

## CHAPTER 9

### TECHNICAL BARRIERS TO TRADE

#### ARTICLE 9.1

##### Objectives

The objectives of this Chapter are to facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade, and to enhance cooperation between the Parties in matters covered by this Chapter.

## ARTICLE 9.2

### Scope

1. This Chapter applies to the preparation, adoption and application of all technical regulations, standards and conformity assessment procedures as defined in Annex 1 to the TBT Agreement that may affect trade in goods between the Parties.
2. This Chapter does not apply to:
  - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of bodies to which Chapter 14 (Public procurement) applies;  
or
  - (b) SPS measures to which Chapter 6 (Sanitary and phytosanitary measures) applies.

## ARTICLE 9.3

### Relation to the TBT Agreement

1. Articles 2 to 9 of and Annexes 1 and 3 to the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

2. Terms used in this Chapter, including in the Annexes to this Chapter, shall have the same meaning as they have in the TBT Agreement.

#### ARTICLE 9.4

##### Technical regulations

1. Further to Article 22.8 (Impact assessment), each Party shall endeavour to carry out an impact assessment of planned technical regulations falling within the scope of regulatory measures defined in point (b) of Article 22.2 (Definitions) that may have a significant impact on trade, in accordance with its rules and procedures. For greater certainty, this paragraph also applies to conformity assessment procedures that are part of such technical regulations.

2. If an impact assessment is carried out pursuant to paragraph 1 of this Article, then, further to point (b) of Article 22.8(2) (Impact assessment), each Party shall assess the feasible and appropriate regulatory and non-regulatory options for the proposed technical regulation that may fulfil the Party's legitimate objectives in accordance with Article 2.2 of the TBT Agreement. For greater certainty, such obligation to assess also applies to conformity assessment procedures that are part of such technical regulations.

3. Further to Articles 2.3 and 2.4 of the TBT Agreement, each Party shall review its technical regulations from time to time. In undertaking such a review, each Party shall, *inter alia*, give positive consideration to increasing convergence with relevant international standards, taking into account any new development as regards the relevant international standards and whether previous circumstances that gave rise to divergences from any relevant international standard continue to exist.

4. Without prejudice to Chapter 22 (Good regulatory practices and regulatory cooperation), when developing major technical regulations that may have a significant effect on trade, each Party shall, as required by its rules and procedures, allow persons of the Parties to provide input through a public consultation process, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Each Party shall allow persons of the other Party to participate in such consultations on terms no less favourable than those accorded to its own persons, and shall make the results of that consultation process public.

## ARTICLE 9.5

### International standards

1. International standards developed by the International Organization for Standardization (ISO), the International Electrotechnical Commission (hereinafter referred to as "IEC"), the International Telecommunication Union (ITU), and the Codex Alimentarius Commission (Codex) shall be considered as the relevant international standards within the meaning of Article 2 and Article 5 of, and Annex 3 to, the TBT Agreement provided that they comply with the conditions set out in paragraph 2 of this Article.

2. A standard developed by an international organisation, other than those referred to in paragraph 1, may also be considered a relevant international standard within the meaning of Article 2 and Article 5 of and Annex 3 to the TBT Agreement, provided that:

- (a) it has been developed by a standardisation body which seeks to establish consensus either:
  - (i) among national delegations of the participating WTO Members representing all the national standards bodies in their territory that have adopted, or expect to adopt, standards for the subject matter to which the international standardisation activity relates; or
  - (ii) among governmental bodies of participating WTO Members; and
- (b) it has been developed in accordance with the Decision of the Committee on Technical Barriers to Trade established by Article 13 of the TBT Agreement on Principles for the Development of International Standards, Guides and Recommendations in relation to Article 2 and Article 5 of and Annex 3 to the TBT Agreement.

3. If a Party has not used international standards as a basis for its technical regulations and related conformity assessment procedures, a Party shall, on request from the other Party, identify any substantial deviation from the relevant international standard and explain the reasons why such standards have been judged inappropriate or ineffective for the aim pursued, and provide the evidence on which that assessment is based, where available.

