

CHAPTER 5

TECHNICAL BARRIERS TO TRADE

ARTICLE 5.1

Scope

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures that may affect trade in goods between the Parties.
2. This Chapter shall not apply to:
 - (a) purchasing specifications prepared by governmental bodies for their production or consumption requirements; or
 - (b) sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).

ARTICLE 5.2

Objectives

The objectives of this Chapter are:

- (a) to further the implementation of the WTO Agreement on Technical Barriers to Trade (TBT Agreement) and facilitate trade in goods between the Parties by identifying, preventing and eliminating unnecessary technical barriers to trade;
- (b) to facilitate exchange of information and cooperation in the field of technical regulations, standards and conformity assessment, including metrology and accreditation, between the Parties;
- (c) to enhance mutual understanding of the regulatory systems of the Parties;
- (d) to promote the implementation of good regulatory practices; and
- (e) to contribute to solve trade concerns arising between the Parties.

ARTICLE 5.3

Incorporation of the TBT Agreement

The TBT Agreement applies to this Chapter and is hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 5.4

Trade Facilitating Initiatives

1. The Parties recognise the importance of intensifying their collaboration with a view to achieving a better understanding of their respective systems and preventing, eliminating or reducing the creation of technical barriers to trade. To this end, the Parties shall work towards the identification, promotion, development, and implementation, as appropriate, of trade facilitating initiatives on a case-by-case basis.

2. A Party may propose trade facilitating initiatives for specific products or sectors in areas covered by this Chapter to the other Parties. These proposals shall be transmitted to the contact points and may include, *inter alia*:

- (a) exchange of information on regulatory approaches and practices;
- (b) initiatives to further align technical regulations and conformity assessment procedures with relevant international standards;
- (c) initiatives on regulatory convergence;
- (d) initiatives to facilitate the acceptance of the results of conformity assessment procedures conducted in another Party, in accordance with paragraph 1 of Article 5.7 (Conformity Assessment Procedures); and
- (e) considering mutual or unilateral recognition of conformity assessment results.

3. If a Party proposes a trade facilitating initiative, the other Parties concerned shall duly consider the proposal and reply within a reasonable period of time. Any Party rejecting the proposal shall explain the reasons for its decision to the Party proposing a trade facilitating initiative.

4. If a Party proposes sectoral initiatives already agreed between each Party concerned and the European Union (EU), the Parties concerned shall, without undue delay, negotiate the proposal to extend to each other equivalent treatment related to technical regulations, standards or conformity assessments. Such proposals extending to each other equivalent treatment related to technical regulations, standards or conformity assessments mutually agreed between each Party concerned and the EU shall only cover sectors falling under harmonised EU legislation.

5. When agreed by the Parties concerned and necessary for the implementation of trade facilitating initiatives under this Article, the State Parties shall facilitate the access of technical teams to demonstrate their conformity assessment schemes and systems in order to increase mutual understanding.

6. The Parties engaged in a trade facilitating initiative shall, when needed, define the terms of work envisaged under this Article and involve their competent regulatory and governmental authorities. The Parties may establish *ad hoc* working groups and, if appropriate and previously agreed upon by the Parties, invite representatives of the

private sector, academia and civil society, *inter alia*, to participate in specific activities of these working groups.

7. The results of an understanding reached under this Article should be incorporated into an appropriate instrument, depending on the subject matter and the agreed tool and shall be reported to the contact points.

8. Further to paragraph 7, whenever the Parties concerned consider that the result of a trade facilitating initiative under this Chapter shall be incorporated into this Agreement, this understanding shall be reported to the Joint Committee, which may decide on the adoption of a new Annex to this Agreement.

9. The Parties have concluded Annex IX (Electrical and Electronic Products) to prevent, eliminate, or reduce unnecessary non-tariff barriers to trade, including to avoid duplicative and unnecessarily burdensome conformity assessment procedures related to electrical and electronic products. The Parties may present amendment proposals to the Joint Committee regarding Annex IX (Electrical and Electronic Products) and Annexes created pursuant to paragraph 8.

