

CHAPTER 7

TECHNICAL BARRIERS TO TRADE

Article 7.1

Definitions

For the purposes of this Chapter, the terms and definitions set out in Annex 1 to the TBT Agreement, including the chapeau and explanatory notes of Annex 1, shall apply.

Article 7.2

Objective

The objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, facilitating information exchange, and promoting cooperation.

Article 7.3

Scope

1. Unless this Chapter provides otherwise, this Chapter shall apply to the preparation, adoption, and application of all technical regulations, standards, and conformity assessment procedures of central level of government bodies which may affect trade in goods between the Parties.
2. Each Party shall take such reasonable measures as may be available to it to ensure compliance with this Chapter by regional level of government bodies within its territory, which are responsible for the preparation, adoption, and application of technical regulations, standards, and conformity assessment procedures.
3. 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.
4. This Chapter shall not apply to:
 - (a) purchasing specifications prepared by a governmental body for production or consumption requirements of a governmental body; or
 - (b) sanitary or phytosanitary measures.
5. Nothing in this Chapter shall prevent a Party from adopting or maintaining technical regulations, standards, or conformity assessment procedures in accordance with its rights and obligations under this Agreement and the TBT Agreement.

Article 7.4
Affirmation of the TBT Agreement

The Parties affirm their rights and obligations under the TBT Agreement.

Article 7.5
Standards, Guides, and Recommendations

1. The Parties recognise the important role that international standards, guides, and recommendations can play in supporting greater harmonisation of technical regulations, conformity assessment procedures, and national standards and in reducing unnecessary barriers to trade.
2. 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 relevant definitions as they are set out and referred to in Annex 1 to the TBT Agreement and shall take into account the Decision of the TBT Committee on *Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement*.
3. When developing technical regulations or conformity assessment procedures each Party shall:
 - (a) use relevant international standards, guides, or recommendations, or relevant parts of them, to the extent provided for in paragraph 4 of Article 2 and in paragraph 4 of Article 5 of the TBT Agreement, as the basis for its technical regulations and conformity assessment procedures; and
 - (b) avoid deviation from the relevant international standards, guides or recommendations, or the introduction of additional requirements when compared to those standards, guides, or recommendations,except where it considers that such international standards, guides, or recommendations would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued, as referred to in Article 2.2 and in Article 5.4 of the TBT Agreement.
4. Where a Party does not use relevant international standards, guides or recommendations, or the relevant parts of them, as referred to in paragraph 3, that Party shall, on request from the other Party:
 - (a) explain the reasons; and
 - (b) provide the available information on which this assessment is based.
5. To facilitate an appropriate explanation under paragraph 4, the requesting Party shall ensure that its request for an explanation:

- (a) identifies a relevant international standard, guide, or recommendation that the Party has not used as a basis for its technical regulation or conformity assessment procedures; and
 - (b) describes how the technical regulation or conformity assessment procedures that is not based on the international standard, guide, or recommendation is a restriction, or has the potential to restrict, trade between the Parties.
- 6. With a view to encouraging the development of international standards, guides, and recommendations that do not create unnecessary obstacles to trade, each Party shall encourage national standards bodies within its territory to cooperate with the national standards bodies in the territory of the other Party.
- 7. The Parties shall exchange available information on:
 - (a) each Party's use of standards in technical regulations;
 - (b) the standard setting processes; and
 - (c) cooperation agreements or arrangements on standardisation with third parties or international organisations subject to any confidentiality obligations under those agreements or arrangements.
- 8. Each Party shall encourage national standards bodies within its territory to make standards and the standards development process gender responsive in line with the United Nations Economic Commission for Europe (UNECE) *Declaration for Gender Responsive Standards and Standards Development* approved at the 28th Annual Session of the UNECE Working Party on Regulatory Cooperation and Standardization Policies on 15 November 2018.

Article 7.6

Technical Regulations

- 1. 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 it is satisfied that these regulations adequately fulfil the objectives of its own regulations.
- 2. In addition to Article 2.7 of the TBT Agreement, a Party shall, on request of the other Party,¹ provide the reasons why it has not or cannot accept a technical regulation of that Party as equivalent to its own. The Party to which the request is made should provide its response to the other Party within a reasonable period of time.
- 3. Upon request of a Party that has an interest in developing a technical regulation similar to a technical regulation of the other Party, the requested Party shall endeavour to provide, to the extent practicable, relevant information, including

¹ The Party's request should identify with precision the respective technical regulation it considers to be equivalent and any data or evidence that supports its position.

any studies or documents, except for confidential information, on which it has relied in its development of that regulation.