## ARTICLE 9.6

### Standards

1. With a view to harmonising standards on as wide a basis as possible, and in addition to Article 4.1 of the TBT Agreement, each Party shall encourage the standardisation bodies within its territory, as well as the regional standardisation bodies of which a Party or the standardisation bodies within its territory are members, to:

- (a) review national and regional standards that are not based on relevant international standards at regular intervals, with a view to increasing the convergence of those national and regional standards with relevant international standards, among other considerations;
- (b) cooperate with the relevant standardisation bodies of the other Party in international standardisation activities, including through cooperation in the international standardisation bodies or at regional level; and
- (c) foster bilateral cooperation with the standardisation bodies of the other Party.

2. The Parties should exchange information on:

- (a) their respective use of standards in support of technical regulations; and
- (b) their respective standardisation processes, and the extent of use of international standards, regional or subregional standards as a base for their national standards.

3. If standards are made mandatory through incorporation into or by reference in a draft technical regulation or conformity assessment procedure, the transparency obligations set out in Article 9.8 (Transparency) of this Chapter and in Article 2 or Article 5 of the TBT Agreement shall apply, to the extent permitted by applicable copyright.

## ARTICLE 9.7

### Conformity assessment

1. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:

- (a) select conformity assessment procedures proportionate to the risks involved;
- (b) accept the use of a supplier's declaration of conformity (hereinafter referred to as "SDoC"), where appropriate; and
- (c) if requested by the other Party, explain the rationale for selecting particular conformity assessment procedures for specific products.

2. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures. Such mechanisms may include:

- (a) SDoC;

- (b) recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;
- (c) cooperative and voluntary arrangements between conformity assessment bodies located in the territories of the Parties;
- (d) mutual recognition agreements for the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;
- (e) use of accreditation to qualify conformity assessment bodies; and
- (f) government designation of conformity assessment bodies.

3. If a Party requires third-party conformity assessment as a positive assurance that a product conforms with a technical regulation, and it has not reserved this task to a governmental authority as specified in paragraph 4, it shall:

- (a) give preference to the use of accreditation to qualify conformity assessment bodies;
- (b) use international standards for accreditation and conformity assessment;
- (c) where practicable, use international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation (hereinafter referred to as "ILAC") and the International Accreditation Forum (hereinafter referred to as "IAF");



- (d) encourage the use of functioning international agreements or arrangements for harmonisation, or facilitation of acceptance of conformity assessment results;
- (e) ensure that its rules and procedures do not unnecessarily restrict choice for economic operators amongst the conformity assessment bodies designated by its authorities for a particular product or set of products;
- (f) ensure that the activities of its accreditation bodies are consistent with international standards for accreditation and, in that respect, that there are no conflicts of interest between accreditation bodies and conformity assessment bodies in relation to their conformity activities, including personnel;
- (g) ensure that conformity assessment bodies carry out their activities in a manner that prevents conflicts of interests affecting the outcome of the conformity assessment;
- (h) allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party. Nothing in this point shall be construed as to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted is required to meet in order to perform the contracted tests or inspection itself; and
- (i) ensure that the details, including the scope of the designation, of the bodies that have been designated to perform such conformity assessment, are published online.

4. Nothing in this Article shall preclude a Party from requiring that conformity assessment in relation to specific products is performed by specified governmental authorities of the Party. If a Party requires conformity assessment to be performed by its specified governmental authorities, that Party shall:

- (a) limit the conformity assessment fees to the approximate cost of the services rendered and, upon the request of an applicant for conformity assessment, explain how any fees it imposes for such conformity assessment are limited to the approximate cost of services rendered; and
- (b) ensure that the conformity assessment fees are available on request, if they are not published.

