

CHAPTER FOUR

TECHNICAL BARRIERS TO TRADE

Article 4.1

Objectives

The objective of this Chapter is to facilitate and increase trade in goods between the Parties, by providing a framework to prevent, identify and eliminate unnecessary barriers to trade within the scope of the TBT Agreement.

Article 4.2

Scope and Definitions

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures as defined in Annex 1 of the TBT Agreement, which may affect trade in goods between the Parties, regardless of the origin of those goods.
2. Notwithstanding paragraph 1, this Chapter does not apply to:
 - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; or
 - (b) sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement which are covered by Chapter Five of this Agreement.
3. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement shall apply.

Article 4.3

Affirmation of the TBT Agreement

The 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 4.4

Joint Cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.
2. The Parties shall seek to identify and develop regulatory cooperation initiatives appropriate for the particular issues or sectors which may include, but are not limited to:
 - (a) exchanging information and experiences on the preparation and application of their technical regulations and the use of good regulatory practice;

- (b) where appropriate, simplifying technical regulations, standards and conformity assessment procedures;
 - (c) avoiding unnecessary divergence in their approaches to technical regulations and conformity assessment procedures, and working towards the possibility of converging or aligning technical regulations with international standards;
 - (d) encouraging cooperation between their respective bodies, public or private, responsible for metrology, standardisation, testing, certification and accreditation;
 - (e) ensuring efficient interaction of regulatory authorities at national, regional and international levels, for instance, by referring enquiries from a Party to the appropriate regulatory authorities; and
 - (f) exchanging information on developments in relevant regional and multilateral *fora* related to standards, technical regulations and conformity assessment procedures.
3. Upon request, a Party shall give appropriate consideration to proposals that the other Party makes for cooperation under the terms of this Chapter.

Article 4.5

Standards

1. The Parties affirm their obligations under Article 4.1 of the TBT Agreement to ensure that their standardising bodies accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards in Annex 3 to the TBT Agreement.
2. With a view to harmonising standards on as wide a basis as possible, the Parties shall encourage their standardising bodies, as well as the regional standardising bodies of which they or their standardising bodies are Members, to cooperate with the relevant standardisation bodies of the other Party in international standardisation activities.
3. The Parties undertake to exchange information on:
 - (a) their use of standards in support of technical regulations;
 - (b) each other's standardisation processes, and the extent of use of international standards or regional standards as a base for their national standards; and
 - (c) cooperation agreements implemented by either Party on standardisation, provided the information can be made available to the public.

Article 4.6

Technical Regulations

The Parties agree to make best use of good regulatory practice with regard to the preparation, adoption and application of technical regulations, as provided for in the TBT Agreement including:

- (a) when developing a technical regulation, to consider, *inter alia*, the impact of the envisaged technical regulation and the available regulatory and non-regulatory alternatives to the proposed technical regulation which may fulfil the Party's legitimate objectives;

- (b) consistent with Article 2.4 of the TBT Agreement, to use, to the maximum extent possible, relevant international standards as a basis for their technical regulations, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued; where international standards have not been used as a basis, to explain upon request to the other Party the reasons why such standards have been considered inappropriate or ineffective for the aim pursued; and
- (c) consistent with Article 2.8 of the TBT Agreement, wherever appropriate, to specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

Article 4.7

Conformity Assessment Procedures

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures, including:
 - (a) the importing Party's reliance on a supplier's declaration of conformity;
 - (b) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;
 - (c) use of accreditation procedures to qualify conformity assessment bodies;
 - (d) government designation of conformity assessment bodies, including bodies located in the territory of the other Party;
 - (e) unilateral recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;
 - (f) voluntary arrangements between conformity assessment bodies in the respective territories of each Party; and
 - (g) use of regional or international multilateral recognition agreements and arrangements of which the Parties are parties.
2. Having regard in particular to those considerations, the Parties shall:
 - (a) intensify their exchange of information on these and other mechanisms with a view to facilitating the acceptance of conformity assessment results;
 - (b) exchange information on the criteria used to select appropriate conformity assessment procedures for specific products and, in line with Article 5.1.2 of the TBT Agreement, require that conformity assessment procedures are not more strict or applied more strictly than necessary to give the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create;
 - (c) exchange information on accreditation policy and consider how to make the best use of international standards for accreditation and international agreements involving the Parties' accreditation bodies, for example through the mechanisms of the International Laboratory Accreditation Co-operation and the International Accreditation Forum; and
 - (d) ensure that, insofar as two or more conformity assessment bodies are authorised by a Party to carry out conformity assessment procedures required

for placing the product on the market, economic operators may choose among them.

