

CHAPTER FOUR

TECHNICAL BARRIERS TO TRADE

ARTICLE 4.1

Affirmation of the TBT Agreement

The Parties affirm their existing rights and obligations with respect to each other under the *Agreement on Technical Barriers to Trade*, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "TBT Agreement") which is incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 4.2

Scope and Definitions

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures as defined in the TBT Agreement that may affect trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter does not apply to:
 - (a) technical specifications prepared by governmental bodies for production or consumption requirements of such bodies; or
 - (b) sanitary and phytosanitary measures as defined in Annex A of the *Agreement on the Application of Sanitary and Phytosanitary Measures*, contained in Annex 1A to the WTO Agreement (hereinafter referred to as the "SPS Agreement").
3. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement shall apply.

ARTICLE 4.3

Joint Cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets. To this end, they may establish regulatory dialogues at both the horizontal and sectoral levels.
2. In their bilateral cooperation, the Parties shall seek to identify, develop and

promote trade facilitating initiatives which may include, but are not limited to:

- (a) reinforcing regulatory cooperation through, for example, the exchange of information, experiences and data and scientific and technical cooperation with a view to improving the quality and level of their technical regulations and making efficient use of regulatory resources;
- (b) where appropriate, simplifying technical regulations, standards and conformity assessment procedures;
- (c) where the Parties agree, and where appropriate, for example where no international standard exists, avoiding unnecessary divergence in approach to regulations and conformity assessment procedures, and working towards the possibility of converging or aligning technical requirements; and
- (d) promoting and encouraging bilateral cooperation between their respective organisations, public or private, responsible for metrology, standardisation, testing, certification and accreditation.

3. On request, a Party shall give due consideration to proposals that the other Party makes for cooperation under the terms of this Chapter.

ARTICLE 4.4

Technical Regulations

1. The Parties agree to make best use of good regulatory practice, as provided for in the TBT Agreement. In particular, the Parties agree:

- (a) to fulfil the transparency obligations of the Parties as indicated in the TBT Agreement;
- (b) to use relevant international standards as a basis for technical regulations including conformity assessment procedures, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued, and where international standards have not been used as a basis, to explain on request to the other Party the reasons why such standards have been judged inappropriate or ineffective for the aim pursued;
- (c) when a Party has adopted or is proposing to adopt a technical regulation, to provide the other Party on request with available information regarding the objective, legal basis and rationale for the technical regulation;
- (d) to establish mechanisms for providing improved information on technical regulations (including through a public website) to the other Party's

economic operators, and in particular to provide written information, and as appropriate and available, written guidance on compliance with their technical regulations to the other Party or its economic operators upon request without undue delay;

- (e) to take appropriate consideration of the other Party's views where a part of the process of developing a technical regulation is open to public consultation, and on request to provide written responses to the comments made by the other Party;
- (f) when making notifications in accordance with the TBT Agreement, to allow at least 60 days following the notification for the other Party to provide comments in writing on the proposal; and
- (g) to leave sufficient time between the publication of technical regulations and their entry into force for economic operators of the other Party to adapt, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise, and where practicable to give appropriate consideration to reasonable requests for extending the comment period.

2. Each Party shall ensure that economic operators and other interested persons of the other Party are allowed to participate in any formal public consultative process concerning development of technical regulations, on terms no less favourable than those accorded to its own legal or natural persons.

3. Each Party shall endeavour to apply technical regulations uniformly and consistently throughout its territory.

ARTICLE 4.5

Standards

1. The Parties reconfirm their obligations under Article 4.1 of the TBT Agreement to ensure that their standardising bodies accept and comply with the Code of Good Practice for the Preparation and Adoption of Standards in Annex 3 to the TBT Agreement, and also have regard to 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.

2. The Parties undertake to exchange information on:

- (a) their use of standards in connection with technical regulations;

- (b) each other's standardisation processes, and the extent of use of international standards as a base for their national and regional standards; and
- (c) cooperation agreements implemented by either Party on standardisation, for example information on standardisation issues in free trade agreements with third parties.

ARTICLE 4.6

Conformity Assessment and Accreditation

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party, including:

- (a) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;
- (b) accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;
- (c) governmental designation of conformity assessment bodies located in the territory of the other Party;
- (d) recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;
- (e) voluntary arrangements between conformity assessment bodies in the territory of each Party; and
- (f) the importing Party's acceptance of a supplier's declaration of conformity.