5. Notwithstanding paragraphs 1, 3 and 4 of this Article, in the fields listed in Annex 9-A (Acceptance of conformity assessment (documents)) in respect of which the Union accepts SDoC, New Zealand shall, if it considers non-first-party conformity assessment necessary as an assurance that a product conforms with the requirements of New Zealand's technical regulations, accept:

- (a) certificates and test reports issued by conformity assessment bodies that are located in the territory of the Union and that have been accredited by an accreditation body member of the international arrangements for mutual recognition of the ILAC or the IAF, or their successor bodies, or that are otherwise recognised pursuant to New Zealand's technical regulations; or
- (b) in relation to electrical safety and electromagnetic compatibility aspects, certificates and test reports that have been issued by conformity assessment bodies that are located in the territory of the Union and under the IEC System for Conformity Assessment Schemes for Electrotechnical Equipment and Components (IECEE) Certification Body (CB) Scheme.

6. SDoC is a first-party attestation of conformity issued<sup>1</sup> by the manufacturer or other authorised first-party on their sole responsibility based on the results of an appropriate type of conformity assessment activity and excluding mandatory third-party assessment.

7. The Parties shall cooperate in the field of mutual recognition in accordance with the Agreement on mutual recognition in relation to conformity assessment between the European Community and New Zealand<sup>2</sup>, done at Wellington on 25 June 1998. The Parties may also decide, in accordance with the relevant provisions of that Agreement, to extend its scope as regards the products, the applicable regulatory requirements or the recognised conformity assessment bodies.

## ARTICLE 9.8

### Transparency

1. Except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise, each Party shall allow the other Party to provide written comments on notified proposed technical regulations and conformity assessment procedures within a period of at least 60 days after the date of transmission of the notification of such regulations or procedures to the WTO Central Registry of Notifications. A Party shall give positive consideration to a reasonable request to extend that comment period.

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<sup>1</sup> Pursuant to each Party's technical regulations.

<sup>2</sup> OJ EU L 229, 17.8.1998, p. 62.

2. In the event that the notified text is not in one of the official languages of the WTO, each Party shall provide a detailed and comprehensive description of the content of the proposed technical regulation or conformity assessment procedure in the WTO notification format.
3. If a Party receives written comments on its proposed technical regulation or conformity assessment procedure from the other Party, it shall:
  - (a) if requested by the other Party, discuss the written comments with the participation of its competent regulatory authority, whenever possible, at a time when the comments can be taken into account; and
  - (b) reply in writing to significant or substantive issues presented in the comments no later than the date of publication of the technical regulation or conformity assessment procedure.
4. Each Party shall make publicly available, preferably by publishing on a website, its responses to significant or substantive issues presented in comments received from other WTO Members on its TBT notification as referred to in paragraph 1 of the proposal for the technical regulation or conformity assessment procedure.
5. If requested by the other Party, a Party shall provide information regarding the objectives of, and rationale for, any technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.
6. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are published online and are accessible free of charge.

7. Each Party shall provide information on the adoption and the entry into force of the technical regulation or conformity assessment procedure and the adopted final text through an addendum to the original notification to the WTO.

8. Further to Article 2.12 of the TBT Agreement, the term "reasonable interval" shall be understood to mean a period of not less than six months, except where this would be ineffective in fulfilling the legitimate objectives pursued.

9. A Party shall consider a reasonable request from the other Party, received prior to the end of the comment period as referred to in paragraph 1 following the transmission to the WTO Central Registry of Notifications to extend the period of time between the adoption of the technical regulation and its entry into force, except where this would be ineffective in fulfilling the legitimate objectives pursued.

## ARTICLE 9.9

### Marking and labelling

1. A technical regulation of a Party may include or deal exclusively with marking or labelling requirements. In such cases, the relevant principles of Article 2.2 of the TBT Agreement apply to these technical regulations.