Article 7.7

Conformity Assessment²

1. Where a Party requires that conformity assessment procedures in relation to specific products are performed by specified government authorities of the Party, the Party conducting the conformity assessment procedures shall:
 - (a) ensure the conformity assessment fee takes into account the cost of the services rendered; and
 - (b) make information on the conformity assessment fees publicly available.
2. Where a Party requires a conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:
 - (a) select conformity assessment procedures that take into account the risks of nonconformity;
 - (b) consider, as appropriate, as proof of compliance with technical regulations, the use of a supplier's declaration of conformity; and
 - (c) where requested by the other Party, consider, if feasible, providing information on the criteria used to select the conformity assessment procedures for specific products.
3. The Parties recognise the advantages of enabling conformity assessment procedures to be carried out online where applicable and reasonably practicable. Where a Party does not allow a conformity assessment procedure to be carried out online, it shall, on request of the other Party, share its reasons.
4. In cases where a positive assurance is required that a product conforms with technical regulations or standards, and relevant international standards, guides or recommendations issued by international standardising bodies exist or their completion is imminent, each Party shall ensure that central level of government bodies use them, or the relevant parts of them, as a basis for their conformity assessment procedures, except where, as duly explained upon request by the other Party, such international standards, guides or recommendations, or relevant parts are inappropriate for the Party concerned, for, amongst other things, reasons such as: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment; fundamental climatic or other geographical factors; or fundamental technological or infrastructural problems.
5. Procedures for assessment of conformity by central level of government bodies of each Party shall be in accordance with Article 5 of the TBT Agreement.

² Nothing in this Article requires a party to accept the results of a conformity assessment body which has not been accredited by an accreditation body of that Party.

6. Further to Articles 6.1 and 6.3 of the TBT Agreement, a Party shall ensure, whenever possible, that results of the conformity assessment procedures in the other Party are accepted, even when those procedures differ from its own, provided it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.³ A Party shall, upon request of the other Party, explain its reasons for not accepting the results of a conformity assessment procedure conducted in the other Party.
7. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. For example:
 - (a) a Party may agree with the other Party to accept the results of conformity assessment procedures that conformity assessment bodies located in the other Party's territory conduct for specific technical regulations;
 - (b) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the other Party's territory;
 - (c) a Party may recognise the results of conformity assessment procedures conducted in the other Party's territory;
 - (d) conformity assessment bodies located in the territory of either Party may enter into voluntary arrangements to accept the results of each other's assessment procedures; and
 - (e) the importing Party may rely on a supplier's declaration of conformity.
8. The Parties shall exchange information on the range of mechanisms relevant to conformity assessment procedures in their respective territories with a view to facilitating the acceptance of conformity assessment results.
9. A Party shall, if it considers appropriate and in accordance with its laws and regulations, permit participation of conformity assessment bodies which are located in the territory of the other Party, in its conformity assessment procedures for the sectors set out in Annex 7A (Product Sectors), under conditions no less favourable than those accorded to conformity assessment bodies located in the territory of the permitting Party.
10. Where a Party permits participation of its conformity assessment bodies and does not permit participation of conformity assessment bodies of the other Party in its conformity assessment procedures as referred to in paragraph 9, it shall, upon reasonable written request of the other Party, explain the reason for its refusal in writing.
11. The Parties recognise the important role that relevant regional or international organisations can play in cooperation in the area of conformity assessment. In this regard, each Party shall take into consideration the participation status or

³ For greater certainty, it is recognised that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding.

membership in such organisations of relevant bodies in the Parties in facilitating this cooperation.

12. The Parties shall encourage cooperation between their relevant conformity assessment bodies in working closer on matters such as the acceptance of conformity assessment results between Parties.
13. The Parties shall exchange information on accreditation policy and promote the use of accreditation to facilitate acceptance of conformity assessment results and consider how to make best use of international standards for accreditation and international agreements involving the Parties' accreditation bodies, for example, through the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement or the International Accreditation Forum Multilateral Arrangement. Each Party shall use accreditation with authority derived from its government or performed by its government, as appropriate, as a means to demonstrate the technical competence of a conformity assessment body.

Article 7.8 **Marking and Labelling**

1. Each Party shall ensure that its technical regulations concerning product marking and labelling:
 - (a) accord treatment no less favourable than that accorded to like goods of national origin; and
 - (b) do not create unnecessary obstacles to trade between the Parties.
2. In particular, if a Party requires marking or labelling of a product in the form of a technical regulation:
 - (a) the Party shall accept that labelling and corrections to labelling may take place in custom warehouses or other designated areas in the country of import, subject to its relevant laws, regulations, and customs procedures, as an alternative to labelling and corrections to labelling in the country of origin, unless such labelling and corrections to labelling are required to be carried out by approved persons for reasons of public health or safety;
 - (b) the Party shall, unless it considers that legitimate objectives under the TBT Agreement are compromised thereby, endeavour to accept supplementary, non-permanent, or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product; and
 - (c) provided that it is not misleading, contradictory, inconsistent or confusing, or that the Party's legitimate objectives are not compromised, the importing Party shall permit the following in relation to the information it requires:

- (i) information in other languages in addition to the language required in the Party;
 - (ii) internationally accepted nomenclatures, pictograms, symbols, or graphics in addition to those required in the Party; and
 - (iii) additional information to that required in the Party.
- 3. A Party shall, where feasible, not require any prior approval, registration or certification of markings or the labels of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless necessary to fulfil its legitimate objectives.

