

APPENDIX 3

NEW CHAPTER 8 (TECHNICAL BARRIERS TO TRADE)

CHAPTER 8

TECHNICAL BARRIERS TO TRADE

Article 1 Definitions

For the purposes of this Chapter, the definitions set out in Annex 1 of the TBT Agreement shall apply. In addition:

competent authorities means the authorities described in *Implementing Arrangement: Chapter 8 A* that have responsibility for implementing this Chapter;

consigned directly in relation to goods means:

- (a) goods that are transported without passing through the territory of a non-Party; or
- (b) goods whose transport involves transit through one or more non-Parties with or without trans-shipment or temporary storage of up to 6 months in such non-Parties, provided that:
 - (i) the goods do not enter into trade or commerce there; and
 - (ii) the goods do not undergo any operation there other than unloading and reloading, repacking, or any operation required to keep them in good condition;

technical regulations also include standards that regulatory authorities recognise as meeting the mandatory requirements related to performance based regulations;

TBT Agreement means the *Agreement on Technical Barriers to Trade*, which is part of the WTO Agreement.

Article 2 Objectives

1. The objectives of this Chapter are to:
 - (a) increase and facilitate trade through furthering the implementation of the TBT Agreement;
 - (b) reduce, wherever possible, unnecessary costs associated with trade between the Parties; and
 - (c) promote regulatory cooperation to manage risks to health, safety and the environment.

2. These objectives will be achieved by:
 - (a) a framework and supporting mechanisms to address the impact of technical barriers to trade in goods;
 - (b) enhancing cooperation between the regulatory authorities of the Parties and standards and conformance bodies responsible for standards, technical regulations and conformity assessment procedures applicable to goods; and
 - (c) eliminating unnecessary technical barriers to trade in goods between the Parties.

Article 3 Affirmation of TBT Agreement

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement including the rights and obligations related to special and differential treatment and technical assistance to developing country Members.

Article 4 Scope

1. This Chapter applies to all standards, technical regulations and conformity assessment procedures that may, directly or indirectly, affect the trade in goods between the Parties, except as provided in paragraphs 2 and 3.
2. This Chapter does not apply to purchasing specifications prepared by governmental entities for production or consumption requirements of such entities of products purchased for governmental purposes and not with a view to commercial resale or with a view to use in the production of goods for commercial sale.
3. This Chapter does not apply to sanitary and phytosanitary measures which are covered by Chapter 7 (Sanitary and Phytosanitary Measures).
4. Nothing in this Chapter shall prevent a Party from adopting or maintaining, in accordance with its rights and obligations under the TBT Agreement, technical regulations, standards and conformity assessment procedures.

Article 5 Application

This Chapter applies to all goods that are manufactured or assembled in the territory of one or both Parties and are consigned directly between the Parties.

Article 6 International Standards

1. The Parties shall use international standards, or the relevant parts of international standards, as a basis for their technical regulations and related conformity assessment procedures where relevant international standards exist or their completion is imminent, except when such international standards or their relevant parts are ineffective or inappropriate to fulfil legitimate regulatory objectives.

2. The Parties shall cooperate with each other, where appropriate, in the context of their participation in international standardising bodies, to ensure that international standards developed within such organizations, that are likely to become a basis for technical regulations, are trade facilitating and do not create unnecessary obstacles to international trade.

3. The Parties shall strengthen communications and coordination with each other, where appropriate, in the context of discussions on international standards and related issues in other international forums, such as the WTO Committee on Technical Barriers to Trade (“WTO TBT Committee”).

Article 7 Equivalence of Technical Regulations

1. Consistent 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 those technical regulations produce outcomes that are equivalent to those produced by its own technical regulations in meeting its legitimate objectives and achieving the same level of protection.

2. A Party shall, upon the request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

3. The Parties shall strengthen communications and coordination with each other, where appropriate, in the context of discussions on the equivalence of technical regulations and related issues in international forums, such as the WTO TBT Committee.

Article 8 Regulatory Cooperation

1. Recognising the important relationship between good regulatory practices and trade facilitation, the Parties agree to seek to cooperate in the areas of standards, technical regulations, and conformity assessment to:

- (a) promote good regulatory practice based on risk management principles;
- (b) improve the quality and effectiveness of their technical regulations;

- (c) develop joint initiatives, where the Parties consider it appropriate, for managing risks relating to health, safety, the environment and deceptive practices;
- (d) build understanding and capacity to promote better regulatory compliance.

