

## CHAPTER 7

### TECHNICAL BARRIERS TO TRADE

#### Article 7.1: Definitions

1. The definitions of the terms used in this Chapter contained in Annex 1 to the *WTO Agreement on Technical Barriers to Trade*, set out in Annex 1A to the WTO Agreement, including the chapeau and explanatory notes of Annex 1, are incorporated into, and shall form part of, this Chapter, *mutatis mutandis*;

2. In addition, for the purposes of this Chapter:

**mutual recognition agreement** means a binding government-to-government agreement for recognition of the results of conformity assessment conducted against the appropriate technical regulations or standards in one or more sectors, including government-to-government 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 and other agreements that provide for the recognition of conformity assessment conducted against appropriate technical regulations or standards in one or more sectors;

**mutual recognition arrangement** means an international or regional arrangement (including a multilateral recognition arrangement) between accreditation bodies recognising the equivalence of accreditation systems (based on peer review) or between conformity assessment bodies recognising the results of conformity assessment; and

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

#### Article 7.2: Objective

The objective of this Chapter is to facilitate trade, including by eliminating unnecessary technical barriers to trade, enhancing transparency, and promoting greater regulatory cooperation and good regulatory practice.

#### Article 7.3: Scope

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of the central

level of government, as defined in the TBT Agreement, that may, directly or indirectly, affect trade in goods between the Parties.

2. Each Party shall take reasonable measures as may be available to it to ensure compliance with this Chapter by regional or local governments and non-governmental bodies within its territory which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures.

2. All references in this Chapter to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments to them and any addition to the rules or the product coverage of those technical regulations, standards and procedures, except amendments and additions of an insignificant nature.

3. This Chapter shall not apply to technical specifications prepared by a governmental entity for its production or consumption requirements. These specifications are covered by Chapter 14 (Government Procurement).

4. This Chapter shall not apply to sanitary and phytosanitary measures. These are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

#### **Article 7.4: Affirmation of the TBT Agreement**

The Parties affirm their rights and obligations with respect to each other under the TBT Agreement.

#### **Article 7.5: International Standards, Guides and Recommendations**

1. The Parties recognise the important role that international standards, guides and recommendations can play in supporting greater regulatory alignment, good regulatory practice and reducing unnecessary barriers to trade.

2. In this respect, and further to Articles 2.4 and 5.4 and Annex 3 of the TBT Agreement, 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 *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.

3. The Parties shall cooperate with each other, when feasible and appropriate, 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.

## **Article 7.6: Conformity Assessment**

1. Further to Article 6.4 of the TBT Agreement, each Party shall accord to conformity assessment bodies located in the territory of the other Party treatment no less favourable than that it accords to conformity assessment bodies located in its own territory. In order to ensure that it accords such treatment, each Party shall apply the same or equivalent procedures, criteria and other conditions to accredit, approve, license or otherwise recognise conformity assessment bodies located in the territory of the other Party that it may apply to conformity assessment bodies in its own territory.

2. Further to Article 9.1 of the TBT Agreement, a Party shall consider adopting measures to approve conformity assessment bodies that have accreditation for the technical regulations or standards of the importing Party, by an accreditation body that is a signatory to an international or regional mutual recognition arrangement. The Parties recognise that these arrangements can address the key considerations in approving conformity assessment bodies, including technical competence, independence, and the avoidance of conflicts of interest.

3. A Party shall publish, preferably by electronic means, any procedures, criteria and other conditions that it may use as the basis for determining whether conformity assessment bodies are competent to receive accreditation, approval, licensing or other recognition, including accreditation, approval, licensing or other recognition granted pursuant to a mutual recognition agreement.

4. If a Party:

(a) accredits, approves, licenses or otherwise recognises a body assessing conformity with a particular technical regulation or standard in its territory, and refuses to accredit, approve, license or otherwise recognise a body assessing conformity with that technical regulation or standard in the territory of the other Party; or

(b) declines to use a mutual recognition arrangement,

it shall, on request of the other Party, explain the reasons for its decision.

5. If a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on the request of the other Party, explain the reasons for its decision.

6. Further to Article 6.3 of the TBT Agreement, if a Party declines the request of the other Party to enter into negotiations to conclude an agreement for mutual recognition of the results of each other's conformity assessment procedures, it shall, on request of the other Party, explain the reasons for its decision.