3. The Parties reaffirm their obligation under Article 5.2.5 of the TBT Agreement that fees imposed for mandatory conformity assessment of imported products shall be equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body.
4. Upon request by either Party, the Parties 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. The Party making the request should substantiate it with relevant information on how this sectoral initiative would facilitate trade between the Parties. In these consultations, all mechanisms described in paragraph 1 may be considered. Where a Party declines such a request from the other Party, it shall, upon request, explain its reasons.

Article 4.8

Transparency

The Parties reaffirm their transparency obligations under the TBT Agreement with regard to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures, and agree:

- (a) where a part of the process of developing a technical regulation is open to public consultation, to take the other Party's views into account and, without discrimination, to provide reasonable opportunities for the other Party and its interested persons to make comments;
- (b) when making notifications in accordance with Article 2.9 of the TBT Agreement, to allow at least sixty days following the notification for the other Party to provide comments in writing on the proposal and where practicable, to give appropriate consideration to reasonable requests for extending the comment period;
- (c) to allow sufficient time between the publication of technical regulations and their entry into force for economic operators of the other Party to adapt, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise; and
- (d) to make available to the other Party or its economic operators relevant information (for example through a public website, if available) on technical regulations, standards and conformity assessment procedures in force and, as appropriate and available, written guidance on compliance with its technical regulations, upon request and without undue delay.

Article 4.9

Market Surveillance

The Parties undertake to exchange information on market surveillance and enforcement activities.

Article 4.10

Marking and Labelling

1. The Parties note that, according to paragraph 1 of Annex 1 of the TBT Agreement, a technical regulation may include or deal exclusively with marking or labelling requirements, and they agree that, where their technical regulations contain mandatory marking or labelling, they will ensure that these are not prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and should not be more trade restrictive than necessary to fulfil a legitimate objective, as referred to under Article 2.2 of the TBT Agreement.
2. The Parties agree that where a Party requires mandatory marking or labelling of products:
 - (a) the Party shall endeavour to restrict its requirements only to those which are relevant for consumers or users of the product or to indicate the product's conformity with the mandatory requirements;
 - (b) the Party may specify the information to be provided on the label and may require compliance with certain regulatory requirements for the affixing of the label, but shall not require any prior approval or certification of labels and markings as a precondition for sale of the products on its market unless this is deemed necessary in the light of the risk of the product to human, animal or plant health or life;
 - (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 it is not misleading, contradictory or confusing in relation to the information required in the importing Party of the goods, the Party shall permit the following:
 - (i) information in other languages in addition to the language required in the importing Party of the goods;
 - (ii) internationally-accepted nomenclatures, pictograms, symbols or graphics;
 - (iii) additional information to that required in the importing Party of the goods;
 - (e) the Party shall accept that labelling, including re-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 Party prior to the distribution and sale of the product as an alternative to labelling in the place of origin, unless such labelling is required to be carried out in the place of origin for reasons of public health or safety; and
 - (f) the Party shall, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.
3. Without prejudice to the Parties' rights and obligations under the WTO Agreement, paragraph 2 shall apply to agricultural products, industrial products, and processed agricultural food products including beverages and spirits.

Article 4.11

Contact Points

The functions of the contact points designated in accordance with Article 13.4 (Enquiries and Contact Points) shall include:

- (a) monitoring the implementation and administration of this Chapter;
- (b) promptly addressing any issue that the other Party raises related to the development, adoption, application, or enforcement of standards, technical regulations or conformity assessment procedures;
- (c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
- (d) exchanging information on standards, technical regulations, and conformity assessment procedures;
- (e) facilitating cooperation activities, as appropriate, in accordance with paragraph 2 of Article 4.4 (Joint Cooperation); and
- (f) arranging the establishment of *ad hoc* working groups at the request of either Party, in order to explore ways to facilitate trade between the Parties.

Article 4.12

Final Provisions

1. The Parties may discuss in the Committee on Trade in Goods established pursuant to Article 16.2 (Specialised Committees) any implementing arrangements arising from this Chapter. The Parties may, by decision in that Committee, adopt any implementing measure required to this effect.
2. The Parties have undertaken further commitments on sector-specific non-tariff measures on goods as set out in Annex 4-A and the Appendices pertaining thereto.