

CHAPTER 9

TECHNICAL BARRIERS TO TRADE

Article 9.1

Objective

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

Article 9.2

Scope

1. This Chapter applies to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures as defined in Annex 1 of the TBT Agreement which may affect trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter does not apply to:
 - (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies and shall be covered by Chapter XX (Government Procurement).]
 - (b) sanitary and phytosanitary measures which are covered by Chapter 6 (Sanitary and Phytosanitary Measures).

Article 9.3

Incorporation of certain provisions of the TBT Agreement

1. Articles 2 to 9 and Annexes 1 and 3 of the TBT Agreement are incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 9.4

International Standards

1. International standards developed by the organisations listed in Annex [X] (Title) shall be considered to be the relevant international standards within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement provided that in their development these organisations have complied with the principles and procedures set out in 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 Article 2, Article 5 and Annex 3 of the TBT Agreement.

2. At the request of either Party the Trade Committee shall consider updating the list of Annex [X] (Title).

Article 9.5

Technical Regulations

1. The parties recognize the importance of carrying out, in accordance with its respective rules and procedures, a regulatory impact assessment of planned technical regulations.
2. The Parties 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. The Parties shall use relevant international standards as a basis for their technical regulations except when the Party developing the technical regulation can demonstrate that such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued.
4. If a Party has not used international standards as a basis for its technical regulations, a Party shall, on request from the other Party, identify any substantial deviation from the relevant international standard and explain the reasons why such standards have been judged inappropriate or ineffective for the aim pursued, and provide the scientific or technical evidence on which this assessment is based.
5. In addition to Article 2.3 of the TBT Agreement, each Party shall review, in accordance with its respective rules and procedures, their technical regulations to increase their convergence with relevant international standards. 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.

Article 9.6

Regulatory cooperation

1. The Parties recognise that a broad range of regulatory cooperation mechanisms exist that can help eliminate or avoid the creation of technical barriers to trade.
2. A Party may propose to the other Party sector specific regulatory cooperation activities in areas covered by this Chapter. Those proposals shall be transmitted to the Chapter Contact Point and shall consist of:
 - a) information exchanges on regulatory approaches and practices, or

- b) initiatives to further align technical regulations and conformity assessment procedures with relevant international standards.

The other Party shall reply to the proposal in a reasonable time.

3. [The Parties/TBT Contact Points] shall inform the Trade Committee about the cooperation activities carried out under this article.
4. The Parties shall endeavour to exchange and collaborate on mechanisms to facilitate the acceptance of conformity assessment results, in order to eliminate unnecessary technical barriers to trade.
5. The Parties shall encourage cooperation between their respective organisations responsible for technical regulation, standardization, conformity assessment, accreditation and metrology, whether they are governmental or non-governmental, with a view to addressing diverse issues covered by this Chapter.
6. Nothing in this Article shall be construed as to require a Party to:
 - a. deviate from domestic procedures for preparing and adopting regulatory measures,
 - b. take actions that would undermine or impede the timely adoption of regulatory measures to achieve its public policy objectives, or
 - c. achieve any particular regulatory outcome.

Article 9.7

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 of building mutual trust based on shared information.
2. For the purposes of this Article,
 - “Market surveillance” means activities conducted and measures taken by public authorities including those taken in cooperation with economic operators, on the basis of procedures of a Party to enable that Party to monitor or address compliance or safety of products with the requirements set out in its laws and regulations;
 - “Consumer products” means goods intended for or likely to be used by consumers, with the exclusion of food, medical devices and medicinal products.

3. To guarantee 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 interest that would affect the impartiality of market surveillance authorities in the performance of control or supervision of economic operators.
4. The Parties may cooperate and exchange information in the area of non-food product safety and compliance, in particular with respect to 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, aiming to improve non-food product safety and compliance;
 - e) emerging issues of significant health and safety relevance;
 - f) standardisation-related activities and
 - g) exchange of officials.
5. The European Union may provide Chile with selected information from its RAPEX alert system, or its successor, with respect to consumer products, and Chile may provide the European Union with selected information on the safety of consumer products and on preventive, restrictive and corrective measures taken with respect to consumer products. The information exchange may take the form of:
 - a. non systematic exchange, in duly justified specific cases, excluding personal data;
 - b. systematic exchange, based on an arrangement that may be established by the Trade Committee in Annex [XX].
6. [EU: The Trade Committee] [Parties] may establish in Annex [ZZ] an arrangement on the systematic exchange of information, including by electronic means, on measures taken on non-compliant non-food products, other than those covered by paragraph 4.
7. The Parties shall use the information obtained pursuant to paragraphs 3, 4 and 5 for the sole purpose of protection of consumers, health, safety or the environment.
8. Each Party shall treat the information obtained pursuant to paragraphs 3, 4 and 5 as confidential.