ARTICLE 5.5

Technical Regulations

1. The Parties shall make best use of good regulatory practices with regard to the preparation, adoption and application of technical regulations, as provided for in the TBT Agreement, including, for example, preference for performance-based technical regulations, use of impact assessments or stakeholder consultation. In particular, the Parties shall:

- (a) reinforce the role of relevant international standards as a basis for their technical regulations, including conformity assessment procedures;
- (b) where international standards have not been used as a basis for a technical regulation, which may have a significant effect on trade, explain upon request of a Party the reasons why such standards have been judged inappropriate or ineffective for the aim pursued;
- (c) promote the development of regional technical regulations and their adoption at national level in order to facilitate trade between the Parties;
- (d) carry out an impact analysis of planned technical regulations in accordance with its respective rules and procedures; and
- (e) when preparing technical regulations, take due account of the characteristics and special needs of micro, small and medium-sized enterprises (MSMEs).

2. Each State Party shall ensure that goods, once placed on the market and fully complying with the relevant technical regulations and the respective conformity

assessment procedures of the importing State Party, may freely move within its territory without any further technical requirement related to this Chapter.

3. If a State Party detains at a port of entry goods exported from another State Party due to an alleged failure to comply with a technical regulation, the reasons for the detention shall be promptly notified to the importer.

4. If a State Party withdraws from its market goods exported from another State Party, the reasons for the withdrawal shall be promptly notified to the person responsible for placing the goods on the market.

ARTICLE 5.6

Standards

1. The State Parties recognise their responsibility under Article 4.1 of the TBT Agreement to take all reasonable measures to ensure that their standardisation bodies comply with the Code of Good Practice for the Preparation and Adoption of Standards in Annex 3 to the TBT Agreement.

2. For the purposes of this Chapter, “relevant international standards” referred to in Article 2.4 of the TBT Agreement means standards developed by international standardising organisations, such as the International Organization for Standardization (ISO), International Electrotechnical (IEC), the International Telecommunication Union (ITU), Codex Alimentarius Commission and the World Organization for Animal Health (WOAH), provided that in their development these organisations have complied with the principles and procedures set out in the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations.

3. Within the limits of their competence and resources, the Parties shall encourage their standardising bodies, as well as the regional standardising bodies which the State Parties or their standardising bodies are members of, to:

- (a) cooperate with the relevant national and regional standardisation bodies of another Party in international standardisation activities; and
- (b) use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for instance because of an insufficient level of protection, fundamental climatic or geographical factors, fundamental technological problems or development concerns of developing countries.

ARTICLE 5.7

Conformity Assessment Procedures

1. The State Parties acknowledge that a broad range of mechanisms exist to facilitate acceptance of the results of conformity assessment procedures conducted in another State Party, such as:

- (a) use of accreditation based on international standards to qualify conformity assessment bodies;
- (b) government designation of conformity assessment bodies;
- (c) voluntary arrangements between conformity assessment bodies in each State Party;
- (d) unilateral recognition by a State Party of the results of conformity assessments performed in another State Party;
- (e) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specified technical regulations conducted by recognised conformity assessment bodies; and
- (f) the importing State Party's acceptance of a supplier's declaration of conformity, based on international standards.

2. The State Parties recognise that the selection of the appropriate mechanisms depends on the institutional and the legal framework of each State Party.

3. The State Parties shall encourage mutual acceptance of conformity assessment results of bodies accredited in accordance with subparagraph 1 (a), which have been recognised under the relevant international agreements, such as the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF).

4. If a State Party requires positive assurance of conformity with domestic technical regulations, it shall consider in its internal regulatory process the use of supplier's declaration of conformity among other options as an assurance of conformity.

5. If a supplier's declaration of conformity, without mandatory third party assessment, is considered a valid conformity assessment procedure in the EFTA States, test reports issued by conformity assessment bodies that are located in the territory of a MERCOSUR State shall be accepted as a valid document in the process of demonstrating that a product conforms with the requirements of the EFTA State's technical regulations. The manufacturer shall remain responsible for the conformity of the product in all cases.

