

## CHAPTER 11

### TECHNICAL BARRIERS TO TRADE

#### Article 11.1: Definitions

1. Annex 1 of the TBT Agreement, including the chapeau and explanatory notes, is incorporated into and made part of this Chapter, *mutatis mutandis*.

2. For the purposes of this Chapter:

**international conformity assessment systems** means systems that facilitate voluntary recognition or acceptance of the results of conformity assessment or accreditation bodies by the authorities of another Party based on compliance with international standards for conformity assessment;

**international standard** means a standard that is consistent with the TBT Committee Decision on International Standards;

**mutual recognition agreement** means an intergovernmental agreement that specifies the conditions by which a Party will recognize the results of conformity assessment procedures produced by another Party's conformity assessment bodies that demonstrate fulfillment of appropriate standards or technical regulations;<sup>1</sup>

**mutual recognition arrangement** or **multilateral recognition arrangement** means an international or regional arrangement among accreditation bodies in the territories of the Parties, in which the accreditation bodies, on the basis of peer evaluation, accept the results of each other's accredited conformity assessment bodies or among conformity assessment bodies in the territories of the Parties recognizing the results of conformity assessment;

**proposed technical regulation** or **conformity assessment procedure** means the entirety of the text setting forth: (a) a proposed technical regulation or conformity assessment procedure; or (b) a significant amendment to an existing technical regulation or conformity assessment procedure;

**TBT Agreement** means the *Agreement on Technical Barriers to Trade*, set out in Annex 1A to the WTO Agreement; and

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<sup>1</sup> For greater certainty, mutual recognition agreements include agreements to implement the *APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment* of May 8, 1998 and the *Electrical and Electronic Equipment Mutual Recognition Arrangement* of July 7, 1999.

**TBT Committee Decision on International Standards** means Annex 2 to Part 1 (*Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement*) in the *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.

### **Article 11.2: Scope**

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations, and conformity assessment procedures, including any amendments, of central level of government bodies, which may affect trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter does not apply to:
  - (a) technical specifications prepared by a governmental body for production or consumption requirements of a governmental body; or
  - (b) sanitary or phytosanitary measures.

### **Article 11.3: Incorporation of the TBT Agreement**

1. The following provisions of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*:
  - (a) Articles 2.1, 2.2, 2.3, 2.4, 2.5, 2.9, 2.10, 2.11, and 2.12;
  - (b) Articles 3.1, 4.1, and 7.1;
  - (c) Articles 5.1, 5.2, 5.3, 5.4, 5.6, 5.7, 5.8, and 5.9; and
  - (d) Paragraphs D, E, F, and J of Annex 3.
2. No Party shall have recourse to dispute settlement under Chapter 31 (Dispute Settlement) for a matter arising under this Chapter if the dispute concerns:
  - (a) exclusively claims made under the provisions of the TBT Agreement incorporated under paragraph 1; or
  - (b) a measure that a Party alleges to be inconsistent with this Chapter that:
    - (i) was referred or is subsequently referred to a WTO dispute settlement panel,

- (ii) was taken to comply in response to the recommendations or rulings from the WTO Dispute Settlement Body, or
- (iii) bears a close nexus, such as in terms of nature, effects, and timing, with respect to a measure described in subparagraph (ii).

#### **Article 11.4: International Standards, Guides and Recommendations**

1. The Parties recognize the important role that international standards, guides, and recommendations can play in supporting greater regulatory alignment and good regulatory practices, 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 TBT Committee Decision on International Standards.

3. Each Party shall apply no additional principles or criteria other than those in the TBT Committee Decision on International Standards in order to recognize a standard as an international standard. For greater certainty, criteria that are not relevant to determining whether a standard is an international standard include:

- (a) the domicile of the standards body;
- (b) whether the standards body is non-governmental or inter-governmental; and
- (c) whether the standards body limits participation to delegations.

4. The Parties shall cooperate with each other in appropriate circumstances to ensure that international standards, guides, and recommendations that are likely to become a basis for technical regulations and conformity assessment procedures do not create unnecessary obstacles to international trade.

5. No Party shall accord any preference to the consideration or use of standards that are developed through processes that:

- (a) are inconsistent with the TBT Committee Decision on International Standards; or
- (b) treat persons of any of the Parties less favorably than persons whose domicile is the same as the standardization body.

