

CHAPTER 5

TECHNICAL BARRIERS TO TRADE

ARTICLE 5.1

Affirmation of the TBT Agreement

The Parties affirm their rights and obligations with respect to each other under the TBT Agreement, which is incorporated into and made part of this Agreement, *mutatis mutandis*.

ARTICLE 5.2

Objectives

1. The objectives of this Chapter are to facilitate and increase bilateral trade in goods by preventing, identifying and eliminating unnecessary obstacles to trade within the scope of the TBT Agreement, and to enhance bilateral cooperation between the Parties.
2. The Parties shall establish and enhance technical capabilities and institutional infrastructure on matters concerning technical barriers to trade.

ARTICLE 5.3

Scope and Definitions

1. This Chapter applies to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures, as defined in Annex 1 to the TBT Agreement, that may affect trade in goods between the Parties, except for:
  - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of those bodies; or
  - (b) sanitary and phytosanitary measures as defined in Annex A to the SPS Agreement.
2. Each Party has the right to prepare, adopt and apply standards, technical regulations and conformity assessment procedures in accordance with this Chapter and the TBT Agreement.
3. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement apply.

ARTICLE 5.4

Technical Regulations

1. Each Party shall make best use of good regulatory practice, as provided for in the TBT Agreement and in this Chapter, in particular, by:
  - (a) assessing the available regulatory and non-regulatory alternatives to a proposed technical regulation that would fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement; endeavouring to assess, *inter alia*, the impact of a proposed technical regulation by means of a regulatory impact assessment, as recommended by the Committee on Technical Barriers to Trade established under Article 13 of the TBT Agreement;
  - (b) using relevant international standards, such as those developed by the International Organization for Standardization, the International Electrotechnical Commission, the International Telecommunication Union and the Codex Alimentarius Commission, as a basis for their technical regulations, except when such international standards would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued by a Party. When a Party has not used international standards as a basis for its technical regulations, it shall, upon request of the other Party, identify any substantial deviation from the relevant international standards and explain the reasons why those standards have been judged inappropriate or ineffective for the objective pursued;

- (c) reviewing, without prejudice to Article 2.3 of the TBT Agreement, technical regulations with a view to increasing their convergence with relevant international standards. In undertaking this review, the Parties shall, *inter alia*, take into account any new development in the relevant international standards and whether the circumstances that have given rise to divergences from any relevant international standard continue to exist;
- (d) specifying technical regulations based on product performance requirements, rather than on design or descriptive characteristics.

2. In accordance with Article 2.7 of the TBT Agreement, a Party shall give favourable consideration to accepting as equivalent technical regulations of the other Party, even if those regulations differ from its own, provided it is satisfied that those regulations adequately fulfil the objectives of its own regulations.

3. A Party that has prepared a technical regulation that it considers to be equivalent to a technical regulation of the other Party because it has a compatible objective and product scope may request in writing that the other Party recognise it as equivalent. That request shall be made in writing and set out in detail the reasons why the technical regulations should be considered to be equivalent, including reasons with respect to product scope. A Party which does not agree that the technical regulations are equivalent shall provide to the other Party, upon request, the reasons for its decision.

ARTICLE 5.5

Standards

1. The Parties affirm 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, Adoption and Application of Standards in Annex 3 to the TBT Agreement. The Parties further affirm their adherence to the principles set out in *Decisions and Recommendations adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995, G/TBT/1/rev.12*, of 21 January 2015, (hereinafter referred to as "the document"), including the *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*, referred to in the Annexes to Part 1 of the document.
  
2. With a view to harmonising standards on as wide a basis as possible, the Parties shall encourage their standardising bodies as well as the regional standardising bodies of which they or their standardising bodies are members to:
  - (a) participate, within the limits of their resources, in the preparation of international standards by relevant international standardising bodies;

- (b) use relevant international standards as a basis for the standards they develop, except where those international standards would be ineffective or inappropriate for the fulfilment of the legitimate objectives pursued by a Party, for instance because of an insufficient level of protection, fundamental climatic or geographical factors, or fundamental technological problems;
  - (c) avoid duplication of, or overlap with, the work of international standardising bodies;
  - (d) review national and regional standards not based on relevant international standards at regular intervals, with a view to increasing their convergence with relevant international standards;  
and
  - (e) cooperate with the relevant standardisation bodies of the other Party in international standardisation activities. That cooperation may be undertaken in international standardising bodies or at regional level.
3. The Parties shall exchange information on:
- (a) their use of standards in support of technical regulations;
  - (b) their standardisation processes, and the extent of their use of international or regional standards as basis for their national standards; and

(c) cooperation agreements on standardisation implemented by either Party, including on standardisation issues in international agreements with third parties, to the extent this is not explicitly prohibited by those agreements.

4. The Parties recognise that in accordance with Annex 1 to the TBT Agreement, compliance with standards is voluntary. When a Party makes compliance with standards mandatory, through incorporation or referencing in technical regulations or conformity assessment procedures, Article 5.7 (Transparency) applies.

