

CHAPTER 6

TECHNICAL REGULATIONS, STANDARDS AND CONFORMITY ASSESSMENT PROCEDURES

Article 1: Definitions

The definitions set out in Annex 1 of the TBT Agreement are incorporated into this Chapter and shall form part of this Chapter, *mutatis mutandis*.

Article 2: Objectives

1. The objectives of this Chapter are to:
 - (a) facilitate trade among the Parties by ensuring that technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to trade;
 - (b) ensure transparency and promote understanding of each Party's technical regulations, standards and conformity assessment procedures;
 - (c) strengthen information exchange and cooperation, including on the preparation, adoption and application of technical regulations, standards and conformity assessment procedures;
 - (d) promote good regulatory practice and good practice in the preparation, adoption and application of standards by standardising bodies in the territory of each Party;
 - (e) enhance the implementation of the TBT Agreement by Parties that are WTO Members;
 - (f) promote the observance of the requirements of the TBT Agreement by Parties that are not WTO Members; and
 - (g) provide a framework of supporting mechanisms to realise these objectives.

2. Recognising the capacity constraints of the developing country Parties, and with a view to increasing their export opportunities, assistance in relation to this Chapter would be provided under Chapter 10 (Development and Economic Cooperation) and the associated Work Programme.

Article 3: Scope

1. Subject to paragraphs 2 and 3, this Chapter shall apply to all technical regulations, standards and conformity assessment procedures that are prepared, adopted or applied by the

central government of a Party and that may directly or indirectly affect trade in goods between the Parties.

2. This Chapter shall not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies or to sanitary or phytosanitary measures under Chapter 5 (Sanitary and Phytosanitary Measures).

3. Each Party shall take such reasonable measures as may be available to it to ensure compliance in the implementation of the provisions of this Chapter by local government and non-governmental bodies within its territory.

Article 4: Rights and Obligations of Parties

1. Nothing in this Chapter shall prevent a Party from preparing, adopting or applying technical regulations necessary for the protection of human health or safety, of animal or plant life or health or of the environment, for the prevention of deceptive practices, for ensuring the quality of its exports or for the protection of its essential security interests, or standards or related conformity assessment procedures, provided that such measures are not inconsistent with this Chapter.

2. Parties that are WTO Members affirm their rights and obligations with respect to each other under the TBT Agreement. While reserving their rights under the TBT Agreement, Parties that are WTO Members shall apply the provisions of Articles 1 through 10 of the TBT Agreement with respect to Parties that are not WTO Members, to the extent that such provisions are not already covered in this Chapter.

3. Notwithstanding that the provisions of this Chapter apply to developing country Parties that are not WTO Members, where a Party that is a developing country and not a WTO Member prepares, adopts or applies a technical regulation, standard or conformity assessment procedure, such regulation, standard or procedure shall be based on the TBT Agreement only to the extent of such Party's capacity. On request of a Party with an interest in a product subject to a technical regulation, standard or conformity assessment procedure applied by such Party, those Parties shall engage promptly in bilateral technical discussions on the matter in accordance with the procedure under Article 11.

Article 5: Non-discrimination

1. Each Party shall, in respect of technical regulations and standards, ensure that products imported from any Party shall be accorded treatment no less favourable than that accorded to like products of national origin and to like products originating in any other country.

2. In cases where a positive assurance of conformity with technical regulations or standards is required, each Party shall ensure that:

- (a) conformity assessment procedures are prepared, adopted and applied so as to grant access for suppliers of like products originating in any Party under

conditions no less favourable than those accorded to suppliers of like products of national origin or originating in any other country, in a comparable situation; and

- (b) such access shall, *inter alia*, entail suppliers' right to an assessment of conformity under the rules of the procedure, including, when foreseen by this procedure, the possibility to have conformity assessment activities undertaken at the site of the facilities and to receive the mark of the system.

Article 6: Trade Facilitation through Information Exchange

1. Each Party shall respond to all requests for information relating to its technical regulations, standards and conformity assessment procedures and for clarification of its responses, provided that the requests are reasonable and are made in writing. Responses to written requests for information or clarification (including those made under Paragraph 3 of Article 4) shall be provided no later than 90 days after the receipt of the request or as mutually agreed between the Parties.

