

## CHAPTER 8

### TECHNICAL BARRIERS TO TRADE

#### ARTICLE 8.1

##### Objective

The objective of this Chapter is to facilitate trade in goods between the Parties by, among others, eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater cooperation and good regulatory practices.

#### ARTICLE 8.2

##### Scope of application and definitions

1. This Chapter shall apply to the preparation, adoption and application of standards, technical regulations, and conformity assessment procedures of the Parties, that may affect trade in goods between the Parties.
2. For the purposes of this Chapter, the definitions under Annex 1 of the TBT Agreement shall apply.
3. This Chapter shall not apply to technical specifications prepared by a governmental entity for its production or consumption requirements.
4. This Chapter shall not apply to sanitary and phytosanitary measures.

## ARTICLE 8.3

### Incorporation of the TBT Agreement

The State Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement, which is incorporated into and made part of this Agreement, *mutatis mutandis*.

## ARTICLE 8.4

### Cooperation on trade facilitating initiatives

1. The Parties recognise the importance of intensifying cooperation in the field of standards, technical regulations and conformity assessment procedures with a view to increasing mutual understanding of their respective systems and eliminating unnecessary technical barriers to trade and facilitating access to their respective markets. In this regard, the Parties shall work towards the identification, promotion, development and implementation, as appropriate, of trade facilitating initiatives, on a case-by-case basis.

2. A Party may propose to another Party such joint trade facilitating initiatives on products or sectors in areas covered by this Chapter. These proposals, which shall be transmitted through the contact points designated under Article 8.12 (Contact points), may include amongst others:

- (a) information exchanges on regulatory approaches and practices;
- (b) facilitating greater alignment or harmonisation with international standards through the greater use of relevant international standards, guides and recommendations as the bases for technical regulations and conformity assessment procedures;
- (c) promoting the use of accreditation to assess the competence of conformity assessment bodies;
- (d) mutually or unilaterally recognising and accepting results of conformity assessment procedures; or
- (e) promoting equivalence of technical regulations.

3. A Party shall, on request of another Party, consider any trade facilitating initiative proposal under this Article and reply to the request within a reasonable period of time. As part of the process, a preliminary joint analysis of the trade facilitating initiative proposal may be undertaken in order to identify any elements, data or evidence that may support the negotiation of a trade facilitating initiative. Proposals for a trade facilitating initiative shall be made in writing. If the requested Party rejects a proposal, it shall explain the reasons for its decision to the requesting Party.

4. When mutually agreed and necessary for the implementation of the initiatives under this Article, the Parties shall facilitate the access of technical teams of another Party to demonstrate their conformity assessment schemes and system in order to increase mutual understanding.

5. The Parties shall encourage the participation of competent regulatory and governmental authorities, at the national or regional level.

6. The terms of the work envisaged in this Article will be defined by the Parties engaged in such work, when needed. This may include establishing ad hoc working groups. In order to benefit from non-governmental perspectives on matters related to this Article, each Party may, as appropriate and in accordance with its rules and procedures, consult with stakeholders and other interested persons.

7. The results of the understandings reached under this Article should be incorporated into an appropriate instrument, depending on the subject matter and the agreed tool.

8. Further to paragraph 7, if the Parties decide that an Annex to this Chapter is the appropriate instrument to incorporate the results of a trade facilitating initiative, the Annex shall constitute an integral part of this Agreement.

## ARTICLE 8.5

### Standards

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 Article 2 (2.4) (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies), Article 5 (5.4) (Procedures for Assessment of Conformity) and Annex 3 (Code of Good Practice for the Preparation, Adoption and Application of Standards) of the TBT Agreement, to determine whether an international standard, guide or recommendation within the meaning of Article 2 (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies), Article 5 Procedures for Assessment of Conformity) and Annex 3 (Code of Good Practice for the Preparation, Adoption and Application of Standards) of the TBT Agreement exists, 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.14), as may be revised, issued by the WTO Committee on Technical Barriers to Trade.

3. Recognising their responsibility under Article 4 (4.1) (Preparation, Adoption and Application of Standards) of the TBT Agreement, the Parties shall ensure, in cases where their standardising bodies are governmental, that they accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 (Code of Good Practice for the Preparation, Adoption and Application of Standards) of the TBT Agreement. For non-governmental bodies, the Parties shall take all reasonable measures to ensure similar acceptance and compliance.