## ARTICLE 5.6

### Conformity Assessment Procedures

1. In respect of mandatory conformity assessment procedures the Parties shall apply paragraph 1 of Article 5.4 (Technical Regulations), *mutatis mutandis*, with a view to avoiding unnecessary obstacles to trade and ensuring transparency and non-discrimination.

2. In line with Article 5.1.2 of the TBT Agreement, when an importing Party requires positive assurance of conformity with its applicable technical regulations or standards, its conformity assessment procedures shall neither be stricter nor applied more strictly than necessary to give this Party adequate confidence that products conform with its applicable technical regulations or standards, taking account of the risks non-conformity would create.

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

- (a) the importing Party's reliance on a supplier's declaration of conformity;
- (b) 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;
- (c) use of accreditation to qualify conformity assessment bodies located in the territory of either Party;
- (d) government designation of conformity assessment bodies, including bodies located in the territory of the other Party;
- (e) unilateral recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;
- (f) voluntary arrangements between conformity assessment bodies located in the territory of either Party; and
- (g) use of regional and international multilateral recognition agreements and arrangements to which the Parties are party.

4. Having regard in particular to the considerations referred to in paragraph 3, the Parties shall:
- (a) intensify their exchange of information on the mechanism referred to in paragraph 3 and on similar mechanisms with a view to facilitating the acceptance of conformity assessment results;
  - (b) exchange information on conformity assessment procedures and, in particular, on the criteria used to select appropriate conformity assessment procedures for specific products;
  - (c) consider a supplier's declaration of conformity as one of the assurances of conformity with domestic law;
  - (d) consider arrangements on mutual acceptance of the results of conformity assessment procedures according to the procedure set out in paragraph 5;
  - (e) exchange information on accreditation policy and to consider how to best make use of international standards for accreditation and of international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation and the International Accreditation Forum;
  - (f) consider joining or, as applicable, to encourage their testing, inspection and certification bodies to join any operative international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;

- (g) ensure that economic operators have a choice amongst conformity assessment facilities designated by the authorities to perform the tasks required by domestic law to assure compliance;
- (h) endeavour to use accreditation to qualify conformity assessment bodies; and
- (i) ensure independence of, and absence of conflict of interest between, accreditation bodies and conformity assessment bodies.

5. Upon request from a Party, the other Party may decide to enter into consultations with a view to defining sectoral initiatives regarding the use of conformity assessment procedures or the facilitation of acceptance of conformity assessment results that are appropriate for the respective sectors. The Party making the request should provide relevant information on how the sectoral initiative would facilitate trade. If the other Party declines that request it shall, upon request, provide its reasons.

6. The Parties affirm their obligations under Article 5.2.5 of the TBT Agreement that fees imposed for mandatory conformity assessment of imported products shall be equitable in relation to any fees chargeable for assessing the conformity of like products of domestic origin or originating in any other country, taking into account communication, transportation and other costs arising from differences between location of facilities of the applicant and the conformity assessment body.

ARTICLE 5.7

Transparency

The Parties acknowledge the importance of transparency with regard to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures. In that regard, the Parties affirm their transparency obligations under the TBT Agreement. Each Party shall:

- (a) take the other Party's comments into account where a part of the process of developing a technical regulation is open to public consultation, and provide, upon request, written responses in a timely manner to the comments made by the other Party;
- (b) ensure that economic operators and other interested persons of the other Party are allowed to participate in any formal public consultation process concerning the development of technical regulations, on terms no less favourable than those accorded to its own legal or natural persons;
- (c) further to subparagraph 1(a) of Article 5.4 (Technical Regulations), in cases where impact assessments are carried out, inform the other Party, upon request, of the outcome of the impact assessment of the proposed technical regulation;

- (d) when making notifications in accordance with Article 2.9.2 or 5.6.2 of the TBT Agreement:
  - (i) allow at least a period of 60 days, following the notification, for the other Party to provide comments in writing to the proposal and, where practicable, give due consideration to reasonable requests for extending that period;
  - (ii) provide the electronic version of the notified text;
  - (iii) provide, in case the notified text is not in one of the official WTO languages, a detailed and comprehensive description of the content of the measure in the WTO notification format;
  - (iv) reply in writing to written comments received from the other Party on the proposal, no later than the date of publication of the final technical regulation or conformity assessment procedure; and
  - (v) provide information on the adoption and the entry into force of the notified measure and the adopted final text through an addendum to the original notification;
- (e) allow 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;

- (f) ensure that all technical regulations and mandatory conformity assessment procedures adopted and in force are publicly available on official websites and free of charge; and
- (g) ensure that the enquiry point, established in accordance with Article 10.1 of the TBT Agreement, provides information and answers in one of the official WTO languages to reasonable enquiries from the other Party or from interested persons of the other Party on adopted technical regulations, conformity assessment procedures and standards.

## ARTICLE 5.8

### Market Surveillance

The Parties shall:

- (a) exchange views on market surveillance and enforcement activities;
- (b) ensure that market surveillance functions are carried out by the competent authorities and that no conflicts of interest exist between the market surveillance function and the conformity assessment function; and
- (c) ensure that there are no conflicts of interest between market surveillance bodies and the economic operators subject to control or supervision.