2. If a Party requires mandatory marking or labelling of products, it shall:

(a) to the extent possible, only require information that is relevant for consumers or users of the product or that indicates that the product conforms with mandatory technical requirements;

- (b) not require any prior approval, registration or certification of the markings or labels of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements unless it is necessary in view of the risk of the products or the risk of the claims made on the markings and labels to human, animal or plant health or life, the environment or national safety;
- (c) if it requires the use of a unique identification number by economic operators, issue such a number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (d) provided that the marking and labelling of a product is compliant with and not misleading, contradictory or confusing as regards the regulatory requirements of the importing Party, permit<sup>3</sup> the following:
  - (i) information in other languages in addition to the language required in the importing Party;
  - (ii) internationally accepted nomenclatures, pictograms, symbols or graphics; and
  - (iii) additional information to that required in the importing Party;

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<sup>3</sup> For greater certainty, this point refers to the importing Party.

- (e) accept that labelling, including supplementary labelling or corrections to labelling, take place in the territory of the importing Party, in accordance with its relevant regulations and procedures as an alternative to labelling in the exporting Party, unless such labelling is necessary in view of the legitimate objectives referred to in Article 2.2 of the TBT Agreement; and
  - (f) if it considers that legitimate objectives referred to in Article 2.2 of the TBT Agreement are not compromised, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation, rather than requiring marking or labelling to be physically attached to the product.
3. Paragraph 2 of this Article does not apply to marking or labelling of medicinal products and medical devices, as defined by a Party's laws and regulations.

#### ARTICLE 9.10

##### Cooperation on market surveillance, safety and compliance of non-food products

1. For the purposes of this Article, the term "market surveillance" means activities conducted and measures taken by public authorities, including those taken in cooperation with economic operators, on the basis of procedures of a Party, to enable that Party to monitor or address safety of products or their compliance with the requirements set out in its laws and regulations.

2. The Parties recognise the importance of cooperation on market surveillance, safety and compliance of non-food products for the facilitation of trade and for the protection of consumers and other users, and the importance of building mutual trust based on shared information.

3. Each Party shall ensure:

- (a) impartial and independent conduct of market surveillance functions from conformity assessment functions with a view to avoiding conflicts of interest;<sup>4</sup> and
- (b) the absence of any interest that would affect the impartiality of market surveillance authorities in the performance of control or supervision of economic operators.

4. The Parties may cooperate and exchange information in the area of market surveillance, safety and compliance of non-food products, in particular with respect to the following:

- (a) market surveillance and enforcement activities and measures;
- (b) risk assessment methods and product testing;
- (c) coordinated product recalls or other similar actions;

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<sup>4</sup> Each Party shall ensure that safeguards are put in place to ensure the impartiality and absence of conflicts of interest if a single entity is entrusted with both market surveillance functions and conformity assessment functions.



- (d) scientific, technical and regulatory matters in order to improve non-food product safety and compliance;
- (e) emerging issues of significant health and safety relevance;
- (f) standardisation-related activities; and
- (g) exchange of officials.

5. The Union may provide New Zealand with selected information from its Rapid Alert System for dangerous non-food products with respect to consumer products as referred to in Directive 2001/95/EC of the European Parliament and of the Council<sup>5</sup> or its successor system, and New Zealand may provide the Union with selected information on the safety of non-food consumer products and on preventive, restrictive and corrective measures taken, with respect to consumer products as referred to in the relevant legislation of New Zealand. The information exchange may take the form of:

- (a) *ad hoc* exchange, in duly justified cases; or
- (b) systematic exchange, based on an arrangement established by decision of the Trade Committee pursuant to Annex 9-C (Arrangement referred to in point (b) of Article 9.10(5) for the systematic exchange of information in relation to the safety of non-food products and related preventive, restrictive and corrective measures).

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<sup>5</sup> Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (OJ EU L 11, 15.1.2002, p. 4).

6. The Trade Committee may adopt a decision to establish pursuant to Annex 9-D (Arrangement referred to in Article 9.10(6) for the regular exchange of information regarding measures taken on non-compliant non-food products, other than those covered by point (b) of Article 9.10(5)) an arrangement on the regular exchange of information, including by electronic means, on measures taken with respect to non-compliant non-food products, other than those covered by point (b) of paragraph 5 of this Article.