4. Whenever a Party's standardising bodies, including its regional standardising bodies, develop national or regional standards, for which modifications of contents of the relevant international standards were necessary, upon request of another Party, Parties shall encourage their standardising bodies, as well as regional standardising bodies, to provide what the differences in the contents are, and reason(s) for those differences.

5. The Parties shall encourage the standardising bodies in their territories, as well as the regional standardising bodies of which the Parties or their standardising bodies within their territories are Members, to:

- (a) use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems;

- (b) participate in the preparation of international standards by relevant international standardising bodies; and
  - (c) avoid duplication of or overlap with the work of international standardising bodies.
6. The Parties undertake to promote the exchange of information on:
- (a) their use of standards or the relevant parts of them as a basis for their technical regulations;
  - (b) each other's standardisation processes and the use of international or regional standards as a basis for their national standards; and
  - (c) cooperation agreements implemented by a Party on standardisation, provided such information can be made available to the public.

## ARTICLE 8.6

### Technical regulations

1. The Parties agree to make best use of good regulatory practices with regard to the preparation, adoption and application of technical regulations, as provided for in the TBT Agreement, and agree to:
- (a) use relevant international standards or the relevant parts of them to the extent provided in Article 2(2.4) (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies) of the TBT Agreement as a basis for their technical regulations. Where a Party does not use such international standards, or their relevant parts, as a basis for its technical regulations which may have a significant effect on trade, it shall, upon request of another Party, explain the reasons for its decision.
  - (b) in implementing Article 2(2.2) (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies) of the TBT Agreement, in accordance with their respective rules and procedures, endeavour to carry out the regulatory impact analysis of planned technical regulations and consider available alternatives and the potential impacts on

micro, small and medium-sized enterprises, in order to ensure that the proposed technical regulations to be adopted are not more trade-restrictive than necessary to fulfil a legitimate objective.

2. For the purposes of applying Article 2(2.12) (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies) of the TBT Agreement, the term "reasonable interval" means normally a period of not less than 6 (six) months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the technical regulation.
3. For greater certainty, a Party may decide to set an interval of less than 6 (six) months between the publication of a measure and its entry into force in certain circumstances, including those where the measure is trade facilitative or is addressing an urgent problem of safety, health, environmental protection, or national security.
4. Each State Party shall ensure that goods, once placed on the market and fully compliant with the relevant technical regulations and its conformity assessment procedures, may freely move within its territory without any further technical requirement related to this Chapter.
5. When a State Party detains at the point of entry a good originating in the territory of another State Party, due to non-fulfilment of a technical regulation, it must notify the importer, or, where applicable, its agent, as soon as possible of the reasons for the detention.

## ARTICLE 8.7

### Conformity assessment procedures

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of results of the conformity assessments carried out in the territory of another State Party, including:
  - (a) agreements on the mutual recognition of the results of conformity assessment procedures, with respect to specific technical regulations, performed by bodies located in the territory of the State Parties concerned;
  - (b) use of accreditation to qualify conformity assessment bodies;

- (c) government approval or designation of conformity assessment bodies;
- (d) unilateral recognition of the results of conformity assessment procedures performed in another State Party's territory;
- (e) voluntary arrangements between the conformity assessment bodies in the territory of the State Parties;
- (f) acceptance by the importing State Party of a supplier's declaration of conformity; or
- (g) the use of regional or international multilateral recognition agreements and arrangements of which the Parties concerned are parties.

2. With respect to the mechanisms listed in paragraph 1, the Parties recognise that the choice of the appropriate mechanisms in a given regulatory context depends on the legal framework of each State Party and a variety of factors, such as the product and sector involved, the volume and direction of trade, the legitimate objectives pursued, and the risks of non-fulfilment of those objectives.

3. Upon request by a State Party, the Parties concerned may decide to engage in consultations with a view to defining sectoral initiatives regarding the use of conformity assessment procedures or the facilitation of acceptance of conformity assessment results that are appropriate for the respective sectors, pursuant to Article 8.4 (Cooperation on trade facilitating initiatives).

4. When a State Party allows the participation of conformity assessment bodies located in the territory of another State Party in its conformity assessment procedures, such State Party shall apply the same or equivalent criteria and other conditions to accredit, approve, license, or otherwise recognise such conformity assessment bodies, on terms no less favourable than those it accords to conformity assessment bodies in its own territory.

5. Paragraphs 3 and 4 shall not preclude a State Party from undertaking conformity assessment in relation to a specific product solely within specified government bodies located in its own territory or in another State Party's territory, in a manner consistent with its obligations under the TBT Agreement.