6. With respect to any agreement or understanding establishing a customs union or free-trade area or providing trade-related technical assistance, each Party shall encourage the adoption, and use as the basis for standards, technical regulations, and conformity assessment procedures, of any

relevant standards, guides, or recommendations developed in accordance with the TBT Committee Decision on International Standards.

7. Recognizing the importance of maintaining North American commercial integration and maintaining market access for producers in North America, each Party shall ensure that any obligation or understanding it has with a non-Party does not facilitate or require the withdrawal or limitation on the use or acceptance of any relevant standard, guide, or recommendation developed in accordance with the TBT Committee Decision on International Standards or the relevant provisions of this Chapter.

## **Article 11.5: Technical Regulations**

### *Preparation and Review of Technical Regulations*

1. Each Party shall conduct an appropriate assessment concerning any major technical regulations it proposes to adopt. An assessment can include:

- (a) a regulatory impact analysis of the technical regulation's potential impacts; or
- (b) an analysis that requires evaluation of alternative measures, if any, including voluntary actions that are brought to the Party's attention in a timely manner.

Each Party shall maintain discretion in deciding if a proposed technical regulation is major under this paragraph.

2. Each Party shall:

- (a) periodically review technical regulations and conformity assessment procedures in order to:
  - (i) examine increasing alignment with relevant international standards, including by reviewing any new developments in the relevant international standards and whether the circumstances that have given rise to divergences from any relevant international standard continue to exist, and
  - (ii) consider the existence of any less trade-restrictive approaches; or
- (b) maintain a process whereby a person of another Party may directly petition the Party's regulatory authorities to review a technical regulation or conformity assessment procedure on the grounds that:
  - (i) circumstances that were relevant to the content of the technical regulation have changed, or

- (ii) a less trade-restrictive method to fulfil the technical regulation's objective exists, such as a technical regulation based on the international standard.

*Use of Standards in Technical Regulations*

3. If there are multiple international standards that would be effective and appropriate to fulfil the Party's legitimate objectives of a technical regulation or conformity assessment procedure, the Party shall:

- (a) consider using as a basis for the technical regulation or conformity assessment procedure each of the international standards that fulfill the legitimate objectives of the technical regulation or conformity assessment procedure; and
- (b) if the Party has rejected an international standard that was brought to its attention, issue a written explanation wherever practicable.

The written explanation provided for in subparagraph (b) must include the reasons for the Party's decision to reject an international standard and shall be provided directly to the person that proposed a particular international standard or in a document that is published at the same time that the Party publishes the final technical regulation or conformity assessment procedure.

4. If no international standard is available that fulfils the legitimate objectives of the technical regulation or conformity assessment procedure, each Party shall consider whether a standard developed by a standardizing body domiciled in any of the Parties can fulfill its legitimate objectives. To that end, each Party shall:

- (a) consider and decide whether to accept the standard developed by a standardizing body domiciled in any of the Parties fulfils its legitimate objectives; and
- (b) if the Party has rejected a standard that was brought to its attention, issue a written explanation wherever practicable.

The written explanation provided for in subparagraph (b) must include the reasons for the Party's decision to reject an international standard and shall be provided directly to the person that proposed a particular standard or in a document that is published at the same time the Party publishes the final technical regulation or conformity assessment procedure.

5. In order for a Party to consider accepting or using a standard as provided for in paragraphs 4 and 5, the Parties recognize that a standard must be brought to the attention of a Party, in a language the Party utilizes for the publication of technical regulations and conformity assessment procedures. This must be done during the Party's planning stage or when the proposed technical regulation or conformity assessment procedure is published for comment as provided for in Article 11.7 (Transparency).

### *Information Exchange*

6. If a Party has not used an international standard as a basis for a technical regulation, a Party shall, on request from another Party, explain why it has not used a relevant international standard or has substantially deviated from an international standard. The explanation shall address why the standard has been judged inappropriate or ineffective for the objective pursued, and identify the scientific or technical evidence on which this assessment is based. To facilitate an appropriate explanation, the requesting Party shall in its request:

- (a) identify a relevant international standard that the technical regulation has purportedly not used as its basis; and
- (b) describe how the technical regulation is constraining or has the potential to constraint its exports.