2. The Parties shall seek to implement paragraph 1 by establishing work programmes under Article 14 of this Chapter, including to:

- (a) exchange information on:
 - (i) regulatory systems;
 - (ii) incident analysis;
 - (iii) hazard alerts;
 - (iv) product bans and recalls;
 - (v) domestic practices and programmes for product surveillance activities;
 - (vi) appropriate market information material on request; and
 - (vii) reviews of technical regulations and their implementation.
- (b) cooperate on:
 - (i) good regulatory practice; and
 - (ii) the development and implementation of risk management principles including product monitoring, safety, compliance and enforcement practices.

3. Where goods are covered by an Annex or Implementing Arrangement to this Chapter and a Party takes a measure to manage an urgent problem that it considers those goods may pose to health, safety or the environment, it shall notify the other Party, through the contact point established under Article 14 of this Chapter, of the measure and the reasons for the imposition of the measure, within the time limit specified in the relevant Annex or Implementing Arrangement.

Article 9 Conformity Assessment Procedures

1. The Parties agree to seek to increase efficiency, avoid duplication and ensure cost effectiveness through an appropriate range of mechanisms, including, but not limited to:

- (a) cooperation between accreditation agencies of the Parties and recognition of cooperative arrangements between those agencies including arrangements to enhance the effectiveness of the *International Laboratory Accreditation Cooperation Mutual Recognition Arrangement* and *Asia-Pacific Laboratory Accreditation Cooperation Mutual Recognition Arrangement*;
- (b) implementing unilateral recognition by one Party of the results of conformity assessments performed in the other Party's territory, where appropriate;
- (c) implementing mutual recognition of conformity assessment procedures conducted by bodies located in the respective territories of the Parties;
- (d) recognising accreditation procedures for qualifying conformity assessment bodies;
- (e) supporting government recognition of conformity assessment bodies; and
- (f) accepting suppliers' declarations of conformity, where appropriate.

2. The Parties shall seek to ensure that conformity assessment procedures applied between them facilitate trade by ensuring that they are no more restrictive than is necessary to provide an importing Party with confidence that products conform with the applicable technical regulations, taking into account the risk that non-conformity would create. Any agreements or arrangements on mutual recognition of conformity assessment concluded between the Parties under this Agreement shall be included in Annexes and Implementing Arrangements to this Chapter pursuant to Article 16 of this Chapter.

3. The Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, as appropriate to enhance confidence in the continued reliability of each other's conformity assessment results, before accepting results of a conformity assessment procedure.

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

5. Each Party shall accredit or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory.

6. If a Party accredits, or otherwise recognises a body assessing conformity with a particular technical regulation or standard and it refuses to accredit or otherwise recognise a body of the other Party assessing conformity with that technical regulation or standard, it shall, on request, explain the reasons for its refusal.

7. Each Party shall ensure that conformity assessment procedures are prepared, adopted and applied so as to grant access of like products originating in the territory of the other Party under conditions no less favourable than those accorded to suppliers of like products of national origin in a comparable situation.

8. The Parties shall seek to cooperate in coordinating their procedures for issuing approvals of products, or otherwise recognising compliance with their mandatory requirements, with the objectives of reducing compliance and administrative costs, and for the effective monitoring of compliance with their legitimate regulatory objectives.

9. Where a Party declines a request from the other Party to enter into negotiations on facilitating recognition of the results of conformity assessment procedures conducted by bodies of the other Party, it shall, on request, explain its reasons.

10. The Parties shall ensure that any fees imposed for assessing the conformity of products originating in the territory of the other Party are 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 the costs arising from differences between location of facilities of the applicant and the conformity assessment body.

11. The Parties, on request, shall notify each other of:

- (a) any fees imposed for mandatory conformity assessments; and
- (b) the anticipated processing period for any mandatory conformity assessments.

Article 10 Measures at the Border

Where a Party detains, at a port of entry, goods including testing samples for conformity assessment exported from the other Party due to a perceived failure to comply with a technical regulation or conformity assessment procedures, the reasons for the detention shall be promptly notified to the importer or their representative.

Article 11 Marking and Labelling

1. For the purposes of this Article, and in accordance with paragraph 1 of Annex 1 to the TBT Agreement, a technical regulation may include or deal exclusively with marking or labelling requirements.

2. Each Party shall, in accordance with Article 2.2 of the TBT Agreement, ensure that technical regulations, including mandatory marking or labelling of products, are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, such technical regulations shall not be more trade restrictive than necessary to fulfil a legitimate objective.

