

CHAPTER 7

TECHNICAL BARRIERS TO TRADE

Article 93: Objectives

The objectives of this Chapter are to increase and facilitate trade between the Parties, through the improvement of the implementation of the *WTO Agreement on Technical Barriers to Trade* (hereinafter referred to as “TBT Agreement”); the assurance that standards, technical regulations, and conformity assessment procedures, do not create unnecessary obstacles to trade; and the enhancement of bilateral cooperation between the Parties.

Article 94: Affirmation of the TBT Agreement

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

Article 95: Scope

1. The provisions of this Chapter apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, of central and local government bodies, that may affect directly or indirectly the trade in goods between the Parties.

2. This Chapter does not apply to:

(a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; and

(b) sanitary and phytosanitary measures as defined in Annex A of the *WTO Agreement on*

the Application of Sanitary and Phytosanitary Measures, which are covered by Chapter 6 (Sanitary and Phytosanitary Measures) of this Agreement.

Article 96: International Standards

1. Each Party shall use relevant international standards, guides and recommendations to the extent provided in Articles 2.4 and 5.4 of the TBT Agreement, as a basis for its technical regulations and conformity assessment procedures.

2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 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.8, 23rd 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 Agreement)*, issued by the WTO Committee on Technical Barriers to Trade (TBT Committee).

3. Each Party shall encourage its national standardizing bodies to cooperate with the relevant national standardizing bodies of the other Party in international standardizing activities. Such cooperation may take place through the Parties' activities in regional and international standardizing bodies of which they are both members.

Article 97: Technical Regulations

1. Each Party shall give positive consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided it is satisfied that

these regulations adequately fulfil the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall, at the request of the other Party, explain its decision.

3. At the request of a Party that has an interest in developing a similar technical regulation, the Parties may conduct relevant communication to provide, to the extent practicable, information, studies, or other documents, except for confidential information, on which it has relied in the development of a technical regulation.

Article 98: 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 the other Party's territory. The Parties shall exchange information on the range of mechanisms used in their territories.

2. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical confidence of the conformity assessment bodies involved.

3. A Party shall, on the request of the other Party, explain its reasons for not accepting the results of a conformity assessment procedure performed in the other Party's territory.

4. Each Party shall accredit or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory. If a Party accredits, or otherwise recognizes a body

assessing conformity with a particular technical regulation or standard and it refuses to accredit or otherwise recognizes a body of the other Party assessing conformity with that technical regulation or standard, it shall, on request, explain the reasons for its refusal.

5. 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 located in the other Party's territory, it shall, on request, explain its reasons.

6. The Parties shall ensure that, in cases where a compulsory conformity assessment procedure is required, one Party applies the following provisions to products originating in the territory of the other Party:

(a) the standard processing period of each compulsory conformity assessment procedure is published or the anticipated processing period is communicated to the applicant upon request; and

(b) at request of a Party, the other Party shall provide the list of products, in a specific sector, which are subject to compulsory conformity assessment procedures, in a term of 30 working days. The list of products shall be made in English with its HS code, in six or more digits.

Article 99: Transparency

1. Each Party shall notify electronically to the other Party's enquiry point, established under Article 10 of the TBT Agreement, at the same time it submits its notification to the WTO Secretariat in accordance with the TBT Agreement:

(a) its proposed technical regulations and conformity assessment procedures; and

(b) its technical regulations and conformity assessment procedures adopted to address urgent problems of safety, health, environmental protection or national security arising or threatening to arise.

The notifications shall include an electronic link to, or a copy of, the full text of the notified document.

2. Further to subparagraph 1(a), each Party shall allow a period of at least 60 days following notification of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments. A Party shall give positive consideration to a reasonable request for extending the comment period.

3. A Party shall give favourable consideration to the comments from the other Party and, if the comments are not accepted, the Party shall explain the reasons in a timely fashion.

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

5. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comments period following the notification of a proposed technical regulation, to extend the period of time between the adoption of the technical regulation and its entry into force.

6. Where a Party detains at a port of entry a good imported from the territory of the other Party due to a perceived failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention of the good.

7. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are available on an official website that is publicly available.

8. The Parties agree to further strengthen cooperation between TBT Enquiry Points of the Parties, including sharing available translated versions of TBT notifications and relevant information, and exchanging experience and information on TBT notifications.

Article 100: Technical Cooperation

1. The Parties agree to cooperate 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 consider the following activities, *inter alia*:

(a) encouraging the enforcement of this Chapter;

(b) strengthening the capacity of their corresponding standardisation, technical regulation, conformity assessment and metrology bodies;

(c) increasing the participation and collaboration in the international organizations with activity in areas such as standards, conformity assessment and metrology; and

(d) increasing the human resources development and training as required by this Chapter.

Article 101: Committee on Technical Barriers to Trade

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

2. For purposes of this Article, the Committee shall be coordinated by:

(a) for China, the Department of International Cooperation of the General Administration

of Quality Supervision, Inspection and Quarantine, or its successor; and

(b) for Peru, the Vice Ministry of Foreign Trade of the Ministry of Foreign Trade and Tourism, or its successor.

The Parties agree to designate contact points at the first meeting of the Committee on Technical Barriers to Trade established under this Chapter.

3. The Committee's functions shall include:

(a) monitoring the implementation and administration of this Chapter;

(b) reviewing this Chapter in light of any developments under the TBT Committee, and if necessary developing recommendations for attachments to this Chapter;

(c) discussing any issue that a Party raises related to the development, adoption or application of standards, technical regulations, conformity assessment procedures and other TBT issues under this Chapter; including:

(i) establishing, if necessary to achieve the objectives of this Chapter, issues or sectors-specific ad hoc working groups; and

(ii) taking any other steps the Parties may consider that will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade;

(d) exchanging information on standardization, technical regulations, and conformity assessment procedures, including, when appropriate, information of activities in other fora;

(e) promoting and facilitating cooperation in the areas of standards, technical regulations and conformity assessment procedures, including metrology;

(f) at a Party's written request, holding technical consultation on any matter arising under this Chapter; and

(g) as it considers appropriate, reporting to the Free Trade Commission on the implementation of this Chapter.

4. Notwithstanding subparagraph 3(f), any Party may directly resort to the dispute settlement mechanism provided in Chapter 15 (Dispute Settlement).

5. The institutions set out in paragraph 2 will be responsible for coordinating with the relevant institutions and persons in their territory as well as ensuring that such institutions and persons are engaged. They will elaborate their own work rules and shall meet at least every 2 years unless the Parties otherwise agree. The Committee shall carry out their work through the communication channels agreed to by the Parties, which may include electronic mail, teleconferencing, videoconferencing, or other means.

Article 102: Information Exchange

Any information or explanation requested by a Party pursuant to the provisions of this Chapter shall be provided by the other Party, in print or electronically, within a reasonable period of time agreed between the Parties and, if possible, in a term of 60 days.

Article 103: Definitions

For purposes of this Chapter, the terms and definitions of Annex 1 of the TBT Agreement shall apply.