The requesting Party shall also endeavour to indicate whether the international standard was brought to the responding Party's attention when it was developing the technical regulation.

7. In addition to Article 2.7 of the TBT Agreement, a Party shall, on request of another Party,<sup>2</sup> 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 within a reasonable period of time.

### *Labeling*

8. In order to avoid disrupting North American trade, and consistent with the obligations contained in Article 11.3 (Incorporation of the TBT Agreement), each Party shall ensure that its technical regulations concerning labels:

- (a) accord treatment no less favorable than that accorded to like goods of national origin; and
- (b) do not create unnecessary obstacles to trade between the Parties.

## **Article 11.6: Conformity Assessment**

### *National Treatment*

1. In addition to Article 6.4 of the TBT Agreement, each Party shall accord to conformity

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<sup>2</sup> The Party's request should identify with precision the respective technical regulations it considers to be equivalent and any data or evidence that supports its position.

assessment bodies located in the territory of another Party treatment no less favorable than that it accords to conformity assessment bodies located in its own territory or in the territory of the other Party. Treatment under this paragraph includes procedures, criteria, fees, and other conditions relating to accrediting, approving, licensing, or otherwise recognizing conformity assessment bodies.

2. In addition to Article 6.4 of the TBT Agreement, if a Party maintains procedures, criteria or other conditions as set out in paragraph 1 and requires conformity assessment results, including test results, certifications, technical reports or inspections as positive assurance that a product conforms to a technical regulation or standard, it shall:

- (a) not require the conformity assessment body to be located within its territory;
- (b) not effectively require the conformity assessment body to operate an office within its territory; and
- (c) permit conformity assessment bodies in other Parties' territories to apply to the Party, or any body that it has recognized or approved for this purpose, for a determination that they comply with any procedures, criteria and other conditions the Party requires to deem them competent or to otherwise approve them to test or certify the product or conduct an inspection.

#### *Explanations and Information*

3. If a Party undertakes conformity assessment procedures in relation to specific products by specified government bodies located in its own territory or in another Party's territory, the Party shall, on the request of another Party or if practicable, an applicant of another Party, explain:

- (a) how the information it requires is necessary to assess conformity;
- (b) the sequence in which a conformity assessment procedure is undertaken and completed;
- (c) how the Party ensures that confidential business information is protected; and
- (d) the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when a complaint is justified.

4. Each Party shall explain, on the request of another Party, the reasons for its decision, whenever it declines to:

- (a) accredit, approve, license, or otherwise recognize a conformity assessment body;

- (b) recognize the results from a conformity assessment body that is a signatory to a mutual recognition arrangement;
- (c) accept the results of a conformity assessment procedure conducted in the territory of another Party; or
- (d) continue negotiations for a mutual recognition agreement.

### *Subcontracting*

5. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation or standard, it shall not prohibit a conformity assessment body from using subcontractors, or refuse to accept the results of conformity assessment on account of the conformity assessment body using subcontractors, to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of another Party,<sup>3</sup> provided that the subcontractors are accredited and approved in the Party's territory, when required.

### *Accreditation*

6. In addition to Article 9.2 of the TBT Agreement, no Party shall refuse to accept, or take actions that have the effect of, directly or indirectly, requiring or encouraging the refusal of acceptance of conformity assessment results performed by a conformity assessment body located in the territory of another Party because the accreditation body that accredited the conformity assessment body:

- (a) operates in the territory of a Party where there is more than one accreditation body;
- (b) is a non-governmental body;
- (c) is domiciled in the territory of a Party that does not maintain a procedure for recognizing accreditation bodies, provided that the accreditation body is recognized internationally, consistent with paragraph 7;
- (d) does not operate an office in the Party's territory; or
- (e) is a for-profit entity.

7. In addition to Article 9.1 of the TBT Agreement, each Party shall:

- (a) adopt or maintain measures to facilitate and encourage its authorities to rely on

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<sup>3</sup> For greater certainty, this paragraph does not prohibit a Party from taking steps to ensure the performance of the subcontractor meets its requirements.



mutual or multilateral recognition arrangements to accredit, approve, license or otherwise recognize conformity assessment bodies where effective and appropriate to fulfill the Party's legitimate objectives; and

- (b) consider approving or recognizing accredited conformity assessment bodies for its technical regulations or standards, by an accreditation body that is a signatory to a mutual or multilateral recognition arrangement, for example, the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF).