## **Article 7.7: Transparency**

1. Each Party shall allow persons of the other Party to participate in the development of technical regulations, standards and conformity assessment procedures by its central government bodies<sup>1</sup> on terms no less favourable than those that it accords to its own persons.
2. Each Party is encouraged to consider methods to provide additional transparency in the development of technical regulations, standards and conformity assessment procedures, including through the use of electronic tools and public outreach or consultations.
3. If appropriate, each Party shall encourage non-governmental bodies in its territory to observe the obligations in paragraphs 1 and 2.
4. Each Party shall publish all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies.
5. Each Party shall publish preferably by electronic means, in a single official journal or website, all proposals for new technical regulations and conformity assessment procedures and proposals for amendments to existing technical regulations and conformity assessment procedures, and all new final technical regulations and conformity assessment procedures and final amendments to existing technical regulations and conformity assessment procedures, of central government bodies, that a Party is required to notify or publish under the TBT Agreement or this Chapter, and that may have a significant effect on trade.<sup>2</sup>
6. Each Party shall notify proposals for new technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides or recommendations, if any, and that may have a significant effect on trade, according to the procedures established under Article 2.9 or 5.6 of the TBT Agreement.

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<sup>1</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 taking those comments into account in the development of the measure.

<sup>2</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 WTO's official website.

7. Notwithstanding paragraph 6, if urgent problems of safety, health, environmental protection or national security arise or threaten to arise for a Party, that Party may notify a new technical regulation or conformity assessment procedure that is in accordance with the technical content of relevant international standards, guides or recommendations, if any, upon the adoption of that regulation or procedure, according to the procedures established under Article 2.10 or 5.7 of the TBT Agreement.

8. For the purposes of determining whether a proposed technical regulation or conformity assessment procedure may have a significant effect on trade and should be notified in accordance with Article 2.9, 2.10, 3.2, 5.6, 5.7 or 7.2 of the TBT Agreement or this Chapter, a Party shall consider, among other things, the relevant *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.

9. A Party that publishes a notice and that files a notification in accordance with Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter shall:

- (a) include in the notification an explanation of the objectives of the proposal and how it would address those objectives; and
- (b) transmit the notification and the proposal electronically to the other Party through their enquiry points established in accordance with Article 10 of the TBT Agreement, at the same time as it notifies WTO Members.

10. Each Party shall normally allow 60 days from the date it transmits a proposal under paragraph 13 for the other Party or an interested person of the other Party to provide comments in writing on the proposal. A Party shall consider any reasonable request from the other Party or an interested person of the other Party to extend the comment period. A Party that is able to extend a time limit beyond 60 days, for example 90 days, is encouraged to do so.

11. Each Party is encouraged to provide sufficient time between the end of the comment period and the adoption of the notified technical regulation or conformity assessment procedure, for its consideration of, and preparation of responses to, the comments received.

12. Each Party shall endeavour to notify the final text of a technical regulation or conformity assessment procedure at the time the text is adopted or published, as an addendum to the original notification of the proposed measure filed under Article 2.9, 3.2, 5.6 or 7.2 of the TBT Agreement or this Chapter.

13. A Party that files a notification in accordance with Article 2.10 or 5.7 of the TBT Agreement and this Chapter shall, at the same time, transmit the notification and text of the technical regulation or conformity assessment procedure electronically to the other Party through the enquiry points referred to in paragraph 9(b).

## **Article 7.8: Compliance Period for Technical Regulations and Conformity Assessment Procedures**

1. For the purposes of applying 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 by the requirements concerning the conformity assessment procedure.
2. If feasible and appropriate, each Party shall endeavour to provide an interval of more than six months between the publication of final technical regulations and conformity assessment procedures and their 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 shall ensure that it provides suppliers with a reasonable period of time, under the circumstances, to be able to demonstrate the conformity of their goods with the relevant requirements of the technical regulation or standard by the date of entry into force of the specific technical regulation or conformity assessment procedure. In doing so, each Party shall endeavour to take into account the resources available to suppliers.