3. Where a Party requires mandatory marking or labelling of products:

- (a) that Party shall endeavour to minimize the requirements for marking or labelling except for marking or labelling relevant to consumers or users of the product;
- (b) that Party may specify the form of labels or markings in a reasonable manner or require prior approval of the specific information to be provided on the label or marking in light of relevant domestic regulation, but shall not require any prior approval, registration or certification for such labels or markings;
- (c) that Party shall, where it requires a unique identification number to be affixed to products, issue a unique identification number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (d) the Party may require that information on the marks or labels be in a specified language. Where an international system of nomenclature has been accepted by the Parties, such nomenclature may be used. The Parties shall not prohibit the simultaneous use of additional languages, provided that:
 - (i) the information provided in the other languages is identical to that provided in the specified language; or
 - (ii) the information provided in the additional language does not constitute a deceptive statement regarding the product; and
- (e) the Party shall, where it considers that legitimate objectives in accordance with the TBT Agreement are not compromised, endeavour to accept non-permanent or detachable labels.

Article 12 Transparency

1. In order to enhance the opportunity for the Parties and interested persons to provide meaningful comments, a Party publishing a notice under Article 2.9 or 5.6 of the TBT Agreement shall:

- (a) include in the notice a statement describing the objective of the proposal and the rationale for the approach that the Party is proposing;
- (b) at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement, transmit the notification electronically to the other Party through its enquiry point established under Article 10 of the TBT Agreement; and
- (c) on request, make the text of any technical regulations and conformity assessment procedures based on a proposal available electronically to the other Party as soon as practicable after it becomes publicly available.

2. Each Party should allow at least 60 days from the transmission of the notification under paragraph 1(b) above for the other Party and interested persons to make comments on the proposal in writing.

3. A Party making a notification shall give timely and reasonable consideration to the comments of the other Party.

4. A Party shall explain its reasons for not accepting the comments of the other Party and transmit to the other Party through the enquiry point an electronic copy of the final proposal.

5. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party electronically, through its enquiry point referred to under paragraph 1(b).

6. Where a Party makes a notification under Article J of Annex 3 of the TBT Agreement, it shall transmit the notification electronically to the other Party through its enquiry point referred to in paragraph 1(b).

7. Each Party shall notify the other Party in a timely manner of up-to-date lists of accredited and/or designated certification bodies and testing laboratories and the respective conformity assessments that they are accredited and/or designated to undertake.

8. The Parties shall, through the contact points, exchange lists, which are updated in a timely manner, of:

- (a) the mandatory requirements for conformity assessment procedures under their respective technical regulations that are within the scope specified in *Implementing Arrangement: Chapter 8 B*; and
- (b) the test facilities and certification bodies that are accredited and/or designated to undertake those conformity assessment procedures.

9. The Parties shall seek to develop Implementing Arrangements that set out the criteria and processes for exchanging, on request and in relation to products or mandatory requirements not covered by paragraph 8, information on any conformity assessment procedures that are required under applicable technical regulations and the list of test facilities and certification bodies that are accredited and/or designated to undertake those conformity assessment procedures.

10. Each Party shall make available to the other Party, electronically or in any other form, up-to-date publications on technical regulations and any relevant standards or conformity assessment procedures that are cited in, or may be used to comply with, those technical regulations.

Article 13 Technical Assistance

1. Each Party recognises the rights and obligations relating to technical assistance in the TBT Agreement, especially for developing country Members. The Parties, through the Joint TBT Committee established under Article 14 of this Chapter, shall jointly decide technical assistance projects in the field of technical barriers to trade for the purposes of implementing this Chapter. Such technical assistance projects may include, but are not limited to:

- (a) providing training programmes for government officials;
- (b) providing training programmes for technical personnel, including but not limited to inspection and test technical personnel, and standardisation personnel;
- (c) providing technical assistance in the development and improvement of technical regulations and conformity assessment procedures;
- (d) assisting to design and implement programmes to substantially improve a Party's ability to participate in international standardisation activities and the activities of international conformity assessment organizations; and
- (e) any other forms of technical assistance jointly decided by the Parties.

2. The details of any technical assistance projects may be set out in *Implementing Arrangement: Chapter 8 C*.

Article 14 Implementation

1. The Parties hereby establish a Joint Technical Barriers to Trade Committee (“the Joint TBT Committee”) which shall be co-chaired by senior officials of the competent authorities.