Article 7.9 Transparency

1. The Parties recognise the importance of the provisions relating to transparency in the TBT Agreement. In this respect, the Parties shall take into account 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, issued by the WTO Committee on Technical Barriers to Trade.
2. Upon request, a Party shall provide, if already available, the full text or summary of its notified technical regulations and conformity assessment procedures in English. If unavailable, the Party shall provide a summary stating the requirements of the notified technical regulations and conformity assessment procedures to the requesting Party in English within a reasonable period of time agreed between the Parties and, if possible, no later than 30 days after receiving the written request. In implementing the preceding sentence, the contents of the summary shall be determined by the responding Party.
3. Unless otherwise provided for in this Chapter, any information or explanation requested by a Party pursuant to this Chapter shall be provided by the other Party in English, in print or electronically, within a reasonable period of time mutually agreed by the Parties and, if possible, within 60 days of the request.
4. Each Party shall allow persons of the other Party to participate in the consultation procedures which are available to the general public for the development of technical regulations, national standards and conformity assessment procedures, subject to its laws and regulations or administrative arrangements on terms no less favourable than those accorded to its own persons.
5. A Party making a notification in accordance with Article 2.9.2 or Article 5.6.2 of the TBT Agreement shall include in the notification a statement describing the objective of the proposal and the rationale for the approach the Party is proposing.
6. Each Party shall normally allow 60 days from the date of notification to the WTO in accordance with Articles 2.9 and 5.6 of the TBT Agreement for the other Party to make comments in writing, except where urgent problems of

safety, health, environmental protection, or national security arise or threaten to arise. A Party shall give positive consideration to a reasonable request from the other Party to extend the comment period.

7. Each Party shall take the comments of the other Party into account and shall endeavour to provide a response to these comments upon request of the other Party.
8. Upon request of the other Party, a Party shall provide the other Party with information regarding the objective of, and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.
9. Each Party shall 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. Each Party shall publish, preferably by electronic means, in at least one 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 level of 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.⁴ These publications shall be made available in English.
11. Each Party shall take such reasonable measures as may be available to it to ensure that, 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 its regional level of governments are published, and are accessible through an official website or journal.
12. For the purposes of applying Article 2.12 and Article 5.9 of the TBT Agreement, the term “reasonable interval” shall mean 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.
13. When a Party detains at the point of entry an imported consignment, due to noncompliance with a technical regulation or a conformity assessment procedure, it shall notify the importer or its representative, as soon as possible, the reasons for the detention.

⁴ 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.

Article 7.10
Cooperation and Trade Facilitation

1. The Parties shall strengthen their cooperation in the fields of technical regulations, standards, and conformity assessment procedures with a view to facilitating trade between the Parties.
2. A Party shall, upon request of the other Party, give consideration to sector specific proposals, for cooperation under this Chapter on matters of mutual benefit.
3. The Parties shall explore opportunities to promote cooperation between themselves, and between bodies in each Party's territory to develop technical regulations, standards, and conformity assessment procedures.

Article 7.11
Technical Discussions

1. A Party may request technical discussions with the other Party with the aim of resolving any matter that arises under this Chapter.
2. Unless the Parties agree otherwise, the Parties shall hold technical discussions within 60 days of the request for technical discussions, and by any agreed method. The Parties shall endeavour to reach a mutually satisfactory solution to the matter as expeditiously as possible and if the requesting Party considers that the matter is urgent, it may request that any discussions commence within a shorter timeframe. In that case, the responding Party shall give positive consideration to this request.
3. For greater certainty, a Party may request technical discussions with the other Party regarding technical regulations or conformity assessment procedures of its regional level of government that may have a significant effect on trade.
4. Information provided in the course of technical discussions is provided in confidence and the other Party shall maintain the confidentiality of the information subject to its laws and regulations.
5. Unless the Parties agree otherwise, technical discussions shall be 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. Any request for information or technical discussions and communications shall be conveyed through the respective contact points designated pursuant to Article 7.12 (Contact Points).

Article 7.12
Contact Points

1. Each Party shall designate and notify contact points for matters arising under this Chapter, in accordance with Article 27.5 (Contact Points – Administrative and Institutional Provisions).
2. A Party shall promptly notify the other Party of any change of its contact points or the details of the relevant officials.
3. The responsibilities of each contact point shall include communicating with the other Party's contact points, including facilitating discussions, requests, responses to requests from relevant government agencies, and the timely exchange of information on matters arising under this Chapter.

Article 7.13
Subcommittee on Standards, Technical Regulations, and Conformity
Assessment Procedures

1. The Parties hereby establish a Subcommittee on Standards, Technical Regulations, and Conformity Assessment Procedures, consisting of representatives of the Parties.
2. The Subcommittee shall meet at such venues and times as mutually determined by the Parties. Meetings may be conducted in person, or by any other means as mutually determined by the Parties.
3. The functions of the Subcommittee may include:
 - (a) monitoring the implementation and operation of this Chapter;
 - (b) coordinating cooperation pursuant to Article 7.10 (Cooperation and Trade Facilitation);
 - (c) facilitating technical discussions;
 - (d) reporting, where appropriate, its findings to the Committee on Trade in Goods; and
 - (e) carrying out other functions as may be delegated by the Committee on Trade in Goods.