The Parties recognize that the arrangements referenced in subparagraph (b) can address considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

#### *Choice of Conformity Assessment*

8. The Parties recognize that the choice of conformity assessment procedures in relation to a specific product covered by a technical regulation or standard should include an evaluation of the risks involved, the need to adopt procedures to address those risks, relevant scientific and technical information, incidence of non-compliant products, and possible alternative approaches for establishing that the technical regulation or standard has been met.

#### *Fees*

9. Nothing in this Article precludes a Party from requesting that conformity assessment procedures in relation to specific products are performed by specified government authorities of the Party. In those cases, the Party conducting the conformity assessment procedures shall:

- (a) limit any fees it imposes for conformity assessment procedures on products from the other Parties to the costs of services rendered;
- (b) not impose fees on an applicant of another Party to deliver conformity assessment services, except to recover costs incurred from services rendered;
- (c) make the amounts of any fees for conformity assessment procedures publicly available;
- (d) not apply a new or modified fee for conformity assessment procedures until the fee and the method for assessing the fee are published and, if practicable, the Party has provided an opportunity for interested persons to comment on the proposed introduction or modification of a conformity assessment fee.

10. On request of a Party, or an applicant's request if practicable, a Party shall explain how:

- (a) any fees it imposes for such conformity assessment are no higher than the cost of services rendered;
- (b) fees for its conformity assessment procedures are calculated; and
- (c) any information it requires is necessary to calculate fees.

### *Exceptions*

11. For greater certainty, nothing in paragraphs 1 or 2 precludes a Party from taking actions to verify the results from a conformity assessment procedure, including requesting information from the conformity assessment or accreditation body. These actions shall not subject a product to duplicative conformity assessment procedures, except when necessary to address non-compliance. The verifying Party may share information it has requested with another Party, provided it protects confidential information.

12. Paragraphs 2(b) and 5 do not apply to any requirement a Party may have concerning the use of products, conformity assessment procedures or related services in the commercial maritime or civil aviation sectors.

### **Article 11.7: Transparency**

1. Each Party shall allow persons of another Party to participate in the development of technical regulations, standards and conformity assessment procedures<sup>4</sup> by its central government bodies on terms no less favorable than those that it accords to its own persons.

2. Further to Articles 2.9 and 5.6 of the TBT Agreement, if a Party prepares or proposes to adopt a technical regulation or conformity assessment procedure that is not in response to an urgent situation as referred to in Article 2.10 and Article 5.7 of the TBT Agreement, the Party shall:

- (a) publish the proposed technical regulation or conformity assessment procedure;
- (b) allow persons of another Party to submit written comments during a public consultation period on no less favorable terms than it provides to its own persons;
- (c) publish and allow for written comment in accordance with subparagraphs (a) and (b) at a time when the authority proposing the measure has sufficient time to review those comments and, as appropriate, to revise the measure to take them into account;

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<sup>4</sup> A Party satisfies this obligation by, for example, providing interested persons a reasonable opportunity to provide comments on the measure it proposes to develop and by taking those comments into account in the development of the measure.

- (d) consider the written comments from a person of another Party on no less favorable terms than it considers those submitted by its own persons; and
- (e) if practicable,<sup>5</sup> accept a written request from another Party to discuss written comments that the other Party has submitted.

The Party requested under subparagraph (e) to discuss its proposed technical regulation or conformity assessment procedure shall ensure that it has appropriate personnel to participate in the discussions, such as from the competent authority that has proposed the technical regulation or conformity assessment procedure, in order to confirm that the written comments are fully taken into account.

3. Each Party shall endeavor to promptly make publicly available any written comments it receives under paragraph 2(c), except to the extent necessary to protect confidential information or withhold personal identifying information or inappropriate content. If it is impracticable to post these comments on a single website, the regulatory authority of a Party shall endeavor to make these comments available via its own website.

4. Each Party shall publish the final technical regulation or conformity assessment procedure and an explanation of how it has addressed substantive issues raised in comments submitted in a timely manner.

