

CHAPTER 5

TECHNICAL BARRIERS TO TRADE

Article 5.1: Definitions

1. For the purposes of this Chapter:

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

2. The definitions in Annex 1 to the TBT Agreement are incorporated into and made part of this Chapter, *mutatis mutandis*.

Article 5.2: Objectives

The objectives of this Chapter are to:

- (a) facilitate trade in goods between the Parties by ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary technical barriers to trade;
- (b) strengthen cooperation between the Parties in the work of international bodies related to standardisation and conformity assessments;
- (c) strengthen information exchange in relation to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures;
- (d) promote transparency and mutual understanding of the standards, technical regulations and conformity assessment procedures of each Party;
- (e) encourage the reduction of transaction costs between the Parties; and
- (f) facilitate implementation of the principles of the TBT Agreement.

Article 5.3: Scope

1. This Chapter shall apply to all technical regulations, standards and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties. It shall exclude:

- (a) sanitary or phytosanitary measures as defined in paragraph 1 of Annex A to the SPS Agreement, which are covered in Chapter 6 (Sanitary and Phytosanitary Measures); and
- (b) purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies.

2. Nothing in this Chapter shall limit the right of a Party to prepare, adopt or apply, in accordance with its rights and obligations under the TBT Agreement, standards, technical regulations and conformity assessment procedures to the extent necessary to fulfil a legitimate objective.

3. Each Party shall take such reasonable measures as may be available to it to ensure compliance, in the implementation of this Chapter, by regional and local governments and non-governmental bodies within its Area.

Article 5.4: Affirmation of the TBT Agreement

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

Article 5.5: International Standards, Guides and Recommendations

1. The Parties shall use international standards, guides and recommendations, or the relevant parts of them, to the extent provided in Articles 2 and 5 of and Annex 3 to the TBT Agreement, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards, guides and recommendations exist or their completion is imminent, except when they or their relevant parts are ineffective or inappropriate to fulfil the legitimate objectives.

2. In determining whether an international standard, guide or recommendation as mentioned in Articles 2 and 5 of and Annex 3 to the TBT Agreement exists, each Party shall base its determination on the principles set out in relevant decisions and recommendations adopted by the WTO Committee on Technical Barriers to Trade.

Article 5.6: Equivalence of Technical Regulations

1. In accordance with the TBT Agreement, each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfil the objectives of its own regulations.

2. For this purpose, a Party seeking the other Party to accept its technical regulation as equivalent, shall provide, as appropriate:

- (a) information on the relationship of its technical regulation to international standards referenced in the technical regulation of the other Party;
- (b) the circumstances which gave rise to the adoption of its technical regulation; and
- (c) information on the similarity of the established mechanisms of conformity assessment.

3. 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.

Article 5.7: Conformity Assessment Procedures

1. Each Party shall give positive consideration to accepting the results of conformity assessment procedures of the other Party, even if those procedures differ from its own, provided that it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.

2. Each Party shall, subject to its policies, practices and available resources, facilitate the acceptance of the results of conformity assessment procedures conducted in the Area of the other Party. In this regard, a Party may choose a broad range of approaches, including, where applicable:

- (a) recognition by a Party of the results of conformity assessments performed in the Area of the other Party;
- (b) recognition of cooperative or voluntary arrangements between accreditation bodies in the Area of each Party;
- (c) mutual recognition of conformity assessment procedures conducted by bodies located in the Area of the other Party;
- (d) use of existing regional and international multilateral recognition agreements and arrangements;
- (e) adoption of accreditation procedures for qualifying conformity assessment bodies located in the Area of the other Party;
- (f) designation of conformity assessment bodies located in the Area of the other Party to perform conformity assessment; or

(g) acceptance of suppliers' declaration of conformity.

3. Each Party shall, on request of the other Party, exchange information with the other Party on its experience in the development and application of the approaches in paragraph 2 and other appropriate approaches with a view to facilitating the acceptance of the results of conformity assessment procedures.

4. A Party shall, on request of the other Party, explain its reasons for not accepting the results of any conformity assessment procedure performed in the Area of the other Party.