7. Each Party shall use the information obtained pursuant to paragraphs 4, 5 and 6 for the sole purpose of protection of consumers, health, safety or the environment.

8. Each Party shall treat the information obtained pursuant to paragraphs 4, 5 and 6 as confidential.

9. The arrangements referred to in point (b) of paragraph 5 and in paragraph 6 shall specify the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.

10. The Trade Committee shall have the power to adopt decisions in order to determine or amend arrangements referred to in Annexes 9-C (Arrangement referred to in point (b) of Article 9.10(5) for the systematic exchange of information in relation to the safety of non-food products and related preventive, restrictive and corrective measures) and 9-D (Arrangement referred to in Article 9.10(6) for the regular exchange of information regarding measures taken on non-compliant non-food products, other than those covered by point (b) of Article 9.10(5)).

## ARTICLE 9.11

### Technical discussions and consultations

1. If a Party considers that a draft or proposed technical regulation or conformity assessment procedure of the other Party might significantly adversely affect trade between the Parties, it may request to hold discussions on the matter. The request shall be made in writing and identify:

- (a) the measure at issue;
- (b) the provisions of this Chapter to which the concerns relate; and
- (c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

2. A Party shall deliver its request to the TBT Chapter coordinator of the other Party designated pursuant to Article 9.14 (TBT Chapter coordinator).

3. At the request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person, or via any means of communication, including telephone, video conference or other electronic means of communication, within 60 days after the date of delivery of the request and shall endeavour to resolve the matter as expeditiously as possible. If a requesting Party believes that the matter is urgent, it may request that any meeting take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to such a request.

4. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the TBT Chapter coordinator of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of such matter.

5. For greater certainty, this Article is without prejudice to Chapter 26 (Dispute settlement).

## ARTICLE 9.12

### Cooperation

1. The Parties may cooperate in respect of particular areas of mutual interest, with a view to eliminating, reducing or avoiding the creation of technical barriers to trade, and facilitating trade between the Parties, including via digital solutions.

2. The Parties may cooperate and exchange information on any issues related to Annex 9-A (Acceptance of conformity assessment (documents)), including its implementation.

## ARTICLE 9.13

### Prohibition on animal testing

1. Each Party shall continue to actively support and promote the research, development, validation and regulatory acceptance of alternative methods to animal testing.

2. Each Party shall accept, for the purpose of the safety assessment of products falling under the definition of the term "cosmetic product" in their jurisdiction, test results generated from validated alternative methods to animal testing.

3. A Party shall not require that a product falling under the definition of the term "cosmetic product" in their jurisdiction be tested on animals to determine the safety of such a product.

#### ARTICLE 9.14

##### TBT Chapter coordinator

1. Each Party shall designate a TBT Chapter coordinator and notify the other Party of its contact details. Each Party shall promptly notify the other Party of any change to those contact details.

2. The TBT Chapter coordinators shall work jointly to facilitate the implementation of this Chapter and cooperation between the Parties in all TBT matters. To that end and subject to each Party's internal procedures, the TBT Chapter coordinators shall, in particular, have the following responsibilities:

(a) monitoring the implementation and administration of this Chapter, promptly addressing any issue that either Party raises related to the development, adoption, application or enforcement of technical regulations, standards or conformity assessment procedures, and upon either Party's request, consulting on any matter arising under this Chapter;

- (b) enhancing cooperation in the development and improvement of technical regulations, standards and conformity assessment procedures;
- (c) arranging the technical discussions or consultations referred to in Article 9.11 (Technical discussions and consultations);
- (d) arranging the establishment of working groups<sup>6</sup>, where relevant; and
- (e) exchanging information on developments in non-governmental, regional and multilateral fora related to technical regulations, standards and conformity assessment procedures.

3. The TBT Chapter coordinators shall communicate with one another by any agreed method that is appropriate to carry out their responsibilities.

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<sup>6</sup> For greater certainty, the establishment of working groups as such may only be decided by the Trade Committee pursuant to point (a) of Article 24.2(2) (Functions of the Trade Committee).