5. If appropriate, each Party shall encourage non-governmental bodies including standardization bodies in its territory to act consistently with the obligations in paragraphs 1 and 7, in developing standards and voluntary conformity assessment procedures.

6. Each Party shall ensure that its central government standardizing body's work program, containing the standards it is currently preparing and the standards it has adopted, is published:

- (a) on the central government standardizing body's website;
- (b) in its official gazette; or
- (c) on the website referred to in paragraph 10.

*Stakeholder Participation in Developing Technical Regulations and Mandatory Conformity Assessment Procedures*

7. Each Party shall encourage consideration of methods to provide additional transparency in

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<sup>5</sup> Circumstances when discussions are not practicable include where the Party requesting discussions has failed to submit its comments in a timely manner or if discussions would need to take place after the deadline to submit written comments has passed.

the development of technical regulations, standards and conformity assessment procedures, including the use of electronic tools and public outreach or consultations.

8. If a Party requests a body within its territory to develop a standard for use as a technical regulation or conformity assessment procedure, the Party shall require the body to allow persons of another Party to participate on no less favorable terms than its own persons in groups or committees of the body that is developing the standard, and apply Annex 3 of the TBT Agreement.

9. Each Party shall take such reasonable measures as may be available to it to ensure proposed and final technical regulations and conformity assessment procedures of regional governments are published.<sup>6</sup>

10. Each Party shall publish online and make freely accessible, preferably on a single website, all proposed and final technical regulations and mandatory conformity assessment procedures, except with respect to any standards that are:

- (a) developed by non-governmental organizations; and
- (b) have been incorporated by reference into a technical regulation or conformity assessment procedure.

#### *Notification of Technical Regulations and Conformity Assessment*

11. In accordance with the procedures established under Article 2.9 or Article 5.6 of the TBT Agreement, each Party shall notify proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides, or recommendations if they may have a significant effect on trade. The Party's notification shall identify the precise international standards, guides or recommendations with which the proposal is in accordance.

12. In accordance with the procedures under Article 2.10 or Article 5.7 of the TBT Agreement, and notwithstanding paragraph 11, if urgent problems of safety, health, environmental protection, or national security arise or threaten to arise for a Party, that Party shall notify a technical regulation or conformity assessment procedure that is in accordance with the technical content of relevant international standards, guides or recommendations. In its notification, the Party shall identify the precise international standards, guides, or recommendations with which the proposal is in accordance.

13. In accordance with the procedures established under Article 2.9 or Article 5.6 of the TBT Agreement, each Party shall endeavor to notify, proposed technical regulations and conformity assessment procedures of regional level of governments that may have a significant effect on trade

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<sup>6</sup> 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 official website of the WTO.

and that are in accordance with the technical content of relevant international standards, guides, and recommendations.

14. With respect to notifications made under Articles 2.9 and 5.6 of the TBT Agreement and paragraph 11 of this Chapter, each Party shall notify proposed technical regulations and conformity assessment procedures at an early appropriate stage by:

- (a) ensuring the notification is made at a time when the authority developing the measure can introduce amendments, including in response to any comments submitted as set out in subparagraph (d);
- (b) including with its notification:
  - (i) any objective for the proposed technical regulation or conformity assessment procedure and its legal basis,
  - (ii) an explanation of how the proposed technical regulation or conformity assessment procedure would fulfill the identified objectives, and
  - (iii) a copy of the proposed technical regulation or conformity assessment procedure or an online address at which the proposed measure can be accessed;
- (c) transmitting the notification electronically to the other Parties through their enquiry points established in accordance with Article 10 of the TBT Agreement, contemporaneously with the submission of the notification to the WTO Secretariat; and
- (d) providing sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure to ensure that the responsible authority can fully consider the submitted comments and the Party can issue its responses to the comments.

Each Party shall normally allow 60 days from the date it transmits a proposal under subparagraph (b) for another Party or an interested person of a Party to provide comments in writing on the proposal. A Party shall consider any reasonable request from another Party or an interested person of a Party to extend the comment period. A Party that is able to extend a time limit beyond 60 days, for example 90 days, shall consider doing so.

15. Each Party, when making a notification under Article 2.10 or Article 5.7 of the TBT Agreement, shall at the same time transmit electronically the notification and text of the technical regulation or conformity assessment procedure, or an online address where the text of the measure can be viewed, to the Parties' contact points referred to in Article 11.12 (Contact Points).