Article 5.8 Transparency

1. A Party publishing a notice or filing a notification under Articles 2.9, 2.10, 3.2, 5.6, 5.7 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 Party through the enquiry point the 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.

2. On request, a Party shall make available to the other Party the full text of technical regulations and conformity assessment procedures which are notified to the WTO, in available languages, within 15 working days after receiving the written request. If the full text of the notified documents is provided in languages other than English, the Party shall endeavour to provide an English summary of such technical regulations and conformity assessment procedures, which includes the main requirements thereof.

3. A Party that makes a notification pursuant to Articles 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement shall allow at least 60 days for the other Party to present comments on its proposed new or amended technical regulations or conformity assessment procedures except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall consider any reasonable request from the other Party for extending the comment period.

4. Each Party shall take into due consideration the comments of the other Party and endeavour to provide responses to these comments on request within a reasonable timeframe.

5. A Party shall, on request of the other 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.

6. Each Party shall endeavour to publish proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides or recommendations and that it considers may have a significant effect on trade of the other Party according to the procedures established under Articles 2.9, 2.10, 3.2, 5.6, 5.7 or 7.2 of the TBT Agreement, as appropriate.

7. For the purposes of applying Articles 2.12 and 5.9 of the TBT Agreement, the term “reasonable interval” shall normally mean a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives being pursued.

8. 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 Articles 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter.

Article 5.9: Technical Cooperation

1. With a view to enhancing the mutual understanding of each other’s standards and conformance systems and facilitating bilateral trade, the Parties shall explore opportunities for future cooperation in the following areas:

- (a) communication and exchange of information between each other’s competent authorities in respect of technical regulations, standards, conformity assessment procedures, metrology and good regulatory practice;
- (b) encouraging, where possible, cooperation between conformity assessment bodies in the Areas of the Parties;
- (c) enhancing cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures;
- (d) enhancing cooperation on mutually agreed regulatory issues consistent with this Chapter; and
- (e) other areas as agreed upon by the Parties.

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

Article 5.10: Information Exchange

Unless otherwise provided in this Chapter, 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 timeframe as agreed by the Parties. A Party shall endeavour to respond to each such request within 60 days.

Article 5.11: Consultations

1. On request of a Party for consultations on any matter arising under this Chapter, the Parties shall enter into consultations.
2. The consultations under this Article shall commence within 30 days of a Party receiving a request for consultations, unless the Parties otherwise agree. Such consultations may be conducted in person, via teleconference, videoconference or any other means as agreed by the Parties.
3. When a Party requests consultations under this Article, the Parties shall make every attempt to obtain a mutually satisfactory solution within 60 days.

Article 5.12: Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade (TBT Committee), comprising representatives of each Party.
2. The functions of the TBT Committee include:
 - (a) monitoring the implementation and administration of this Chapter;
 - (b) promptly addressing any issue that a Party raises related to the preparation, adoption and application of standards, technical regulations, or conformity assessment procedures by the other Party;
 - (c) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures;
 - (d) exchanging information, where appropriate, on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardisation, technical regulations, and conformity assessment procedures;
 - (e) on request of a Party, consulting on any matter arising under this Chapter in accordance with Article 5.11;

- (f) reviewing this Chapter in light of any development in relation to the TBT Agreement and developing recommendations to the Joint Commission for amendments to this Chapter in light of those developments;
- (g) taking any other step the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade in goods between them;
- (h) as it considers appropriate, reporting to the Joint Commission on the implementation of this Chapter; and
- (i) establishing, if necessary to achieve the objectives of this Chapter, issues or sectors-specific *ad hoc* working groups.

3. The TBT Committee may meet at such time as may be agreed by the Parties. The TBT Committee may meet in person, via teleconference, videoconference or any other means as agreed by the Parties.

Article 5.13: Contact Points

1. Each Party shall provide the contact details of its designated contact point, which shall, for that Party, be responsible for coordinating the implementation of this Chapter.
2. Each Party shall promptly notify the other Party of any change of its contact point or any amendment to the details of the relevant officials.