ARTICLE 5.8

Transparency

1. The State Parties reaffirm their transparency obligations under the TBT Agreement with regard to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.
2. For the purposes of paragraph 1, the State Parties shall:
 - (a) take another State Party's views into account where a part of the process of developing a technical regulation is open to public consultations;
 - (b) ensure that economic operators and other interested persons of another State Party are allowed to participate in any formal public consultative process concerning the development of technical regulations; and
 - (c) when making notifications in accordance with Article 2.9 of the TBT Agreement, to endeavour to allow at least 60 days for another State Party to provide comments in writing to the proposal.
3. Where practicable, the State Parties shall give appropriate consideration to reasonable requests to extend the comment period.
4. Each State Party shall ensure that all technical regulations and mandatory conformity assessment procedures adopted and in force are publicly available on an official website. If the presumption of conformity with technical regulations relies on standards not referred to in these technical regulations, the State Party concerned shall, upon request, provide the list of standards designated under the corresponding regulations.

ARTICLE 5.9

Marking and Labelling

1. The Parties affirm that their technical regulations including or dealing exclusively with marking or labelling shall observe the principles of Article 2 of the TBT Agreement.
2. Where a Party requires mandatory marking or labelling of goods:
 - (a) the Party shall only require information which is relevant for consumers, users of the product or the competent authorities, or an indication of the product's conformity with the mandatory technical requirements;
 - (b) where a State Party requires any prior approval, registration or certification of the labels or markings of the goods, as a precondition for placing goods on the market that otherwise comply with its mandatory technical requirements, it shall ensure that the requests submitted by the economic operators of another State Party are decided without undue delay and on a non-discriminatory basis;

- (c) where the State Party requires the use of a unique identification number by economic operators, the State Party shall issue such number to the economic operators of another State Party without undue delay and on a non-discriminatory basis;
 - (d) provided it is neither misleading nor confusing in relation to the information required, nor contradicting the regulatory requirements in the importing State Party, the Party shall permit the following:
 - (i) information in other languages in addition to the language required by the importing State Party; and
 - (ii) nomenclatures, pictograms, symbols or graphics adopted in international standards;
 - (e) the State Party, whenever possible and not compromising legitimate objectives under the TBT Agreement, shall accept that supplementary labelling and corrections to labelling take place in customs warehouses or other designated areas at the point of import as an alternative to labelling in the country of origin; and
 - (f) the State Party shall endeavour to accept non-permanent or detachable labels, or inclusion of relevant information in the accompanying documentation, rather than labels that are physically attached to the product, unless such labelling is required for public health or safety reasons or any other legitimate objectives under the TBT Agreement.
3. Paragraph 2 shall not apply to marking or labelling of medicinal products.

ARTICLE 5.10

Technical Cooperation

1. With a view to increasing mutual understanding of their respective systems and facilitating access to their respective markets, the Parties shall strengthen their cooperation. Such cooperation may include, but shall not be limited to:
 - (a) activities of international standardisation bodies and the WTO Committee on Technical Barriers to Trade;
 - (b) communication between their competent authorities, exchange of information with respect to technical regulations, good regulatory practice, standards, conformity assessment procedures, border control and market surveillance;
 - (c) strengthening the technical and institutional capacity of the national regulatory, metrology, standardisation, conformity assessment and accreditation institutions, by means of cooperation and joint activities that support the development of a technical infrastructure and continuous training of human resources; and

- (d) supporting activities by national, regional and international organisations in the areas covered by this Chapter.

2. Upon request, and taking into account the different levels of development of the involved Parties, a Party shall give appropriate consideration to proposals for cooperation according to this Article.

ARTICLE 5.11

Technical Consultations

1. Upon request of a Party, which considers that a technical regulation, standard or conformity assessment procedure of another Party has created, or is likely to create, an obstacle to trade, consultations shall be held with the objective of finding a mutually acceptable solution.

2. Consultations shall take place within 60 days from the receipt of the request by the contact point, unless the request identifies the matter as urgent, in which case the Parties shall endeavour to hold the technical discussions sooner. The consultations may be conducted by any method agreed by the consulting Parties. The Joint Committee shall be informed of the consultations.

3. For greater certainty, this Article shall be without prejudice to a Party's rights and obligations under Chapter 15 (Dispute Settlement).

ARTICLE 5.12

Contact Points

The Parties shall exchange names and addresses of contact points in order to facilitate the implementation of this Chapter.