2. Further to Paragraph 1, if a Party:

- (a) does not use an international standard, guide or recommendation or the relevant parts thereof as a basis for a technical regulation or related conformity assessment procedure; or
- (b) does not accept a technical regulation of another Party as equivalent to its own; or
- (c) does not accept the results of a conformity assessment procedure conducted in the territory of another Party; or
- (d) recognises a body assessing conformity with a specific technical regulation or standard in its territory and refuses to recognise a body assessing conformity with that technical regulation or standard in the territory of another Party; or
- (e) applies a technical regulation that, in the view of another Party, is more trade restrictive than necessary to fulfil a legitimate objective, taking account of the risks that non-fulfilment would create; or
- (f) applies a conformity assessment procedure that, in the view of another Party, is more strict or applied more strictly than necessary to give adequate confidence that products conform with the applicable technical regulation or standard, taking account of the risks that non-conformity would create; or
- (g) applies a technical regulation that, in the view of another Party, is not in conformity with Article 5.1 of this Chapter; or
- (h) applies conformity assessment procedures in a manner that, in the view of another Party, is not in conformity with Article 5.2 of this Chapter;

it shall on request explain its reasons in writing. If the Party requesting an explanation so desires, it may request further technical discussions in accordance with the procedure under Article 11.

Article 7: Code of Good Practice for the Preparation, Adoption and Application of Standards

Each Party in respect of central government bodies shall ensure, and in respect of local government and non-governmental bodies shall take such reasonable measures as may be available to it to ensure, that standardising bodies in its territory:

- (a) in the case of a Party that is a WTO Member, accept and comply with the Code of Good Practice for the Preparation, Adoption and Application of Standards at Annex 3 to the TBT Agreement; and
- (b) in the case of a Party that is not a WTO Member, observe to the extent of its capacity the Substantive Provisions of the Code of Good Practice for the Preparation, Adoption and Application of Standards at Annex 3 to the TBT Agreement.

Article 8: Transparency

1. Consistent with Articles 2.9, 2.10, 5.6 and 5.7 of the TBT Agreement, where a relevant international standard, guide or recommendation does not exist or the technical content of a proposed technical regulation or related conformity assessment procedure is not in accordance with the technical content of relevant international standards, guides or recommendations, and if such regulation or procedure may have a significant effect on the trade of other Parties, the Party preparing it shall:

- (a) publish a notice of its proposal to introduce the regulation or procedure in a publication at an early appropriate stage, in such a manner as to enable interested Parties to become acquainted with it;
- (b) notify Parties, at an early appropriate stage when amendments can still be introduced and comments taken into account, of the products to be covered by the regulation or procedure and its objective and rationale;
- (c) on request, provide to other Parties through Contact Points particulars or copies in electronic format of the proposed regulation or procedure and, whenever possible, identify the parts which deviate in substance from relevant international standards, guides or recommendations; and
- (d) without discrimination, allow reasonable time for other Parties to make comments in writing, discuss these comments on request and take these written comments and the results of these discussions into account.

2. Where urgent problems of safety, health, environmental protection or national security arise or threaten to arise for that Party, it may omit such steps of paragraph 1(a) to 1(d) as it finds necessary, provided that, upon adoption of the regulation or procedure, the Party:

- (a) notifies other Parties in writing of the regulation or procedure, the products covered, its objective and rationale, and the nature of the urgent problems;
- (b) on request, provides other Parties through Contact Points with electronic copies of the regulation or the rules of the procedure; and
- (c) without discrimination, allows other Parties to present their comments in writing, discusses these comments on request, and takes these written comments and the results of these discussions into account in making an informed decision about the measure.

3. Notifications, requests, comments, responses and other communications for the purposes of paragraphs 1 and 2 shall be conveyed through Contact Points.

4. Each Party shall ensure that technical regulations and conformity assessment procedures which have been adopted are published promptly or otherwise made available in such manner as to enable any member of the public in any Party to become acquainted with them.

5. Consistent with Articles 2.12 and 5.9 of the TBT Agreement and except in the urgent circumstances specified in Articles 2.10 and 5.7 of the TBT Agreement, an importing Party shall allow a reasonable interval between the publication of a technical regulation or related conformity assessment procedure and its entry into force in order to allow time for producers in exporting Parties, and particularly in developing country Parties, to adapt their products or methods of production to its requirements. The reasonable interval shall be a period of not less than six months, except where this would be ineffective in fulfilling the legitimate objective pursued.

Article 9: Contact Points

1. Each Party shall provide the other Parties with a Contact Point to facilitate the distribution of requests and notifications made in accordance with this Chapter and which shall, for that Party, have responsibility for coordinating the implementation of this Chapter.

2. Each Party shall provide each other Party with the name of its Contact Point and the contact details of the relevant position in the organisation which performs its functions, including telephone, facsimile, e-mail address, mailing address and any other relevant details.

3. Each Party shall ensure that the information provided under paragraphs 1 and 2 is kept up-to-date.

4. Each Party shall ensure that its Contact Point facilitates the exchange of information between the Parties on any matters relating to the implementation of this Chapter.

5. To promote efficiency in the distribution of requests and notifications under this Chapter and ensure consistency with the performance of related functions under the TBT Agreement, each Party that is a WTO Member should consider assigning to its Enquiry Point established pursuant to Article 10 of the TBT Agreement the role of Contact Point for the purposes of this Chapter.