## **Article 7.9: Cooperation and Trade Facilitation**

1. Further to Articles 5, 6 and 9 of the TBT Agreement, the Parties acknowledge that a broad range of mechanisms exist to facilitate the acceptance of conformity assessment results. In this regard, a Party may:
  - (a) implement mutual recognition of the results of conformity assessment procedures performed by bodies located in its territory and the other Party’s territory with respect to specific technical regulations;
  - (b) recognise existing regional and international mutual recognition arrangements between or among accreditation bodies or conformity assessment bodies;
  - (c) use accreditation to qualify conformity assessment bodies, particularly international systems of accreditation;
  - (d) designate conformity assessment bodies or recognise the other Party’s designation of conformity assessment bodies;
  - (e) unilaterally recognise the results of conformity assessment procedures performed in the other Party’s territory; and
  - (f) accept a supplier’s declaration of conformity.

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

- (a) regulatory dialogue and cooperation to, among other things:
  - (i) exchange 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) greater alignment of national standards with relevant international standards, except where inappropriate or ineffective;
- (c) facilitation of the greater use of relevant international standards, guides and recommendations as the basis for technical regulations and conformity assessment procedures; and
- (d) promotion of the acceptance of technical regulations of the other Party as equivalent.

3. With respect to the mechanisms listed in paragraphs 1 and 2, the Parties recognise 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.

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.

5. A Party shall, on request of the other Party, give due consideration to any sector-specific proposal for cooperation under this Chapter.

6. Further to Article 2.7 of the TBT Agreement, a Party shall, on request of the other Party, explain the reasons why it has not accepted a technical regulation of the other Party as equivalent.

7. The Parties shall encourage cooperation between their respective organisations responsible for standardisation, conformity assessment, accreditation and metrology, whether they are public or private, with a view to addressing issues covered by this Chapter.

#### **Article 7.10: Information Exchange and Technical Discussions**

1. A Party may request the other Party to provide information on any matter arising under this Chapter. A Party receiving a request under this paragraph shall provide that information within a reasonable period of time, and if possible, by electronic means.

2. A Party may request technical discussions with the other Party with the aim of resolving any matter that arises under this Chapter.

3. The Parties shall discuss the matter raised within 60 days of the date of the request. If the requesting Party considers that the matter is urgent, it may request that any discussions take place within a shorter time frame. The responding Party shall give positive consideration to that request.

4. The Parties shall endeavour to resolve the matter as expeditiously as possible, recognising that the time required to resolve a matter will depend on a variety of factors, and that it may not be possible to resolve every matter through technical discussions.

5. Unless the Parties agree otherwise, the discussions and any information exchanged in the course of the discussions shall be confidential and without prejudice to the rights and obligations of the Parties under this Agreement, the WTO Agreement or any other agreement to which both Parties are party.

6. Where the Parties have had recourse to technical discussions under paragraph 2, such technical discussions shall constitute consultations under Article 27.5 (Consultations) should a Party request the establishment of a dispute settlement Panel on the matter under Article 27.7 (Establishment of a Panel).

7. Requests for information or technical discussions shall be conveyed through the respective contact points designated pursuant to Article 7.11.

#### **Article 7.11: Contact Points**

1. Each Party shall designate and notify a contact point for matters arising under this Chapter, in accordance with Article 26.5 (Contact Points).

2. A Party shall promptly notify the other Party of any change of its contact point or the details of the relevant officials.
3. The responsibilities of each contact point shall include:
  - (a) communicating with the other Party's 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 its territory on relevant matters pertaining to this Chapter;
  - (c) consulting and, if appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter.

## ANNEX 7-A

### WINE AND DISTILLED SPIRITS

1. This Annex shall apply to wine and distilled spirits.

2. For the purposes of this Annex:

**container** means any bottle, barrel, cask or other closed receptacle, irrespective of size or of the material from which it is made, used for the retail sale of wine or distilled spirits;

**distilled spirits** mean a potable alcoholic distillate, including spirits of wine, whiskey, rum, brandy, gin, tequila, mezcal and all dilutions or mixtures of those spirits for consumption;

**label** means any brand, mark, pictorial or other descriptive matter that is written, printed, stencilled, marked, embossed or impressed on, or firmly affixed to the primary container of wine or distilled spirits;

**oenological practices** mean winemaking materials, processes, treatments and techniques, but does not include labelling, bottling or packaging for final sale;

**single field of vision** means any part of the surface of a primary container, excluding its base and cap, that can be seen without having to turn the container;

**supplier** means a producer, importer, exporter, bottler or wholesaler; and

**wine** means a beverage that is produced by the complete or partial alcoholic fermentation exclusively of fresh grapes, grape must, or products derived from fresh grapes in accordance with oenological practices that the country in which the wine is produced authorises under its laws and regulations.