ARTICLE 5.9

Marking and Labelling

1. The Parties note that a technical regulation may include or deal exclusively with marking or labelling requirements. When a Party's technical regulations contain mandatory marking or labelling requirements, that Party shall observe the principles of Article 2.2 of the TBT Agreement, in particular, that technical regulations shall not be prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and that they shall not be more trade restrictive than necessary to fulfil a legitimate objective.
  
2. When requiring mandatory marking or labelling of products, a Party shall:
  - (a) only require information which is relevant for consumers or users of the product or which indicates the product's conformity with the mandatory technical requirements;
  
  - (b) not require any prior approval, registration or certification of the labels or markings of products as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements, unless it is necessary in view of the risk of the products to human, animal or plant health or life, the environment or national security; 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 light of the relevant domestic regulations;

- (c) in the event that it requires the use of a unique identification number by economic operators, issue that number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (d) provided it is not misleading, contradictory or confusing in relation to the information required in the Party importing the goods, permit the following:
  - (i) information in other languages in addition to the language required in the Party importing the goods;
  - (ii) internationally accepted nomenclatures, pictograms, symbols or graphics; or
  - (iii) additional information to that required in the Party importing the goods;
- (e) accept that labelling, including supplementary labelling or corrections to labelling, take place, where relevant, in authorised premises, such as in customs or bonded licensed warehouses at the point of import, in the importing Party prior to the distribution and sale of the product; the Party may require that the original labelling is not removed;
- (f) when it considers that the legitimate objectives under the TBT Agreement are not compromised, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product.

ARTICLE 5.10

Cooperation and Trade Facilitation

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 to facilitating trade between them. To that end, they may establish regulatory dialogues at both horizontal and sectoral levels.

2. The Parties shall aim to identify, develop and promote bilateral initiatives regarding standards, technical regulations and conformity assessment procedures that are appropriate for particular issues or sectors and which facilitate trade. Those initiatives may include:

- (a) promoting good regulatory practices through regulatory cooperation, including the exchange of information, experiences and data, with a view to improving the quality and effectiveness of their standards, technical regulations and conformity assessment procedures and making efficient use of regulatory resources;
- (b) using a risk-based approach to conformity assessment such as relying on a supplier's declaration of conformity for low-risk products and, where appropriate, reducing the complexity of technical regulations, standards and conformity assessment procedures;
- (c) increasing the convergence of their standards, technical regulations and conformity assessment procedures with relevant international standards, guides or recommendations;

- (d) avoiding unnecessary divergence of approach in standards, technical regulations and conformity assessment procedures where no international standards, guides or recommendations exist;
- (e) promoting or enhancing cooperation between the Parties' respective organisations, public or private, responsible for standardisation, conformity assessment and metrology;
- (f) ensuring efficient interaction and cooperation between regulatory authorities at regional or international level; and
- (g) exchanging information, to the extent possible, about agreements and arrangement related to technical barriers to trade subscribed to at international level.

3. Upon request, a Party shall give due consideration to proposals for cooperation from the other Party under this Chapter. This cooperation shall be undertaken, *inter alia*, through dialogue in appropriate *fora*, joint projects, technical assistance and capacity-building programmes on standards, technical regulations and conformity assessment procedures in selected industrial areas, as mutually agreed.

ARTICLE 5.11

Consultations

1. A Party shall give prompt and favourable consideration to any request for consultations from the other Party on issues relating to the implementation of this Chapter.
2. In order to clarify or resolve issues referred to in paragraph 1, the Trade Committee may establish a working group with a view to identifying a workable and practical solution to facilitate trade. The working group shall comprise representatives of the Parties.

ARTICLE 5.12

Implementation

1. Each Party shall designate a contact point in the Ministry of Science and Technology of Viet Nam and the European Commission, respectively, and provide the other Party with the contact details of the office or official responsible for matters covered under this Chapter, including information on telephone, facsimile, e-mail and other relevant details.
2. Each Party shall promptly notify the other Party of any change of its contact point and amendments to the information referred to in paragraph 1.

3. The contact points shall, *inter alia*:
  - (a) monitor the implementation and administration of this Chapter;
  - (b) facilitate cooperation activities, as appropriate, in accordance with Article 5.10 (Joint Cooperation and Trade Facilitation);
  - (c) promptly address any issue that a Party raises in relation to the development, adoption, application or enforcement of standards, technical regulations and conformity assessment procedures;
  - (d) consult, upon a Party's request, on matters arising under this Chapter;
  - (e) take any other actions which may assist the Parties in implementing this Chapter; and
  - (f) carry out other functions as may be delegated by the Committee on Trade in Goods.
4. The enquiry points, established in accordance with Article 10.1 of the TBT Agreement, shall:
  - (a) facilitate the exchange of information between the Parties on standards, technical regulations and conformity assessment procedures, in response to all reasonable requests for such information from the other Party; and
  - (b) refer enquiries from the other Party to the appropriate regulatory authorities.