16. If a Party is notifying a proposed technical regulation or conformity assessment procedure to the WTO TBT Committee and the other Parties for the first time,<sup>7</sup> the Party shall notify it to the WTO TBT Committee and the other Parties as a regular notification.<sup>8</sup> Each Party shall endeavor to identify the scope of its proposed technical regulation or conformity assessment procedure in its notification by reference to the specific Harmonized System heading, subheading, or tariff item for the products that would be affected by the proposal.

17. If a Party is notifying a proposed technical regulation or conformity assessment procedure that is related to a measure that was previously notified, including because it is an revision, amendment, or replacement to the previously notified measure, the Party shall provide the WTO notification symbol for the previously notified measure.<sup>9</sup> Each Party shall endeavor to submit a revision to a notification if the notified measure has been substantially redrafted prior to its entry into force. If the Party files a revision or the circumstances in paragraph 18(e) arise, the Party shall endeavor to allow either a new or extended period of time for interested persons to submit comments to the Party.

18. Each Party shall submit an addendum to a notification it has previously made to the WTO TBT Committee and the Parties in any of the following circumstances:

- (a) the period of time to submit comments on the proposed measure has changed;
- (b) the notified measure has been adopted or otherwise entered into force;
- (c) the compliance dates for the final measure have changed;
- (d) the notified measure has been withdrawn, revoked, or replaced;<sup>10</sup>
- (e) the content or scope of the notified measure is partially changed or amended;
- (f) any interpretive guidance for a notified measure that has been issued; or
- (g) the final text of the notified measure is published or adopted or otherwise enters into force.

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<sup>7</sup> The Parties shall follow the recommendation set forth in G/TBT/35, Coherent Use of Notification Formats.

<sup>8</sup> A notification is a document that is circulated by the WTO Secretariat, or submitted to the WTO Secretariat for the purposes of circulation, under the prefix "G/TBT/N."

<sup>9</sup> The Parties agree the appropriate place to make the identification is in field 8 of a document produced consistent with the Format and Guidelines for Notification Procedures for Draft Technical Regulations and Conformity Assessment Procedures.

<sup>10</sup> The Party shall provide the WTO document number identifying the notification of a measure that replaces or has been proposed as a replacement for a withdrawn or revoked measure.

19. Each Party shall endeavor to submit a corrigendum to a notification if it subsequently determines there are minor administrative or clerical errors in:

- (a) a notification or subsequent related addendum or revision; or
- (b) the text of the notified measure.

20. If a Party obtains a translation of a measure notified to the WTO TBT Committee, whether official or unofficial, in an official WTO language other than the language of the notification, it shall endeavor to send the translation to the Parties' contact points referred to in Article 11.12 (Contact Points).

21. For the purposes of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and is subject to notification in accordance with Articles 2.9, 2.10, 3.2, 5.6, 5.7, or 7.2 of the TBT Agreement and this Chapter, a Party shall consider, among other things, the relevant guidance in the *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.

22. When a Party has adopted a technical regulation or conformity assessment procedure that may have a significant effect on trade, the Party shall promptly publish online:

- (a) an explanation of how the technical regulation or conformity assessment procedure achieves the Party's objectives;
- (b) a description of alternative approaches, if any, that the Party considered in developing the adopted technical regulation or conformity assessment procedure and the explanation of why it chose one approach over the others it considered;
- (c) its views on any substantive issues raised in timely submitted comments on the proposed technical regulation or conformity assessment procedure;
- (d) any impact assessment it has undertaken;
- (e) if not addressed by an impact assessment, an explanation of the relationship between the regulation and the key evidence, data, and other information the regulatory authority considered in finalizing its work on the regulation; and
- (f) the date by which compliance is required.

## **Article 11.8: Compliance Period for Technical Regulations and Conformity Assessment Procedures**

1. For the purposes of Articles 2.12 and 5.9 of the TBT Agreement, the term “reasonable interval” means 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 the conformity assessment procedure.<sup>11</sup>
2. If feasible and appropriate, each Party shall endeavor to provide an interval of more than six months between the publication of a final technical regulation or conformity assessment procedure and its entry into force.
3. In addition to paragraphs 1 and 2, in setting a “reasonable interval” for a specific technical regulation or conformity assessment procedure, each Party provide suppliers with a reasonable period of time, under the circumstances, to be able to demonstrate the conformity of their products with the relevant requirements of the technical regulation by the date of entry into force of the specific technical regulation or conformity assessment procedure. In doing so, each Party shall endeavor to take into account the resources available to suppliers.

