

Chapter Seven

Technical Barriers to Trade

Objectives

The objectives of this Chapter are to increase and facilitate trade through the improvement of the implementation of the TBT Agreement, the elimination of unnecessary technical barriers to trade, and the enhancement of bilateral cooperation.

Article 7.1: Scope and Coverage

1. Except as provided in paragraphs 2 and 3 of this Article, this Chapter applies to all standards, technical regulations, and conformity assessment procedures that may, directly or indirectly, affect trade in goods between the Parties. Notwithstanding Article 1.4 (Extent of Obligations), this Chapter applies only to central government bodies.
2. Technical specifications prepared by governmental bodies for production or consumption requirements of such bodies are not subject to the provisions of this Chapter, but are addressed in Chapter Nine (Government Procurement), according to its coverage.
3. This Chapter does not apply to sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

Article 7.2: Affirmation of Agreement on Technical Barriers to Trade

Further to Article 1.3 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

Article 7.3: International Standards

In determining whether an international standard, guide, or recommendation within the meaning of Articles 2, 5, and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev.7, 28 November 2000, Section IX (*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*), issued by the WTO Committee on Technical Barriers to Trade.

Article 7.4: Trade Facilitation

The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating access to each other's markets. In particular, the Parties shall seek to identify bilateral initiatives that are appropriate for particular issues or sectors. Such initiatives may include cooperation on regulatory issues, such as convergence or equivalence of technical regulations and standards, alignment with international standards, reliance on a supplier's declaration of conformity, and use of accreditation to qualify conformity assessment bodies, as well as cooperation through mutual recognition.

Article 7.5: Technical Regulations

1. Where a Party provides for the acceptance of a foreign technical regulation as equivalent to a particular technical regulation of its own, and the Party does not accept a technical regulation of the other Party as equivalent to that technical regulation, it shall, at the request of the other Party, explain the reasons for not accepting the technical regulation of the other Party as equivalent.
2. Where a Party does not provide for the acceptance of foreign technical regulations as equivalent to its own, that Party may, at the request of the other Party, explain the reasons for not accepting the other Party's technical regulations as equivalent.

Article 7.6: Conformity Assessment

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance of conformity assessment results, including:

- (a) the importing Party's reliance on a supplier's declaration of conformity;
- (b) voluntary arrangements between conformity assessment bodies from each Party's territory;
- (c) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified regulations conducted by bodies located in the territory of the other Party;
- (d) accreditation procedures for qualifying conformity assessment bodies;
- (e) government designation of conformity assessment bodies; and

- (f) recognition by one Party of the results of conformity assessments performed in the other Party's territory.

The Parties shall intensify their exchange of information on the range of mechanisms to facilitate the acceptance of conformity assessment results.

2. Where a Party does not accept the results of a conformity assessment procedure performed in the territory of the other Party, it shall, on request of the other Party, explain its reasons.

3. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those it accords to conformity assessment bodies in its territory. If a Party accredits, approves, licenses, or otherwise recognizes a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request, explain the reasons for its refusal.

4. Where a Party declines a request from the other Party to engage in or conclude negotiations to reach agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the territory of the other Party, it shall, on request, explain its reasons.

Article 7.7: Transparency

1. Further to Article 20.2 (Publication), each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures. Each Party shall permit persons of the other Party to participate in the development of such measures on terms no less favorable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental standardizing bodies in its territory observe paragraph 1.

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

- (a) include in the notice a statement describing the objective of the proposal and the rationale for the approach the Party is proposing; and

- (b) transmit the proposal electronically to the other Party through the inquiry point established under Article 10 of the TBT Agreement at the same time as it notifies WTO Members of the proposal pursuant to the TBT Agreement.

Each Party should allow at least 60 days from the transmission under subparagraph (b) for persons and the other Party to make comments in writing on the proposal.

4. Where a Party makes a notification under Article 2.10 or 5.7 of the TBT Agreement, it shall at the same time transmit the notification to the other Party, electronically, through the inquiry point referenced in paragraph 3(b).

5. Each Party shall publish, in print or electronically, or otherwise make available to the public, its responses to significant comments at the same time as the publication of the final technical regulation or conformity assessment procedure.

6. Each Party shall, on request of the other Party, provide information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt.

7. Each Party shall implement this Article as soon as is practicable and in no event later than five years from the date of entry into force of this Agreement.

Article 7.8: Committee on Technical Barriers to Trade

1. The Parties hereby establish the Committee on Technical Barriers to Trade, comprising representatives of each Party, pursuant to Annex 7.8.

2. The Committee's functions shall include:

- (a) monitoring the implementation and administration of this Chapter;
- (b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
- (c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
- (d) where appropriate, facilitating sectoral cooperation among governmental and non-governmental conformity assessment bodies in the Parties' territories;

- (e) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standardization, technical regulations, and conformity assessment procedures;
- (f) taking any other steps the Parties consider will assist them in implementing the TBT Agreement and in facilitating trade in goods between them;
- (g) at a Party's request, consulting on any matter arising under this Chapter;
- (h) 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; and
- (i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter.

3. Where the Parties have had recourse to consultations under paragraph 2(g) such consultations shall, on the agreement of the Parties, constitute consultations under Article 22.4 (Consultations).

4. A Party shall, on request, give favorable consideration to any sector-specific proposal the other Party makes for further cooperation under this Chapter.

5. The Committee shall meet at least once a year unless the Parties otherwise agree.

Article 7.9: Information Exchange

Any information or explanation that is provided on request of a Party pursuant to the provisions of this Chapter shall be provided in print or electronically within a reasonable period of time.

Article 7.10: Definitions

For purposes of this Chapter, **technical regulation, standard, conformity assessment procedures, and central government body** shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

Annex 7.8

Committee on Technical Barriers to Trade

For purposes of Article 7.8, the Committee shall be coordinated by:

- (a) in the case of Chile, the *Ministerio de Economia* through the *Departamento de Comercio Exterior*, or its successor; and
- (b) in the case of the United States, the Office of the United States Trade Representative, or its successor.