6. If a State Party requires non-governmental third party conformity assessment body or bodies to carry out a conformity assessment procedure, the State Party shall:

- (a) use international standards for accreditation and conformity assessment, as well as international agreements involving the Parties' accreditation bodies;
- (b) where applicable, consider joining, or encourage the State Party's testing, inspection and certification bodies to join the relevant international agreements or arrangements;
- (c) ensure that, insofar as two or more conformity assessment bodies are authorised by a State Party to carry out conformity assessment procedures required for placing the product on the market, economic operators may choose among them;
- (d) ensure that conformity assessment bodies operate objectively and independently of manufacturers, importers and distributors in the sense that they carry out their activities with objectivity and independence of judgment;
- (e) ensure that there are no conflicts of interest between the conformity assessment bodies and accreditation bodies as well as market surveillance authorities; and
- (f) make publicly available the bodies that it has recognised to perform such conformity assessment and relevant information on the scope of each body's designation.

7. For the purposes of applying Article 5 (5.9) (Procedures for Assessment of Conformity) of the TBT Agreement, the term "reasonable interval" means normally a period of not less than 6 (six) months, except when this would be ineffective in fulfilling the legitimate objectives pursued by the requirements concerning the conformity assessment procedure.

8. Further to subparagraph 5.2.5 of Article 5 (5.2) (Procedures for Assessment of Conformity) of the TBT Agreement, each State Party shall endeavour to establish any conformity assessment fee imposed by government authorities of the State Party, in accordance with the approximate cost of the services rendered.

## ARTICLE 8.8

### Marking and labelling

1. The Parties affirm that their technical regulations that include or deal exclusively with marking or labelling requirements shall comply with Article 2 of the TBT Agreement.
2. For the purposes of this Agreement, where a Party requires mandatory marking or labelling of products:
  - (a) the Party shall restrict its requirements only to those which are relevant for consumers, users of the product, regulatory authorities or to indicate the product's conformity with the mandatory requirements;
  - (b) where a Party requires, as a precondition for placing on the market, any prior approval, registration or certification of the markings or labels of products which otherwise comply with its technical regulations, it shall ensure that the requests submitted by the economic operators of another Party are decided without undue delay and on a non-discriminatory basis;
  - (c) where the Party requires the use of a unique identification number by economic operators, the Party shall ensure that such numbers are issued to the relevant economic operators without undue delay and on a non-discriminatory basis;
  - (d) provided that it is not misleading, contradictory or confusing in relation to the importing State Party's regulatory requirements, and the legitimate objectives under the TBT Agreement are not compromised, the Party shall permit, in addition to such requirements:
    - (i) information in other languages in addition to the language required in the importing State Party of the goods; and
    - (ii) internationally-accepted nomenclatures, pictograms, symbols, or graphics; and
  - (e) the Party, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised and where applicable:

- (i) shall accept that supplementary labelling, and corrections to labelling, take place, where relevant, in authorised premises (for example in customs warehouses at the point of import) in the importing State Party prior to the distribution and sale of the product as an alternative to labelling in the place of origin; and
- (ii) shall endeavour to accept alternative forms of labelling, such as electronic labels, non-permanent or detachable labels, or marking or labelling in the accompanying materials packaged with the product.

## ARTICLE 8.9

### Transparency

1. 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, 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>1</sup>
2. Each Party shall ensure that its proposals contain sufficient detail about the likely content of the proposed technical regulations and conformity assessment procedures to enable interested persons and another Party to assess how their trade interests might be affected.
3. Each Party shall notify proposed technical regulations and conformity assessment procedures that may have a significant effect on the trade of another State Party according to the procedures established under Article 2(2.9) (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies) or Article 5(5.6) (Procedures for Assessment of Conformity) or, if appropriate, Article 2(2.10) (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies) or Article 5(5.7) (Procedures for Assessment of Conformity) of the

---

<sup>1</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.

TBT Agreement, even when they are in accordance with the technical content of relevant international standards, guides, or recommendations.

4. 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 Articles 2(2.9) (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies), 2(2.10) (Preparation, Adoption and Application of Technical Regulations by Central Government Bodies), 3(3.2) (Preparation, Adoption and Application of Technical Regulations by Local Government Bodies and Non-Governmental Bodies), 5(5.6) (Procedures for Assessment of Conformity), 5(5.7) (Procedures for Assessment of Conformity) or 7(7.2) (Procedures for Assessment of Conformity by Local Government Bodies) 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. 14), as may be revised.

