

CHAPTER 7 : TECHNICAL BARRIERS TO TRADE

ARTICLE 7.1 : OBJECTIVES

The objective of this Chapter is to eliminate unnecessary technical barriers to trade between the Parties by providing a framework to address the impact of such technical barriers, so as to facilitate and increase bilateral trade and by enhancing bilateral cooperation.

ARTICLE 7.2 : GENERAL PROVISIONS

1. The Parties reaffirm and incorporate their rights and obligations under the TBT Agreement.
2. For the purpose of facilitating and increasing bilateral trade, the Parties shall seek to enhance their cooperation in the area of technical barriers to trade and deepen the mutual understanding and awareness of their respective systems.
3. In addition to the TBT Agreement the Parties shall apply the provisions under this Chapter.

ARTICLE 7.3 : SCOPE

1. This Chapter is applicable to any and all standards, technical regulations and conformity assessment procedures of the Parties that may affect, directly or indirectly, the trade in goods between the Parties⁷⁻¹.
2. This Chapter does not apply to sanitary and phytosanitary measures as defined in the SPS Agreement, which are covered by Chapter 6 (Sanitary and Phytosanitary Measures).
3. This Chapter does not apply to purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies, which are covered by Chapter 9 (Government Procurement).
4. Nothing in this Chapter shall prevent a Party from adopting or maintaining standards or technical regulations in accordance with its rights and obligations under the TBT Agreement to fulfill a legitimate objective, taking into account the risk non-fulfillment would create. This

⁷⁻¹ For greater certainty, the Parties understand that:

- (a) any reference in this Chapter to a standard, technical regulation or conformity assessment procedure includes those related to metrology; and
- (b) the application of this Chapter to trade in goods between the Parties is regardless of origin.

shall include technical regulations necessary to ensure its national security requirements, the prevention of deceptive practices, the protection of human life, health or safety, animal and plant life or health, or the environment.

ARTICLE 7.4 : DEFINITIONS

For the purpose of this Chapter,

1. **TBT Agreement** refers to the WTO Agreement on Technical Barriers to Trade done in Marrakesh on 15 April 1994;
2. **TBT Committee** refers to the Committee on Technical Barrier to Trade provided for under Article 13 of the TBT Agreement; and
3. the terms and their definitions of Annex 1 of the TBT Agreement, shall apply *mutatis mutandis* to this Agreement.

ARTICLE 7.5 : INTERNATIONAL STANDARDS

1. Each Party shall, to the maximum extent possible and in accordance with Article 2.4 of the TBT Agreement, use relevant international standards as a basis for its technical regulations.
2. 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 TBT Committee since 1 January 1995, G/TBT/1/Rev.8, 23 May 2002, 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 WTO TBT Agreement) issued by the TBT Committee .

ARTICLE 7.6 : TRADE FACILITATION

1. The Parties shall co-operate and jointly identify work in the field of standards, technical regulations and conformity assessment procedures, with a view to facilitating market access. In particular, the Parties shall seek to identify initiatives that are appropriate for the particular issues or sectors. Such initiatives may include co-operation and technical assistance on regulatory issues, such as unilateral recognition or harmonisation or equivalence of technical regulations and standards, alignment to international standards, reliance on a supplier's declaration of conformity, recognition and acceptance of the results of conformity assessment procedures, and use of accreditations to qualify conformity assessment bodies.

2. At the request of a Party, each Party shall encourage governmental and non-governmental bodies in its territory to co-operate with the governmental and non-governmental bodies in the territory of the other Party with respect to particular standards, technical regulations or conformity assessment procedures following the principles of the TBT Agreement.

3. Where a Party detains at a port of entry a good originating in the territory of another Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention.

ARTICLE 7.7 : EQUIVALENCE OF TECHNICAL REGULATIONS

1. Each Party shall give favourable consideration to accept as equivalent the technical regulations of the other Party, even if they differ from its own technical regulations, provided that the said technical regulations produce the outcomes, equivalent to those produced by its own technical regulations, in meeting the legitimate objectives, or achieving the same level of protection.

2. For this purpose, a Party seeking the other Party to accept its technical regulation as equivalent, shall provide, as appropriate:

- (a) information on the relationship of its technical regulation to international standards referenced in the technical regulation of the other Party;
- (b) the circumstances which gave rise to the adoption of its technical regulation; and
- (c) information on the similarity of the established mechanisms of conformity assessment.