3. Each Party shall make information about its laws and regulations concerning wine and distilled spirits publicly available.

4. A Party may require a supplier to ensure that any statement required by that Party to be placed on a wine or distilled spirits label is:

- (a) clear, specific, truthful, accurate and not misleading to the consumer; and
- (b) legible to the consumer; and

(c) that such labels be firmly affixed.

5. If a Party requires a supplier to indicate information on a distilled spirits label, the Party shall permit the supplier to indicate that information on a supplementary label that is affixed to the distilled spirits container. Each Party shall permit a supplier to affix the supplementary label on the container of the imported distilled spirits after importation but prior to offering the product for sale in the Party's territory, and may require that the supplier affix the supplementary label prior to release from customs. For greater certainty, a Party may require that the information indicated on a supplementary label meet the requirements in paragraph 4.

6. Each Party shall permit the alcoholic content by volume indicated on a wine or distilled spirits label to be expressed by alcohol by volume (alc/vol), for example 12% alc/vol or alc12%vol, and to be indicated in percentage terms to a maximum of one decimal point, for example 12.1%.

7. Each Party shall permit suppliers to use the term "wine" as a product name. A Party may require a supplier to indicate additional information on a wine label concerning the type, category, class or classification of the wine.

8. With respect to wine labels, each Party shall permit the information set out in subparagraphs 10(a) through (d) to be presented in a single field of vision for a container of wine. If this information is presented in a single field of vision, then the Party's requirements with respect to placement of this information are satisfied. A Party shall accept any of the information that appears outside a single field of vision if that information satisfies that Party's laws, regulations and requirements.

9. Notwithstanding paragraph 8, a Party may require net contents to be displayed on the principal display panel for a subset of less commonly used container sizes if specifically required by that Party's laws or regulations.

10. If a Party requires a wine label to indicate information other than:

- (a) product name;
- (b) country of origin;
- (c) net contents; or
- (d) alcohol content,

it shall permit the supplier to indicate the information on a supplementary label affixed to the wine container. A Party shall permit the supplier to affix the supplementary label on the container of the imported wine after importation but prior to offering the product for sale in the Party's territory, and may require that the supplier affix the supplementary label prior to release from customs. For greater certainty, a Party may

require that information on a supplementary label meet the requirements set out in paragraph 4.

11. For the purposes of paragraphs 4, 5 and 10, if there is more than one label on a container of imported wine or distilled spirits, a Party may require that each label be visible and not obscure mandatory information on another label.

12. Each Party shall permit a supplier to place a lot identification code on a wine or distilled spirits container, if the code is clear, specific, truthful, accurate and not misleading, and shall permit the supplier to determine:

- (a) where to place the lot identification code on the container, provided that the code does not cover up essential information printed on the label; and
- (b) the specific font size, readable phrasing and formatting for the code provided that the lot identification code is legible by physical or electronic means.

13. A Party may impose penalties for the removal or deliberate defacement of any lot identification code provided by the supplier and placed on the container.

14. For wine or distilled spirits with more than 10 per cent alcohol by volume, neither Party shall require a supplier to indicate any of the following information on a wine or distilled spirits container, labels or packaging:

- (a) date of production or manufacture;
- (b) date of expiration;
- (c) date of minimum durability; or
- (d) sell by date,

except that a Party may require a supplier to indicate a date of minimum durability or expiration on products that could have a shorter date of minimum durability or expiration than would normally be expected by the consumer because of: their packaging or container, for example bag-in-box wines or individual serving size wines; or the addition of perishable ingredients.

15. Neither Party shall require a supplier to place a translation of a trademark or trade name on a wine or distilled spirits container, label or packaging.

