

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 each Party's standards, technical regulations and conformity assessment procedures;
- (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 local government and non-governmental bodies within its Area.

4. The provisions of this Chapter shall apply to particular Sectoral Annexes as provided therein.

Article 5.4: Affirmation of 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 fulfill 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. 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 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) designation of conformity assessment bodies located in the Area of the other Party to perform conformity assessment;
- (f) acceptance of suppliers' declaration of conformity; or
- (g) accreditation of conformity assessment bodies in the Area of the other Party.

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. Each Party affirms its commitment to ensuring that information regarding proposed new or amended technical regulations, standards and conformity assessment procedures is made available in accordance with the relevant requirements of the TBT Agreement. Such information should be made available in printed or electronic form.
2. On request, a Party shall endeavour to 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 seven days of receiving the written request.
3. A Party that makes a notification pursuant to Articles 2 and 5 of the TBT Agreement shall endeavour to 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 risks to health, safety and the environment arising or threatening to arise warrant urgent actions.
4. Each Party shall endeavour to take into consideration the comments of the other Party and provide responses to these comments on request within a reasonable timeframe.

Article 5.9: Technical Cooperation

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 and good regulatory practice;
- (b) enhancing cooperation on mutually agreed regulatory issues consistent with this Chapter;
- (c) encouraging, where possible, cooperation between conformity assessment bodies in the Areas of the Parties;
- (d) 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; and
- (e) other areas as agreed upon by the Parties.

Article 5.10: Contact Points

1. Each Party shall designate a contact point, which shall, for that Party, be responsible for coordinating the implementation of this Chapter, including making or receiving a request or a notification under this Chapter.
2. Each Party shall provide the other Party with the name and contact details of its designated contact point, including telephone and email.
3. Each Party shall promptly notify the other Party of any change of its contact point or any amendments to the details of the relevant officials.

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. Consultations shall commence within 30 days of a Party receiving a request for consultations, unless the Parties otherwise agree. Such consultations may be conducted via teleconference, videoconference or any other means agreed by the Parties.

Article 5.12: Dispute Settlement

Neither Party shall have recourse to dispute settlement under Chapter 18 (Consultations and Dispute Settlement) for any matter arising under this Chapter.