## **Article 11.9: Cooperation and Trade Facilitation**

1. In addition to Articles 5, 6, and 9 of the TBT Agreement, the Parties acknowledge that a broad range of mechanisms<sup>12</sup> exists to facilitate the acceptance of conformity assessment results. In this regard, a Party shall give consideration to a request made by another Party with respect to any sector-specific proposal for cooperation including by, as appropriate:
  - (a) implementing mutual recognition of the results by conformity assessment bodies located in its territory and another Party’s territory with respect to specific technical regulations;
  - (b) recognizing existing mutual and multilateral recognition arrangements between or among accreditation bodies or conformity assessment bodies;
  - (c) using accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;

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<sup>11</sup> For greater certainty, a Party may decide to set an interval of less than six months between the publication of a measure and its entry into force in certain circumstances, including those where the measure is trade facilitative or is addressing an urgent problem of safety, health, environmental protection, or national security.

<sup>12</sup> With respect to the mechanisms listed in paragraphs 1 and 2, the Parties recognize that the choice of the appropriate mechanism in a given regulatory context depends on a variety of factors, such as the product and sector involved, the volume and direction of trade, the relationship between Parties’ respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.



- (d) designating conformity assessment bodies or recognise the other Party's designation of conformity assessment bodies;
- (e) unilaterally recognizing the results of conformity assessment procedures performed in the other Party's territory; and
- (f) accepting a supplier's declaration of conformity.

2. The Parties recognize that a broad range of mechanisms exist to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region, including:

- (a) regulatory dialogue and cooperation to, among other things:
  - (i) exchange of information on regulatory approaches and practices,
  - (ii) promote the use of good regulatory practices to improve the efficiency and effectiveness of technical regulations, standards and conformity assessment procedures,
  - (iii) provide technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards, conformity assessment procedures and metrology, or
  - (iv) provide technical assistance and cooperation, on mutually agreed terms and conditions, to build capacity and support the implementation of this Chapter;
- (b) facilitation of the greater use and alignment of standards, technical regulations, and conformity assessment procedures with relevant international standards, guides, and recommendations; and
- (c) promotion of the acceptance of technical regulations of the other Party as equivalent.

3. In addition to subparagraph (c), the Parties shall work to develop common standards and conformity assessment procedures in sectors of mutual interest. The Parties shall determine the scope of this work through the Committee on Technical Barriers to Trade established under Article 11.11 (Committee on Technical Barriers to Trade).

4. The Parties shall strengthen their exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory alignment and to eliminate unnecessary technical barriers to trade in the region. To this end, the Parties shall seek

to identify, develop, and promote trade-facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that address particular cross-cutting or sector-specific issues.

5. The Parties shall encourage cooperation between their respective organizations responsible for standardization, conformity assessment, accreditation and metrology, whether they are public or private, with a view to facilitate trade.

#### **Article 11.10: Information Exchange and Technical Discussions**

1. The Parties recognize that technical discussions and information exchange can serve an important function in reaching mutually satisfactory solutions to trade concerns by promoting cooperation and consultation informed by relevant technical and scientific information. Accordingly, with respect to a matter that arises under this Chapter, a Party may request that another Party:

- (a) engage in technical discussions concerning the matter; or
- (b) provide information regarding any proposed or final technical regulation or conformity assessment procedure that relates to the matter.

2. The Party making the request shall do so in writing and identify:

- (a) the matter, including those provisions of the Chapter to which the matter relates;
- (b) the reasons for the request, including any concerns with a proposed or final measure;
- (c) whether the matter is urgent; and
- (d) if applicable, the precise information that is being requested.

The Party making the request shall transmit it to the Parties through their respective contact points designated pursuant to Article 30.5 (Agreement Coordinator and Contact Points).