2. The Joint TBT Committee shall:

- (a) take any action it decides appropriate for the implementation of this Chapter;
- (b) establish working groups to consider issues relating to:
 - (i) WTO enquiry and notification points;
 - (ii) standardisation; and
 - (iii) accreditation and conformity assessment;
- (c) identify priority sectors for enhanced cooperation, including giving favourable consideration to any sector-specific proposal made by either Party;
- (d) establish ad hoc working groups to develop and implement work programmes with clear targets, design structures and timelines in priority sectors;
- (e) monitor the progress of work programmes and the implementation of Annexes and Implementing Arrangements;
- (f) consult with a view to resolving any matter arising under this Chapter, in accordance with Article 15 of this Chapter;
- (g) review this Chapter in light of any developments under the TBT Agreement, and develop recommendations for amendments to this Chapter in light of those developments;
- (h) take any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them; and
- (i) report to the FTA Joint Commission on the implementation of this Chapter, as it considers appropriate.

3. After obtaining any necessary authorisation from their respective competent authorities, the Joint TBT Committee may:

- (a) initiate and develop proposals for the conclusion of new Annexes to this Chapter in accordance with Article 16.1 of this Chapter and review existing Annexes with a view to developing proposals for their amendment, and submit any such proposals to the FTA Joint Commission for approval; and
- (b) initiate, develop, conclude, review and modify Implementing Arrangements in accordance with Article 16.2 of this Chapter.

4. The Joint TBT Committee shall conduct meetings to promote and monitor the implementation and administration of this Chapter at least once a year, or more frequently on the request of one of the Parties, via teleconference, video-conference or any other means mutually determined by the Parties.

5. The Parties shall ensure that the persons and organizations in their respective territories that have responsibility for relevant standards, technical regulations and conformity assessment procedures including accreditation, shall participate in working groups or other consultations decided by the Joint TBT Committee as appropriate where the Joint TBT Committee has:

- (a) identified a priority sector for enhanced cooperation under paragraph 2(c);
- (b) established a work programme under paragraph 2(d); or
- (c) been requested to undertake technical consultations under Article 15 of this Chapter.

6. Each Party shall establish a contact point which shall have responsibility to coordinate the implementation of this Chapter.

7. The Parties shall provide each other with the name of the governmental organization that shall be their contact points and the contact details of relevant officials in that organization, including telephone, fax, email and other relevant details.

8. The Parties shall notify each other promptly of any change of their contact points or any amendments to the details of the relevant officials.

9. For the purposes of implementing this Chapter, the contact point of each Party shall:

- (a) coordinate participation in work programmes established under paragraph 2 with persons and organizations in their respective territories that have responsibility for accreditation or relevant regulations;
- (b) ensure appropriate steps are taken to consider any issue that a Party may raise related to the development, adoption, application or

enforcement of technical regulations and conformity assessment procedures;

- (c) facilitate, where appropriate, sectoral cooperation between governmental and non-governmental regulatory authorities, accreditation agencies and conformity assessment bodies in the Parties' territories; and
- (d) exchange information on developments in non-governmental, regional and multilateral fora engaged in activities related to standardisation, technical regulations and conformity assessment procedures.

Article 15 Technical Consultations

1. Either Party may request technical consultations in accordance with Article 14.2(f) of this Chapter and unless the Parties mutually determine otherwise, the Parties shall hold technical consultations within 60 days from the request for technical consultations by email, teleconference, video-conference, or through any other means, as mutually determined by the Parties.

2. Where either Party has requested technical consultations on the application of any technical regulation or the recognition of any standard or conformity assessment procedure, the other Party shall investigate the issues that gave rise to the request for consultations, shall address any irregularities in the implementation of its technical regulations or conformity assessment procedures, and shall report back to the other Party on the outcome of its investigations, stating its reasons.

3. Technical consultations held pursuant to this Article are without prejudice to the rights and obligations of the Parties under Chapter 16 (Dispute Settlement).

Article 16 Annexes and Implementing Arrangements

1. The Parties may conclude Annexes to this Chapter setting out agreed principles and procedures relating to technical regulations and conformity assessments applicable to goods traded between them.

2. The Parties may, through the Joint TBT Committee, conclude Implementing Arrangements setting out:

- (a) details for the implementation of the Annexes to this Chapter;
- (b) arrangements on information exchange reached in accordance with Article 12 of this Chapter;
- (c) arrangements on technical assistance reached in accordance with Article 13 of this Chapter; or

- (d) arrangements resulting from work programmes established under Article 14 of this Chapter.

3. The Parties acknowledge that Annexes and Implementing Arrangements concluded in accordance with this Chapter may take the form of a variety of mechanisms. This may include the use of asymmetrical approaches, where appropriate.

4. The Parties agree to maintain a programme of ongoing review and enhancement of Annexes and Implementing Arrangements concluded in accordance with this Chapter.