

CHAPTER EIGHT

TECHNICAL BARRIERS TO TRADE

ARTICLE 8.1 : SCOPE AND COVERAGE

This Chapter applies to all standards, technical regulations, and conformity assessment procedures of the central government that may, directly or indirectly, affect trade in any product between the Parties, except:

- (a) technical specifications prepared by government bodies for the production or consumption requirements of such bodies; and
- (b) sanitary and phytosanitary measures as defined in Annex A of the SPS Agreement.

ARTICLE 8.2 : AFFIRMATION OF THE TBT AGREEMENT

Further to Article 1.1.2, the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

ARTICLE 8.3 : REGIONAL GOVERNMENTS

Each Party shall provide information to authorities of regional governments to encourage their adherence to this Chapter, as appropriate.

ARTICLE 8.4 : INTERNATIONAL STANDARDS

1. Each Party shall use relevant international standards, to the extent provided in Article 2.4 of the TBT Agreement, as a basis for its technical regulations.
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, 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 Agreement)*, issued by the WTO Committee on Technical Barriers to Trade.
3. The Parties shall consult and exchange views on matters under discussion in relevant international or regional bodies that develop standards, guidelines, recommendations, or policies relevant to this Chapter.

ARTICLE 8.5 : 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 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 reasons. The Parties will, if they so agree, give further consideration to whether a Party should accept a particular regulation as equivalent to its own and consider establishing an *ad hoc* working group, as provided for in Article 8.9.3, for this purpose.

3. Neither Party may have recourse to dispute settlement under this Agreement for any matter arising under this Article.

ARTICLE 8.6 : CONFORMITY ASSESSMENT PROCEDURES

1. The Parties recognise 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. For example:

- (a) the importing Party may rely on a supplier's declaration of conformity;
- (b) conformity assessment bodies located in each Party's territory may enter into voluntary arrangements to accept the results of each other's assessment procedures;
- (c) a Party may agree with the other Party to accept the results of conformity assessment procedures that bodies located in the other Party's territory conduct with respect to specific technical regulations;
- (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 facilitate the consideration of a request by the other Party to recognise the results of conformity assessment procedures conducted by bodies in the other Party's territory, including through negotiation of agreements in a sector nominated by that other Party.

The Parties shall exchange information on these and other similar mechanisms with a view to facilitating acceptance of conformity assessment results.

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

3. Each Party shall accredit, approve, license, or otherwise recognise 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. Where a Party accredits, approves, licenses, or otherwise recognises a body assessing conformity with a specific 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, it shall, on request of that other Party, explain the reasons for its decision.

4. Where a Party declines a request from the other Party to engage in negotiations or conclude an agreement on facilitating recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall, on request of that other Party, explain the reasons for its decision. The Parties will, if they so agree, give further consideration with respect to this matter and consider establishing an *ad hoc* working group, as provided for in Article 8.9.3, for this purpose.

ARTICLE 8.7 : TRANSPARENCY

1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures on terms no less favourable than those accorded to its own persons.

2. Each Party shall recommend that non-governmental bodies in its territory observe paragraph 1 in relation to the development of standards and voluntary conformity assessment procedures.

3. The Parties acknowledge the importance of transparency in decision-making, including providing a meaningful opportunity for persons to provide comments on proposed technical regulations and conformity assessment procedures. Where a Party publishes a notice under Article 2.9 or 5.6 of the TBT Agreement, it shall:

- (a) include in the notice a statement describing the objective of the proposed technical regulation or conformity assessment procedure and the rationale for the approach the Party is proposing; and
- (b) transmit the proposal electronically to the other Party through the enquiry point the Party has 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 after it transmits a proposal under subparagraph (b) for the public and the other Party to make comments in writing on the proposal.

4. Each Party shall publish, or otherwise make available to the public, in print or electronically, its responses to significant comments it receives from the public or the other Party under paragraph 3 no later than the date it publishes the final technical regulation or conformity assessment procedure.

5. 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 enquiry point referenced in subparagraph 3(b).

6. On request of the other Party, a Party shall provide the other Party 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.

ARTICLE 8.8 : TRADE FACILITATION

1. The Parties shall work cooperatively in the fields of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between the Parties. In particular, the Parties shall seek to identify trade facilitating bilateral initiatives regarding standards, technical regulations, and conformity assessment procedures 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 recognition of conformity assessment procedures.

2. At the request of the other Party, a Party shall encourage non-governmental bodies in its territory to cooperate with the non-governmental bodies in the territory of the other Party with respect to particular standards or conformity assessment procedures

ARTICLE 8.9 : CHAPTER COORDINATORS

1. In order to facilitate implementation of this Chapter and cooperation between the Parties, each Party shall designate a Chapter Coordinator who shall be responsible for coordinating with interested persons in the Party's territory and communicating with the other Party's Coordinator in all matters pertaining to this Chapter. The 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;
- (d) exchanging information on standards, technical regulations, and conformity assessment procedures, in response to all reasonable requests for such information from a Party;
- (e) facilitating the consideration of any sector-specific proposal a Party makes for further cooperation between conformity assessment bodies, both governmental and nongovernmental, in the territories of the Parties ;
- (f) facilitating the consideration of a request that a Party recognise the results of conformity assessment procedures conducted by bodies in the other Party's

territory, including a request for the negotiation of an agreement, in a sector nominated by that other Party;

- (g) facilitating cooperation in the area of specific technical regulations by referring enquiries from a Party to the appropriate regulatory authorities;
- (h) on request of a Party, consulting on any matter arising under this Chapter; and
- (i) 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.

2. The Coordinators shall communicate with one another by any agreed method that is appropriate for the efficient and effective discharge of their functions.

3. Where a matter covered under this Chapter cannot be clarified or resolved through the Chapter Coordinators, the Parties may establish an *ad hoc* technical working group with a view to identifying a workable and practical solution that would facilitate trade. A working group shall comprise representatives of the Parties and may include regional government representatives, where appropriate, with responsibility for the standards, technical regulations, or conformity assessment procedures in question. Where a Party declines a request from the other Party to establish a working group, it shall, on request, explain the reasons for its decision.

ARTICLE 8.10 : INFORMATION EXCHANGE

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

ARTICLE 8.11 : DEFINITIONS

For the purposes of this Chapter:

technical regulation, standard, and conformity assessment procedures shall have the meanings assigned to those terms in Annex 1 of the TBT Agreement.

ANNEX 8-A
CHAPTER COORDINATOR

For the purposes of Article 8.9, Chapter Coordinators shall be:

- (a) in the case of Australia, Department of Industry, Tourism and Resources, or its successor; and
- (b) in the case of the United States, the Office of the U.S. Trade Representative, or its successor.