3. Where a Party does not accept a technical regulation of the other Party as equivalent to its own technical regulation, it shall, at the request of the other Party, explain the reasons for not accepting the said regulation as equivalent. The Parties may agree to further engage for the purpose of accepting equivalent technical regulations, such as by establishing an *ad hoc* working group, as provided for in Article 7.11 (Country Coordinators on Technical Barriers to Trade).

4. At the request of a Party which may have an interest in developing a technical regulation similar to the technical regulation of the other Party, and in order to minimize duplicate expenses, the other Party shall provide any available information, studies or other relevant documents, which it had relied on in the development of that technical regulation except confidential information.

ARTICLE 7.8 : CONFORMITY ASSESSMENT

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance, in a Party's territory, of the results of conformity assessment procedures conducted in another Party's territory, for example:

- (a) the importing Party may rely on a supplier's declaration of conformity;
- (b) the Parties' conformity assessment bodies may enter into voluntary arrangements to accept the results of each other's conformity assessment procedures;
- (c) a Party may agree with the other Party to accept the results of conformity assessment procedures with respect to specific technical regulations conducted by conformity assessment bodies located in the other Party's territory;
- (d) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;
- (e) a Party may designate conformity assessment bodies located in the territory of the other Party; and
- (f) a Party may unilaterally recognize the results of conformity assessment procedures conducted in the territory of the other Party with respect to a sector nominated by other Party.

The Parties shall intensify their exchange of information on these and other similar mechanisms, so as to facilitate the acceptance of results of conformity assessment procedures.

2. If a Party does not accept the results of a conformity assessment procedure carried out in the territory of the other Party, it shall, on request of the other Party, explain its decision, so that the affected Party may take corrective action.

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. Where a Party accredits, approves, licenses or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and 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 of that other Party, explain the reasons for its decision so that the other Party may take corrective action.

4. Where a Party refuses an application from the other Party to engage or conclude negotiations to reach an agreement that facilitates the recognition in its territory of the results of the conformity assessment procedures conducted by conformity assessment bodies in the territory of the other Party, it shall, on request of the other Party, explain its decision, so that the other Party may take corrective action. The Parties may agree to further engagements, such as by the establishment of an *ad hoc* working group, as provided for in Article 7.11 (Country Coordinators on Technical Barriers to Trade).

2. The Parties shall encourage the use of activities developed within the framework of cooperation and technical assistance as reference in a process to recognize assessment conformity.

ARTICLE 7.9 : TRANSPARENCY

1. The Parties undertake to transmit, electronically, through the contact points established by each Party under Article 10 of the TBT Agreement, the proposed technical regulations and conformity assessment procedures intended to be adopted at the same time that the parties notify WTO members in accordance with the TBT Agreement. The Parties shall also notify/publish, pursuant to paragraph 7 of this Article, those technical regulations, whether the technical regulations are in accordance with the technical content of the relevant international standards, or not.

2. Each Party shall allow for at least sixty (60) days, after the transmission of the notifications mentioned in paragraph 1, for the other Party to comment and have consultations on such measure. Each Party shall take into consideration the comments of the other Party and the outcome of the consultations. A Party shall give favourable consideration to a reasonable request by the other Party for extension of the above period.

3. In case of emergency, a Party adopting technical regulations and/or conformity assessment procedures shall send electronically, through the aforementioned contact points, the said documents to the other Party at the same time it notifies the Members of the WTO. The Parties shall also notify/publish those technical regulations, whether the technical regulations are in accordance with the technical content of the relevant international standards, or not.

4. Each Party shall publish, or otherwise make available to the public, in print or electronically, its responses to significant comments it receives from persons of the other Party no later than the date it publishes the final technical regulation or conformity assessment procedure.

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

6. The Parties agree that the period of time as from the date of publication and the validity of the technical regulations, conformity assessment procedures or any other mandatory rule shall not be less than (6) six months, unless such time period would undermine a legitimate purpose underlying the adoption of the regulation, procedure or rule.

7. Each Party shall ensure that all technical regulations and conformity assessment procedures which have been adopted or are proposed and the necessary notifications referred to under paragraphs 1 and 3, are available on its official websites.