Article 10: Cooperation

1. The Parties shall undertake joint efforts in the fields of standards, technical regulations and conformity assessment procedures with a view to facilitating trade between the Parties, including increasing market access opportunities for developing country Parties.

2. Each Party shall on request of another Party give positive consideration to proposals for cooperation on matters within the scope of this Chapter on mutually agreed terms and conditions, including but not limited to:

- (a) advice, technical assistance or capacity building relating to the development and application of standards, technical regulations and conformity assessment procedures;
- (b) cooperation between conformity assessment bodies, both governmental and non-governmental, in the territories of each of the Parties on matters such as:
 - (i) use of accreditation to qualify conformity assessment bodies; and
 - (ii) enhancing infrastructure in calibration, testing, inspection, certification and accreditation to meet relevant international standards, guidelines and recommendations;
- (c) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures, such as enhancing participation, particularly of the developing country Parties, in the existing frameworks for mutual recognition developed by relevant regional and international bodies; and
- (d) enhancing cooperation in the development and improvement of technical regulations and conformity assessment procedures in areas such as:
 - (i) cooperation in the development and promotion of good regulatory practice;
 - (ii) transparency, including ways to promote improved access to information on standards, technical regulations and conformity assessment procedures; and
 - (iii) management of risks relating to health, safety, the environment and deceptive practices.

3. On request of another Party, a Party shall give positive consideration to a sector-specific proposal that the requesting Party makes for further cooperation under this Chapter on mutually agreed terms and conditions.

Article 11: Technical Discussions

1. If a Party considers that a technical regulation, standard or conformity assessment procedure affecting trade between it and another Party warrants further discussion, it may, through the Contact Points, request a detailed explanation of the measure and if necessary, request to hold technical discussions in an attempt to resolve any concerns on specific issues arising from the application of the measure. The other Party shall respond promptly to any requests for such explanations, and if so requested, shall enter into technical discussions within 60 days from the date of the request. The Parties to the technical discussions shall make every effort to reach a mutually satisfactory resolution through technical discussions within 90 days from the date of the request or within a timeframe mutually agreed upon by them.

2. A Party participating in technical discussions or negotiations pursuant to paragraph 3 of Article 4, paragraph 2 of Article 6 or paragraph 1 of this Article may invite another Party or a relevant international or regional organisation in the field of technical regulations, standards and conformity assessment procedures to participate for the purpose of providing technical advice.

3. Technical discussions should be conducted using electronic means. If this is not possible they may be conducted in person or by any other means, as mutually determined by the Parties.

4. The Parties shall take such reasonable measures as may be available to them to ensure that representatives of bodies responsible for the technical regulations, standards or conformity assessment procedures that are the subject of the technical discussions participate in those discussions.

5. A Party shall exercise restraint when requesting technical discussions between it and another Party on a matter that has been the subject of a previous technical discussion between the two Parties. If technical discussions on a matter under Article 6.2(b) to Article 6.2(f) have taken place, and a mutually satisfactory solution cannot be reached, an importing Party may only decline a further request for technical discussions on justifiable grounds.

6. Without prejudice to the rights and obligations of the Parties under other provisions of this Agreement, if the importing Party declines a request for technical discussions under paragraph 5 it shall provide an explanation of reasons for its position.

7. Technical discussions held pursuant to this Article do not constitute formal consultations under Chapter 14 (Consultations and Dispute Settlement) and are without prejudice to the rights and obligations of the Parties under that Chapter, the WTO Agreement or any other agreement to which both Parties are party.

Article 12: Meetings on Technical Regulations, Standards and Conformity Assessment Procedures

1. The Parties shall, through the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, the Joint Committee or any other relevant subsidiary body, consult as required to consider the implementation of their commitments under this Chapter.
2. The Parties, through the Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, the Joint Committee or any other relevant subsidiary body, shall commence a review of this Chapter within three years of entry into force of this Agreement and submit a final report to the Joint Committee, including any recommendations, within four years of entry into force of this Agreement.

Article 13: Special and Differential Treatment

Consistent with Articles 12.3, 12.4 and 12.9 of the TBT Agreement:

- (a) Each Party shall, in the preparation and application of technical regulations, standards and conformity assessment procedures, take account of the special development, financial and trade needs of developing country Parties, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to exports from developing country Parties.
- (b) Parties recognise that, although international standards, guidelines or recommendations may exist, in their particular technological and socio-economic conditions, developing country Parties may adopt certain technical regulations, standards or conformity assessment procedures aimed at preserving indigenous technology and production methods and processes compatible with their development needs. Parties therefore recognise that developing country Parties should not be expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs.
- (c) During consultations, developed country Parties shall bear in mind the special difficulties experienced by developing country Parties in formulating and implementing technical regulations, standards and conformity assessment procedures and, in their desire to assist developing country Parties with their efforts in this direction, developed country Parties shall take into account the special needs of the former in regard to financing, trade and development.