2. Having regard in particular to those considerations, the Parties undertake:

- (a) to intensify their exchange of information on these and similar mechanisms with a view to facilitating the acceptance of conformity assessment results;
- (b) to exchange information on conformity assessment procedures, and in particular on the criteria used to select appropriate conformity assessment procedures for specific products;
- (c) to exchange information on accreditation policy, and to consider how to make best use of international standards for accreditation, and international agreements involving the Parties' accreditation bodies, for

example, through the mechanisms of the International Laboratory Accreditation Cooperation and the International Accreditation Forum; and

- (d) in line with Article 5.1.2 of the TBT Agreement, to require conformity assessment procedures that are not more strict than necessary.

3. Principles and procedures established in respect of development and adoption of technical regulations under Article 4.4 with a view to avoiding unnecessary obstacles to trade and ensuring transparency and non-discrimination shall also apply in respect of mandatory conformity assessment procedures.

ARTICLE 4.7

Market Surveillance

The Parties undertake to exchange views on market surveillance and enforcement activities.

ARTICLE 4.8

Conformity Assessment Fees

The Parties reaffirm their obligation under Article 5.2.5 of the TBT Agreement, that fees for mandatory conformity assessment of imported products shall be equitable in relation to the fees charged for conformity assessment of like products of national origin or originating in other countries, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body, and undertake to apply this principle in the areas covered by this Chapter.

ARTICLE 4.9

Marking and Labelling

1. The Parties note the provision of paragraph 1 of Annex 1 of the TBT Agreement, that a technical regulation may include or deal exclusively with marking or labelling requirements, and agree that where their technical regulations contain mandatory marking or labelling, they will observe the principles of Article 2.2 of the TBT Agreement, that technical regulations should not be prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and should not be more trade restrictive than necessary to fulfil a legitimate objective.

2. In particular, the Parties agree that where a Party requires mandatory marking or labelling of products:

- (a) the Party shall endeavour to minimise its requirements for marking or labelling other than marking or labelling relevant to consumers or users of the product. Where labelling for other purposes, for example, for fiscal purposes is required, such a requirement shall be formulated in a manner that is not more trade restrictive than necessary to fulfil a legitimate objective;
- (b) the Party may specify the form of labels or markings, but shall not require any prior approval, registration or certification in this regard. This provision is without prejudice to the right of the Party to require prior approval of the specific information to be provided on the label or marking in the light of the relevant domestic regulation;
- (c) where the Party requires the use of a unique identification number by economic operators, the Party shall issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (d) the Party shall remain free to require that the information on the marks or labels be in a specified language. Where there is an international system of nomenclature accepted by the Parties, this may also be used. The simultaneous use of other languages shall not be prohibited, provided that, either the information provided in the other languages shall be identical to that provided in the specified language, or that the information provided in the additional language shall not constitute a deceptive statement regarding the product; and
- (e) the Party shall, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

ARTICLE 4.10

Co-ordination Mechanism

1. The Parties agree to nominate TBT Co-ordinators and to give appropriate information to the other Party when their TBT Co-ordinator changes. The TBT Co-ordinators shall work jointly in order to facilitate the implementation of this Chapter and cooperation between the Parties in all matters pertaining to this Chapter.
2. The Co-ordinator's functions shall include:
 - (a) monitoring the implementation and administration of this Chapter, promptly addressing any issue that either Party raises related to the development, adoption, application or enforcement of standards, technical

regulations and conformity assessment procedures, and upon either Party's request, consulting on any matter arising under this Chapter;

- (b) enhancing cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures;
- (c) arranging the establishment of regulatory dialogues as appropriate in accordance with Article 4.3;
- (d) arranging the establishment of working groups, which may include or consult with non-governmental experts and stakeholders as mutually agreed by the Parties;
- (e) exchanging information on developments in non-governmental, regional and multilateral fora related to standards, technical regulations and conformity assessment procedures; and
- (f) reviewing this Chapter in light of any developments under the TBT Agreement.

3. The Co-ordinators shall communicate with each other by any agreed method that is appropriate for the efficient and effective discharge of their functions.