8. Each Party shall implement this Article as soon as is practicable, and under no circumstance, later than two years, from the date of entry into force of this Agreement.

ARTICLE 7.10: TECHNICAL COOPERATION

1. The Parties agree to supply each other technical assistance and cooperation, to the extent possible, in order to, *inter alia*:

- (a) encourage the enforcement of this Chapter;
- (b) encourage the enforcement of the TBT Agreement;
- (c) strengthen the corresponding organisations of standardisation, technical regulation, conformity assessment, metrology and information and notice systems within the scope of the TBT Agreement;
- (d) strengthen the technical reliability among said organisations, mainly intending to execute Mutual Recognition Agreements of interest for the Parties;
- (e) facilitate the acceptance of equivalence of standards and technical regulations;
- (f) strengthen, where applicable, collaboration between the Parties in relevant international organisations implementing agreements or developing international standards, guidelines and recommendations referred to matters covered by this Chapter;
- (g) provide support to the development and application of international standards; and

- (h) increase the formation and training of the human resources required for this Chapter.

2. The Parties shall explore opportunities for further cooperation and collaboration so as to facilitate the implementation of this Chapter including the negotiations of Mutual Recognition Agreements by the competent organisations in the areas of standardisation, regulation and conformity assessment following the principles of the TBT Agreement.

ARTICLE 7.11 : COUNTRY COORDINATORS ON TECHNICAL BARRIERS TO TRADE

1. To facilitate information exchange, cooperation and implementation of this chapter, the Parties hereby establish the Country Coordinators on Technical Barriers to Trade, comprising representatives of each Party.

2. The Country Coordinators on Technical Barriers to Trade shall be:

- (a) in the case of Peru,

Ministry of Foreign Trade and Tourism
Viceministry of Foreign Trade
Calle Uno Oeste N° 50, Urb. Córpac, San Isidro
Tel (51 1) 513 6100,

or its successors or its designated coordinator; and

- (b) in the case of Singapore,

Ministry of Trade and Industry
Trade Division
100 High Street # 09-01 The Treasury
Singapore 179434
Tel (65) 6225 9911
Fax (65) 6332 7260
Email mti_email@mti.gov.sg

or its successor or its designated coordinator.

3. The Country Coordinators' 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 and, as appropriate, designing and proposing mechanisms for technical assistance of the type described in Article 11 of the TBT Agreement;
- (d) where appropriate, facilitating sectoral cooperation between governmental and non-governmental conformity assessment bodies in the territories of the Parties;
- (e) exchanging information on developments in non-governmental, regional and multilateral fora engaged in activities related to standards, technical regulations and conformity assessment procedures;
- (f) at a Party's request, consulting on any matter arising under this Chapter;
- (g) reviewing this Chapter in light of any developments under the TBT Committee, and developing recommendations for amendments to this Chapter if necessary;
- (h) taking any other steps the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade;
- (i) as it considers appropriate, reporting to the Commission on the implementation of this Chapter;
- (j) establishing, if necessary, for particular issues or sectors, working groups for the treatment of specific matters related with the chapter and the TBT agreement;
- (k) facilitating the consideration of a request by a Party for the recognition of the results to conformity assessment procedures, including a request for the negotiation of an Agreement, in a sector nominated by that party; and
- (l) facilitating cooperation in the areas of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities.

4. When consultations are requested under paragraph 2(f), the Parties shall make every effort to attain a mutually satisfactory solution, within a thirty (30) day period.

5. Where the Parties have had recourse to consultations under paragraph 2(f) such consultations shall constitute consultations under Article 17.4 (Consultations).

6. The Country Coordinators shall meet at least once a year unless the Parties otherwise agree. The Country Coordinators shall carry out its work through the communication means agreed by the Parties, such as Internet, videoconferences or others.

ARTICLE 7.12 : EXCHANGE OF INFORMATION

1. Any information or explanation requested by a Party pursuant to the provisions of this Chapter shall be provided by other Party, in print or electronically, in a term of thirty (30) days, which may be extended prior justification of the informing Party.

2. As concerns information exchange, in compliance with Article 10 under the TBT Agreement, the Parties shall apply the recommendations included in the document on Decisions and Recommendations adopted by the Committee since 1 January 1995, G/TBT/1/Rev. 8, 23 May, 2002, Section IV (Procedure for information exchanges) as transmitted by the TBT Committee .