5. Each Party shall allow normally 60 (sixty) days, from the date it submits a notification under paragraph 3, in order to enable another Party or interested persons from another Party to make written comments on the proposals, except when urgent problems of safety, health, environmental protection or national security, arise or threaten to arise. Each Party shall consider reasonable requests of the other Parties to extend the comment period.

6. Each Party shall endeavour to notify final versions of a technical regulation or conformity assessment procedure as an addendum to the original notification at the same time it is adopted and made available to the public on a government website.

7. Each Party shall respond in writing to the comments received from another Party during the consultation period stipulated in the notification, and, whenever possible, no later than the date of publication of the final version of the technical regulation or conformity assessment procedure.

8. Each Party shall allow, in accordance with its own internal procedures, interested persons of another Party a reasonable opportunity to provide comments on the development of technical regulations and conformity assessment procedures on terms no less favourable than those that it accords its own persons.

9. 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.
10. If a Party has a central government standardising body, the Party shall ensure that the body's work program, containing the standards it is preparing and the standards it has adopted, is available:
- (a) on the central government standardising body's website; or
  - (b) in the Party's official gazette.
11. A Party may request relevant and reasonable information or explanation from another Party on any matter arising under this Chapter. A Party that receives a request under this paragraph shall endeavour to provide that information and explanation, within a mutually agreed timeframe, in English and preferably by electronic means.

## ARTICLE 8.10

### Technical cooperation

1. The Parties recognise the importance of technical cooperation in the fields of standards, technical regulations, conformity assessment procedures and metrology, with a view to facilitate the implementation of this Chapter. To this end, when mutually agreed, the Parties may undertake technical cooperation which may include but are not limited to:
- (a) promoting cooperation between the Parties' respective bodies, whether governmental or non-governmental, with a view to building trust between these bodies;
  - (b) promoting regulatory cooperation through the exchange of information, experiences and best practices;
  - (c) exchanging views on market surveillance;

- (d) promoting the exchange of information on different technical regulations and conformity assessment procedures in force;
  - (e) promoting and facilitating the Parties' participation in international organisations and other fora related to the fields covered by this Article; and
  - (f) promoting and supporting the use and implementation of relevant international standards.
2. Upon request, a Party shall give appropriate consideration to proposals for cooperation presented under the terms of this Chapter.

## ARTICLE 8.11

### Technical discussions

1. A Party which considers that a technical regulation or conformity assessment procedure of another Party might have a significant and adverse effect on trade between the State Parties may request that another Party engage in technical discussions regarding the matter.
2. Upon request of a Party, technical discussions shall be held with the objective of finding a mutually acceptable solution. The Parties concerned shall discuss the matter identified within 60 (sixty) days, unless otherwise mutually agreed, from the receipt of the request by the contact point of the requested Party. The technical discussions may be conducted by any method agreed by the Parties involved in the technical discussions.
3. Following the technical discussions, the Parties may conclude that the issue could be better addressed through a trade facilitating initiative, in accordance with the provisions of Article 8.4 (Cooperation on trade facilitating initiatives).
4. Unless the Parties that participate in the technical discussions agree otherwise, the discussions and any information exchanged in the course of the discussions shall be confidential. For greater certainty, this Article is without prejudice to a Party's rights and obligations under Chapter 18 (Dispute Settlement).

## ARTICLE 8.12

### Contact points

1. Each Party shall designate a contact point and notify it to the other Parties for matters arising under this Chapter. A Party shall promptly notify the other Parties of any change of its contact point or the details of the relevant officials.
2. The functions of the designated contact points shall include:
  - (a) monitoring the implementation and administration of this Chapter;
  - (b) when necessary, reviewing this Chapter and recommending any potential amendments;
  - (c) addressing any issue that any Party raises on matters covered by this Chapter in a timely manner;
  - (d) encouraging cooperation among the Parties on matters covered by this Chapter;
  - (e) exchanging information on matters covered by this Chapter;
  - (f) facilitating technical discussions pursuant to Article 8.11 (Technical discussions) and trade facilitating initiatives pursuant to Article 8.4 (Cooperation on trade facilitating initiatives), as appropriate;
  - (g) exchanging information in the field of private standards in order to facilitate the understanding of private standards between the Parties; and
  - (h) carrying out any additional function specified by the Joint Committee.