16. Neither Party shall prevent imports of wine from the other Party solely on the basis that the wine label includes the following descriptors or adjectives describing the wine or relating to wine-making: chateau, classic, clos, cream, crusted/crusting, fine,

late bottled vintage, noble, reserve, ruby, special reserve, solera, superior, sur lie, tawny, vintage or vintage character.

17. Neither Party shall require a supplier to disclose an oenological practice on a wine label or container except to meet a legitimate human health or safety objective with respect to that oenological practice.

18. Each Party shall endeavour to base its quality and identity requirements for any specific type, category, class or classification of distilled spirits solely on minimum ethyl alcohol content and the raw materials, added ingredients and production procedures used to produce that specific type, category, class or classification of distilled spirits.

19. Neither Party shall require imported wine or distilled spirits to be certified by an official certification body of the Party in whose territory the wine or distilled spirits were produced or by a certification body recognised by the Party in whose territory the wine or distilled spirits were produced regarding:

- (a) vintage, varietal and regional claims for wine; or
- (b) raw materials and production processes for distilled spirits,

except that the Party may require that wine or distilled spirits be certified regarding (a) or (b) if the Party in whose territory the wine or distilled spirits were produced requires that certification, that wine be certified regarding (a) if the Party has a reasonable and legitimate concern about a vintage, varietal or regional claim for wine, or that distilled spirits be certified regarding (b) if certification is necessary to verify claims such as age, origin or standards of identity.

20. If a Party deems that certification of wine is necessary to protect human health or safety or to achieve other legitimate objectives, that Party shall consider the *Codex Alimentarius Guidelines for Design, Production, Issuance and Use of Generic Official Certificates* (CAC/GL 38-2001), in particular the use of the generic model official certificate, as amended from time-to-time, concerning official and officially recognised certificates.

21. A Party shall normally permit a wine or distilled spirits supplier to submit any required certification, test result or sample only with the initial shipment of a particular brand, producer and lot. If a Party requires a supplier to submit a sample of the product for the Party's procedure to assess conformity with its technical regulation or standard, it shall not require a sample quantity larger than the minimum quantity necessary to complete the relevant conformity assessment procedure. Nothing in this provision precludes a Party from undertaking verification of test results or certification, for example, where the Party has information that a particular product may be non-compliant.

22. Unless problems of human health or safety arise or threaten to arise for a Party, a Party shall not normally apply any final technical regulation, standard or conformity assessment procedure to wine or distilled spirits that have been placed on the market in the Party's territory before the date of entry into force of the technical regulation, standard or conformity assessment procedure, provided that the products are sold within a period of time after the date of entry into force of the technical regulation, standard or conformity assessment procedure, stipulated by the authority responsible for that technical regulation, standard or conformity assessment procedure.

## **ANNEX 7-B**

### **ORGANIC PRODUCTS**

1. This Annex shall apply to a Party if that Party adopts or maintains technical regulations, standards or conformity assessment procedures that relate to the production, processing or labelling of products as organic for sale or distribution within its territory.
2. Each Party is encouraged to take steps to:
  - (a) exchange information on matters that relate to organic production, certification of organic products, and related control systems; and
  - (b) cooperate with the other Party to develop, improve and strengthen international guidelines, standards and recommendations that relate to trade in organic products.
3. If a Party maintains a requirement that relates to the production, processing or labelling of products as organic, it shall enforce that requirement.
4. Each Party is encouraged to consider, as expeditiously as possible, a request from the other Party for recognition or equivalence of a technical regulations, standards or conformity assessment procedures that relates to the production, processing, or labelling of products of the other Party as organic. Each Party is encouraged to accept as equivalent or recognise the technical regulations, standards or conformity assessment procedures that relate to the production, processing or labelling of products of the other Party as organic, if the Party is satisfied that the technical regulations, standards or conformity assessment procedures of the other Party adequately fulfils the objectives of the Party's technical regulations, standards or conformity assessment procedures. If a Party does not accept as equivalent or recognise the technical regulations, standards or conformity assessment procedures that relate to the production, processing, or labelling of products of the other Party as organic, it shall, on request of the other Party, explain its reasons.
5. Each Party is encouraged to participate in technical exchanges to support improvement and greater alignment of technical regulations, standards or conformity assessment procedures that relate to the production, processing or labelling of products as organic.