3. With respect to a request made under paragraph 1(a), the requesting Party and the requested Party shall discuss the matter identified within 60 days after the date the request was transmitted to the contact point, unless the request identified the matter as urgent, in which case the Parties shall endeavor to hold the technical discussions sooner. The requested Party, at its discretion, may decide to allow another Party to participate in the technical discussions. With respect to a request made under paragraph 1(b), the Party receiving the request shall provide appropriate information within a reasonable period of time. The Parties shall attempt to obtain satisfactory resolution of the matter.

4. Unless the Parties decide otherwise, any discussions or information exchanged under this Article, other than the request referenced in paragraphs 1 and 2, shall be kept confidential and is without prejudice to the Parties' rights and obligations under the Agreement, the WTO Agreement or any other agreement to which the requesting and requested Parties are party.

#### **Article 11.11: Committee on Technical Barriers to Trade**

1. The Parties hereby establish a Committee on Technical Barriers to Trade (TBT Committee), composed of government representatives of each Party.

2. Through the TBT Committee, the Parties shall strengthen their joint work in the fields of technical regulations, standards, and conformity assessment procedures with a view to facilitating trade between the Parties.

3. The TBT Committee's functions include:

- (a) monitoring and identifying ways to strengthen the implementation and operation of this Chapter, and identifying any potential amendments to or interpretations of this Chapter for referral to the Commission;
- (b) as appropriate, discussing proposed and final versions of standards, technical regulations, or conformity assessment procedures of any Party;
- (c) monitoring any technical discussions on matters that arise under this Chapter requested pursuant to paragraph 2 of Article 11.10 (Information Exchange and Technical Discussions);
- (d) reaching an agreement on priority areas of mutual interest for future work under this Chapter and considering proposals for new sector-specific initiatives or other initiatives;
- (e) encouraging cooperation between the Parties in matters that pertain to this Chapter, including the development, review, or modification of technical regulations, standard, and conformity assessment procedures;
- (f) encouraging cooperation between non-governmental bodies in the Parties' territories, as well as cooperation between governmental and non-governmental bodies in the Parties' territories in matters that pertains to this Chapter;
- (g) facilitating the identification of technical capacity needs;
- (h) encouraging the exchange of information between the Parties and their relevant

non-governmental bodies, if appropriate, to develop common approaches regarding matters under discussion in non-governmental, regional, plurilateral, and multilateral bodies or international conformity assessment systems or standards development relevant to this Chapter; including the WTO TBT Committee and bodies that develop standards in accordance with the TBT Committee Decision on International Standards, as appropriate;

- (i) encouraging, on request of a Party, the exchange of information between the Parties regarding specific technical regulations, standards, and conformity assessment procedures of non-Parties as well as systemic issues, with a view to fostering a common approach;
- (j) undertaking initiatives to support greater regulatory alignment in the region, including through the development of common standards or conformity assessment procedures, in sectors of mutual interest;
- (k) reporting to the Commission on the implementation and operation of this Chapter;
- (l) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments;
- (m) engaging, as appropriate, with the public to participate in the work of the TBT Committee, for example by requesting and considering comments on matters related to the implementation of this Chapter; and
- (n) taking any other steps that the Parties consider will assist them in implementing this Chapter.

4. Unless the Parties decide otherwise, the TBT Committee shall meet at least once a year.

5. The TBT Committee may establish and determine the scope and mandate of working groups to carry out its functions, and may invite, as appropriate, representatives of non-governmental entities to participate in a working group.

6. To determine what activities the TBT Committee will undertake, the TBT Committee shall consider work that is being undertaken in other fora, with a view to ensuring that any activities undertaken by the TBT Committee do not unnecessarily duplicate that work.

#### **Article 11.12: Contact Points**

1. Each Party shall designate a contact point and notify it to the other Parties for matters arising under this Chapter in accordance with Article 30.5 (Agreement Coordinator and Contact

Points). A Party shall promptly notify the other Parties of any change of its contact point or the details of the relevant officials.

2. The functions of each contact point shall include:

- (a) communicating with the other Parties' contact points, including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;
- (b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in the territory of the Party it represents on relevant matters pertaining to this Chapter;
- (c) consulting and, if appropriate, coordinating with interested persons in the territory of the Party it represents on relevant matters pertaining to this Chapter; and
- (d) carrying out any additional responsibilities specified by the TBT Committee.