Further to Articles 5, 6 and 9 of the TBT Agreement, the Parties acknowledge that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results. In this regard, a Party may:
  - (a) implement mutual recognition of the results of conformity assessment procedures performed by bodies located in its territory and the other Party’s territory with respect to specific technical regulations;
  - (b) recognise existing regional and international mutual recognition arrangements between or among accreditation bodies or conformity assessment bodies;
  - (c) use accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;
  - (d) designate conformity assessment bodies or recognise the other Party’s designation of conformity assessment bodies;
  - (e) unilaterally recognise the results of conformity assessment procedures performed in the other Party’s territory; and
  - (f) accept a supplier’s declaration of conformity.

2. The Parties recognise that a broad range of mechanisms exist to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade, including:

- (a) regulatory dialogue and cooperation to, among other things:
  - (i) exchange information on regulatory approaches and practices;
  - (ii) promote the use of good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards and conformity assessment procedures;
  - (iii) provide technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards, conformity assessment procedures and metrology; or
  - (iv) provide technical assistance and cooperation, on mutually agreed terms and conditions, to build capacity and support the implementation of this Chapter;
- (b) greater alignment of national standards with relevant international standards, except where inappropriate or ineffective;
- (c) facilitation of the greater use of relevant international standards, guides and recommendations as the basis for technical regulations and conformity assessment procedures; and
- (d) promotion of the acceptance of technical regulations of the other Party as equivalent.

3. With respect to the mechanisms listed in paragraphs 1 and 2, the Parties recognise that the choice of the appropriate mechanism in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.

4. The Parties shall strengthen their exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade.

5. A Party shall, on request of the other Party, give due consideration to any sector-specific proposal for cooperation under this Chapter.

6. Further to Article 2.7 of the TBT Agreement, a Party shall, on request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

7. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment, accreditation and metrology, whether they are public or private, with a view to addressing issues covered by this Chapter.

#### **Article 7.10: Information Exchange and Technical Discussions**

1. A Party may request the other Party to provide information on any matter arising under this Chapter. A Party receiving a request under this paragraph shall provide that information within a reasonable period of time, and if possible, by electronic means.

2. A Party may request technical discussions with the other Party with the aim of resolving any matter that arises under this Chapter.

3. The Parties shall discuss the matter raised within 60 days of the date of the request. If the requesting Party considers that the matter is urgent, it may request that any discussions take place within a shorter time frame. The responding Party shall give positive consideration to that request.

4. The Parties shall endeavour to resolve the matter as expeditiously as possible, recognising that the time required to resolve a matter will depend on a variety of factors, and that it may not be possible to resolve every matter through technical discussions.

5. Unless the Parties agree otherwise, the discussions and any information exchanged in the course of the discussions shall be confidential and without prejudice to the rights and obligations of the Parties under this Agreement, the WTO Agreement or any other agreement to which both Parties are party.

6. Where the Parties have had recourse to technical discussions under paragraph 2, such technical discussions shall constitute consultations under Article 27.5 (Consultations) should a Party request the establishment of a dispute settlement Panel on the matter under Article 27.7 (Establishment of a Panel).

7. Requests for information or technical discussions shall be conveyed through the respective contact points designated pursuant to Article 7.11.

#### **Article 7.11: Contact Points**

1. Each Party shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 26.5 (Contact Points).

2. A Party shall promptly notify the other Party of any change of its contact point or the details of the relevant officials.



3. The responsibilities of each contact point shall include:
  - (a) communicating with the other Party's contact points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;
  - (b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;
  - (c) consulting and, if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter.