

## CHAPTER 4

### TECHNICAL BARRIERS TO TRADE

#### ARTICLE 88

##### Objective

The objective of this Chapter is to facilitate trade in goods between the Parties by preventing, identifying and eliminating unnecessary technical barriers to trade.

#### ARTICLE 89

##### Scope

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, which may affect 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; or

(b) SPS measures that fall within the scope of Chapter 3 of this Title.

3. The Annexes to this Chapter apply in addition to this Chapter in respect of products within the scope of those Annexes. Any provision in an Annex to this Chapter that an international standard or body or organisation is to be considered or recognised as relevant shall not prevent a standard developed by any other body or organisation from being considered to be a relevant international standard pursuant to Article 91(4) and (5).

## ARTICLE 90

### Relationship with the TBT Agreement

1. Articles 2 to 9 of and Annexes 1 and 3 to the TBT Agreement are incorporated into and made part of this Agreement *mutatis mutandis*.
2. Terms referred to in this Chapter and in the Annexes to this Chapter shall have the same meaning as they have in the TBT Agreement.

## ARTICLE 91

### Technical regulations

1. Each Party shall carry out impact assessments of planned technical regulations in accordance with its respective rules and procedures. The rules and procedures referred to in this paragraph and in paragraph 8 may provide for exceptions.
2. Each Party shall assess the available regulatory and non-regulatory alternatives to the proposed technical regulation that may fulfil the Party's legitimate objectives, in accordance with Article 2.2 of the TBT Agreement.
3. Each Party shall use relevant international standards as a basis for its technical regulations except when it can demonstrate that such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.
4. International standards developed by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and the Codex Alimentarius Commission (Codex) shall be the relevant international standards within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement.

5. A standard developed by other international organisations may also be considered a relevant international standard within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement, provided that:

- (a) it has been developed by a standardising body which seeks to establish consensus either:
  - (i) among national delegations of the participating WTO Members representing all the national standardising bodies in their territory that have adopted, or expect to adopt, standards on the subject matter to which the international standardisation activity relates, or,
  - (ii) among governmental bodies of participating WTO Members; and
- (b) it has been developed in accordance with the Decision of the WTO Committee on Technical Barriers to Trade on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5, and Annex 3 of the TBT Agreement.<sup>1</sup>

6. Where a Party does not use international standards as a basis for a technical regulation, on request of the other Party, it shall identify any substantial deviation from the relevant international standard, explain the reasons why such standards were judged inappropriate or ineffective for the objective pursued, and provide the scientific or technical evidence on which that assessment was based.

---

<sup>1</sup> G/TBT/9, 13 November 2000, Annex 4.

7. Each Party shall review its technical regulations to increase the convergence of those technical regulations with relevant international standards, taking into account, inter alia, any new developments in the relevant international standards or any changes in the circumstances that have given rise to divergence from any relevant international standards.

8. In accordance with its respective rules and procedures and without prejudice to Title X of this Heading, when developing a major technical regulation which may have a significant effect on trade, each Party shall ensure that procedures exist that allow persons to express their opinion in a public consultation, except where urgent problems of safety, health, environment or national security arise or threaten to arise. Each Party shall allow persons of the other Party to participate in such consultations on terms that are no less favourable than those accorded to its own nationals, and shall make the results of those consultations public.

## ARTICLE 92

### Standards

1. Each Party shall encourage the standardising bodies established within its territory, as well as the regional standardising bodies of which a Party or the standardising bodies established in its territory are members:

- (a) to participate, within the limits of their resources, in the preparation of international standards by relevant international standardising bodies;

- (b) to use relevant international standards as a basis for the standards they develop, except where such international standards would be ineffective or inappropriate, for example because of an insufficient level of protection, fundamental climatic or geographical factors or fundamental technological problems;
- (c) to avoid duplications of, or overlaps with, the work of international standardising bodies;
- (d) to review national and regional standards that are not based on relevant international standards at regular intervals, with a view to increasing the convergence of those standards with relevant international standards;
- (e) to cooperate with the relevant standardising bodies of the other Party in international standardisation activities, including through cooperation in the international standardising bodies or at regional level;
- (f) to foster bilateral cooperation with the standardising bodies of the other Party; and
- (g) to exchange information between standardising bodies.

2. The Parties shall exchange information on:

- (a) their respective use of standards in support of technical regulations; and
- (b) their respective standardisation processes, and the extent to which they use international, regional or sub-regional standards as a basis for their national standards.

3. Where standards are rendered mandatory in a draft technical regulation or conformity assessment procedure, through incorporation or reference, the transparency obligations set out in Article 94 and in Article 2 or 5 of the TBT Agreement shall apply.

## ARTICLE 93

### Conformity assessment

1. Article 91 concerning the preparation, adoption and application of technical regulations shall also apply to conformity assessment procedures, *mutatis mutandis*.
2. Where a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:
  - (a) select conformity assessment procedures that are proportionate to the risks involved, as determined on the basis of a risk-assessment;
  - (b) consider as proof of compliance with technical regulations the use of a supplier's declaration of conformity, i.e. a declaration of conformity issued by the manufacturer on the sole responsibility of the manufacturer without a mandatory third-party assessment, as assurance of conformity among the options for showing compliance with technical regulations;

(c) where requested by the other Party, provide information on the criteria used to select the conformity assessment procedures for specific products.

3. Where a Party requires third party conformity assessment as a positive assurance that a product conforms with a technical regulation and it has not reserved this task to a government authority as specified in paragraph 4, it shall:

- (a) use accreditation, as appropriate, as a means to demonstrate technical competence to qualify conformity assessment bodies. Without prejudice to its right to establish requirements for conformity assessment bodies, each Party recognises the valuable role that accreditation operated with authority derived from government and on a non-commercial basis can play in the qualification of conformity assessment bodies;
- (b) use relevant international standards for accreditation and conformity assessment;
- (c) encourage accreditation bodies and conformity assessment bodies located within its territory to join any relevant functioning international agreements or arrangements for harmonisation or facilitation of acceptance of conformity assessment results;
- (d) if two or more conformity assessment bodies are authorised by a Party to carry out conformity assessment procedures required for placing a product on the market, ensure that economic operators have a choice amongst the conformity assessment bodies designated by the authorities of a Party for a particular product or set of products;

- (e) ensure that conformity assessment bodies are independent of manufacturers, importers and economic operators in general and that there are no conflicts of interest between accreditation bodies and conformity assessment bodies;
- (f) allow conformity assessment bodies to use subcontractors to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party, and may require subcontractors to meet the same requirements the conformity assessment body must meet to perform such testing or inspections itself; and
- (g) publish on a single website a list of the bodies that it has designated to perform such conformity assessment and the relevant information on the scope of designation of each such body.

4. Nothing in this Article shall preclude a Party from requiring that conformity assessment in relation to specific products is performed by its specified government authorities. If a Party requires that conformity assessment is performed by its specified government authorities, that Party shall:

- (a) limit the conformity assessment fees to the approximate cost of the services rendered and, at the request of an applicant for conformity assessment, explain how any fees it imposes for that conformity assessment are limited to the approximate cost of services rendered; and
- (b) make publicly available the conformity assessment fees.

5. Notwithstanding paragraphs 2 to 4, each Party shall accept a supplier's declaration of conformity as proof of compliance with its technical regulations in those product areas where it does so on the date of entry into force of this Agreement.
6. Each Party shall publish and maintain a list of the product areas referred to in paragraph 5 for information purposes, together with the references to the applicable technical regulations.
7. Notwithstanding paragraph 5, either Party may introduce requirements for the mandatory third party testing or certification of the product areas referred to in that paragraph, provided that such requirements are justified on grounds of legitimate objectives and are proportionate to the purpose of giving the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks that non-conformity would create.
8. A Party proposing to introduce the conformity assessment procedures referred to in paragraph 7 shall notify the other Party at an early stage and shall take the comments of the other Party into account in devising any such conformity assessment procedures.

## ARTICLE 94

### Transparency

1. Except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise, each Party shall allow the other Party to provide written comments on notified proposed technical regulations and conformity assessment procedures within a period of at least 60 days from the date of the transmission of the notification of such regulations or procedures to the WTO Central Registry of Notifications. A Party shall give positive consideration to a reasonable request to extend that comment period.
2. Each Party shall provide the electronic version of the full notified text together with the notification. In the event that the notified text is not in one of the official WTO languages, the notifying Party shall provide a detailed and comprehensive description of the content of the measure in the WTO notification format.
3. If a Party receives written comments on its proposed technical regulation or conformity assessment procedure from the other Party, it shall:
  - (a) if requested by the other Party, discuss the written comments with the participation of its competent regulatory authority, at a time when they can be taken into account; and
  - (b) reply in writing to the comments no later than the date of publication of the technical regulation or conformity assessment procedure.

4. Each Party shall endeavour to publish on a website its responses to the comments it receives following the notification referred to in paragraph 1 no later than on the date of publication of the adopted technical regulation or conformity assessment procedure.
5. Each Party shall, where requested by the other Party, provide information regarding the objectives of, legal basis for and rationale for, any technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.
6. Each Party shall ensure that the technical regulations and conformity assessment procedures it has adopted are published on a website that is accessible free of charge.
7. Each Party shall provide information on the adoption and the entry into force of technical regulations or conformity assessment procedures and the adopted final texts through an addendum to the original notification to the WTO.
8. Each Party shall allow a reasonable interval between the publication of technical regulations and their entry into force, in order to allow time for the economic operators of the other Party to adapt. "Reasonable interval" means a period of at least six months, unless this would be ineffective in fulfilling the legitimate objectives pursued.
9. A Party shall give positive consideration to a reasonable request from the other Party received prior to the end of the comment period set out in paragraph 1 to extend the period of time between the adoption of the technical regulation and its entry into force, except where the delay would be ineffective in fulfilling the legitimate objectives pursued.

10. Each Party shall ensure that the enquiry point established in accordance with Article 10 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 regarding adopted technical regulations and conformity assessment procedures.

## ARTICLE 95

### Marking and labelling

1. The technical regulations of a Party may include or exclusively address mandatory marking or labelling requirements. In such cases, the principles of Article 2.2 of the TBT Agreement apply to these technical regulations.
2. Where a Party requires mandatory marking or labelling of products, all of the following conditions shall apply:
  - (a) it shall only require information which is relevant for consumers or users of the product or information that indicates that the product conforms to the mandatory technical requirements;
  - (b) it shall not require any prior approval, registration or certification of the labels or markings of products, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements unless it is necessary in view of legitimate objectives;

- (c) where the Party requires the use of a unique identification number by economic operators, it shall issue such a number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
- (d) unless the information listed in point (i), (ii) or (iii) would be misleading, contradictory or confusing in relation to the information that the importing Party requires with respect to the goods, the importing Party shall permit:
  - (i) information in other languages in addition to the language required in the importing Party of the goods;
  - (ii) internationally-accepted nomenclatures, pictograms, symbols or graphics; and
  - (iii) additional information to that required in the importing Party of the goods;
- (e) it shall accept that labelling, including supplementary labelling or corrections to labelling, take place in customs warehouses or other designated areas in the country of import as an alternative to labelling in the country of origin, unless such labelling is required to be carried out by approved persons for reasons of public health or safety; and
- (f) unless it considers that legitimate objectives may be undermined, it shall endeavour to accept the use of non-permanent or detachable labels, or marking or labelling in the accompanying documentation, rather than requiring labels or marking to be physically attached to the product.

## ARTICLE 96

### Cooperation on market surveillance and non-food product safety and compliance

1. The Parties recognise the importance of cooperation on market surveillance, compliance and the safety of non-food products for the facilitation of trade and for the protection of consumers and other users, and the importance of building mutual trust based on shared information.
2. To guarantee the independent and impartial functioning of market surveillance, the Parties shall ensure:
  - (a) the separation of market surveillance functions from conformity assessment functions; and
  - (b) the absence of any interests that would affect the impartiality of market surveillance authorities in the performance of their control or supervision of economic operators.
3. The Parties shall cooperate and exchange information in the area of non-food product safety and compliance, which may include in particular the following:
  - (a) market surveillance and enforcement activities and measures;
  - (b) risk assessment methods and product testing;
  - (c) coordinated product recalls or other similar actions;

- (d) scientific, technical and regulatory matters in order to improve non-food product safety and compliance;
- (e) emerging issues of significant health and safety relevance;
- (f) standardisation-related activities;
- (g) exchanges of officials.

4. The Partnership Council shall use its best endeavours to establish in Annex 16, as soon as possible and preferably within six months of entry into force of this Agreement, an arrangement for the regular exchange of information between the Rapid Alert System for non-food products (RAPEX), or its successor, and the database relating to market surveillance and product safety established under the General Product Safety Regulations 2005, or its successor, in relation to the safety of non-food products and related preventive, restrictive and corrective measures.

The arrangement shall set out the modalities under which:

- (a) the Union is to provide the United Kingdom with selected information from its RAPEX alert system, or its successor, as referred to in Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety, or its successor;

- (b) the United Kingdom is to provide the Union with selected information from its database relating to market surveillance and product safety established under the General Product Safety Regulations 2005, or its successor; and
- (c) the Parties are to inform each other of any follow-up actions and measures taken in response to the information exchanged.

5. The Partnership Council may establish in Annex 17 an arrangement on the regular exchange of information, including the exchange of information by electronic means, regarding measures taken on non-compliant non-food products, other than those covered by paragraph 4.

6. Each Party shall use the information obtained pursuant to paragraphs 3, 4 and 5 for the sole purpose of protecting consumers, health, safety or the environment.

7. Each Party shall treat the information obtained pursuant to paragraphs 3, 4 and 5 as confidential.

8. The arrangements referred to in paragraphs 4 and 5 shall specify the type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules. The Partnership Council shall have the power to adopt decisions in order to determine or amend the arrangements set out in Annexes 16 and 17.

9. For the purposes of this Article, "market surveillance" means activities conducted and measures taken by market surveillance and enforcement authorities, including activities conducted and measures taken in cooperation with economic operators, on the basis of procedures of a Party to enable that Party to monitor or address safety of products and their compliance with the requirements set out in its laws and regulations.

10. Each Party shall ensure that any measure taken by its market surveillance or enforcement authorities to withdraw or recall from its market or to prohibit or restrict the making available on its market of a product imported from the territory of the other Party, for reasons related to non-compliance with the applicable legislation, is proportionate, states the exact grounds on which the measure is based and is communicated without delay to the relevant economic operator.

## ARTICLE 97

### Technical discussions

1. If a Party considers that a draft or proposed technical regulation or conformity assessment procedure of the other Party might have a significant effect on trade between the Parties, it may request technical discussions on the matter. The request shall be made in writing to the other Party and shall identify:

(a) the measure at issue;

- (b) the provisions of this Chapter or of an Annex to this Chapter to which the concerns relate; and
- (c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

2. A Party shall deliver its request to the contact point of the other Party designated pursuant to Article 99.

3. At the request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person or via videoconference or teleconference, within 60 days of the date of the request and shall endeavour to resolve the matter as expeditiously as possible. If a requesting Party believes that the matter is urgent, it may request that any meeting take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to such a request.

## ARTICLE 98

### Cooperation

1. The Parties shall cooperate in the field of technical regulations, standards and conformity assessment procedures, where it is in their mutual interest, and without prejudice to the autonomy of their own respective decision-making and legal orders. The Trade Specialised Committee on Technical Barriers to Trade may exchange views with respect to the cooperation activities carried out under this Article or the Annexes to this Chapter.

2. For the purposes of paragraph 1, the Parties shall seek to identify, develop and promote cooperation activities of mutual interest. These activities may in particular relate to:

- (a) the exchange of information, experience and data related to technical regulations, standards and conformity assessment procedures;
- (b) ensuring efficient interaction and cooperation of their respective regulatory authorities at international, regional or national level;
- (c) exchanging information, to the extent possible, about international agreements and arrangements regarding technical barriers to trade to which one or both Parties are party; and
- (d) establishment of or participation in trade facilitating initiatives.

3. For the purposes of this Article and the provisions on cooperation under the Annexes to this Chapter, the European Commission shall act on behalf of the Union.

## ARTICLE 99

### Contact points

1. Upon the entry into force of this Agreement, each Party shall designate a contact point for the implementation of this Chapter and shall notify the other Party of the contact details for the contact point, including information regarding the relevant officials. The Parties shall promptly notify each other of any change of those contact details.
2. The contact point shall provide any information or explanation requested by the contact point of the other Party in relation to the implementation of this Chapter within a reasonable period of time and, if possible, within 60 days of the date of receipt of the request.

## ARTICLE 100

### Trade Specialised Committee on Technical Barriers to Trade

The Trade Specialised Committee on Technical Barriers to Trade shall supervise the implementation and operation of this Chapter and its Annexes and shall promptly clarify and address, where possible, any issue raised by a Party relating to the development, adoption or application of technical regulations, standards and conformity assessment procedures under this Chapter or the TBT Agreement.