9. The arrangements referred to in paragraphs 4 and 5 shall specify the product scope, type of information to be exchanged, the modalities for the exchange and the application of confidentiality and personal data protection rules.

The [Trade Committee] shall have the power to adopt decisions in order to determine or amend arrangements set out in Annexes [XX] and [ZZ].

Article 9.8

Standards

1. With a view to harmonizing standards on as wide a basis as possible, the Parties shall encourage the standardizing bodies within their territories, as well as the regional standardizing bodies of which they or their standardizing bodies within their territories are Members:
 - (a) to participate, within the limits of their resources, in the preparation of international standards by relevant international standardizing 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 instance because of an insufficient level of protection or fundamental climatic or geographical factors or fundamental technological problems;
 - (c) to avoid duplication of, or overlap with, the work of international standardizing bodies;
 - (d) to 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;
 - (e) to cooperate with the relevant standardization bodies of the other Party in international standardization activities. That cooperation may be undertaken in the international standardization bodies or at regional level; and
 - (f) to foster bilateral cooperation between them and the standardization bodies of the other Party.
2. The Parties should exchange information on:
 - (a) their use of standards in support of technical regulations; and
 - (b) each other's standardization processes, and the extent of use of international standards, regional or sub-regional standards as a base for their national standards.

3. If standards are made mandatory through incorporation or referencing in a draft technical regulation or conformity assessment procedure, the transparency obligations set out in Article 9.10 (Transparency) of this Agreement and in Articles 2 or 5 of the TBT Agreement shall be fulfilled.

Article 9.9

Conformity Assessment

1. The provisions set out in Article 9.5 (Technical Regulations) with respect to the preparation, adoption and application of technical regulations shall also apply, *mutatis mutandis*, to conformity assessment procedures.
2. If a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation, it shall:
 - (a) select conformity assessment procedures proportionate to the risks involved;
 - (b) consider, according to its respective laws and regulations, the use of a supplier's declaration of conformity, as an option for showing compliance with a technical regulation; and
 - (c) if requested, provide information to the other Party on the criteria used to select the conformity assessment procedures for specific products.
3. If 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 governmental authority as specified in paragraph 4, it shall:
 - (a) preferentially use accreditation to qualify conformity assessment bodies;
 - (b) preferentially use international standards for accreditation and conformity assessment, as well as international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF);
 - (c) join or, as applicable, encourage their conformity assessment bodies to join any functioning international agreements or arrangements for harmonization and/or facilitation of acceptance of conformity assessment results;
 - (d) ensure that when more than one conformity assessment body has been designated for a particular product or set of products, economic operators have a choice amongst them to carry out the conformity assessment procedure;
 - (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. Nothing in this subparagraph shall be construed to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted would be required to meet in order to perform the contracted tests or inspection itself; and
 - (g) publish on official websites a list of the bodies that it has designated to perform such conformity assessment and relevant information on the scope of each such body's designation.
4. Nothing in this Article shall preclude a Party from requesting that conformity assessment in relation to specific products is performed by specified governmental authorities of the Party. In such cases, the Party shall:
- (a) limit the conformity assessment fees to the approximate cost of the services rendered and upon the request of an applicant for conformity assessment, explain how any fees it imposes for such conformity assessment are limited in amount to the approximate cost of the services rendered; and
 - (b) make publicly available the conformity assessment fees. When not publically available, these fees should be provided upon request.
5. Notwithstanding the provisions of paragraphs 2-4, in the fields listed in Annex 2 , where EU accepts Supplier's Declaration of Conformity, i.e. first-party attestation issued by the manufacturer on his sole responsibility based on the results of an appropriate type of conformity assessment activity and excluding mandatory third party assessment, as assurance that a product conforms to a technical regulation that sets out such conformity assessment procedures, Chile shall provide, according to its laws or regulations, for an efficient and transparent procedure for acceptance of certificates and test reports issued by conformity assessment bodies that are located in the territory of the EU and which have been accredited for the relevant scopes by an accreditation body member of the international arrangements for mutual recognition of the International Laboratory Accreditation Cooperation (ILAC) and the International Accreditation Forum (IAF) as an assurance that a product conforms with the requirements of Chile's technical regulations.

Article 9.10

Transparency

1. In accordance with its respective rules and procedures and without prejudice to Chapter [XX] (Good Regulatory Practices) when developing major technical regulations which may have a significant effect on trade in goods each Party shall ensure that transparency procedures exist that allow persons of the Parties to provide input through a public consultation process, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise.

2. Each Party shall allow persons of the other Party to participate to such consultation in terms no less favourable than those accorded to its own persons and make the results of that consultation process public.
3. Each Party shall allow a period of at least 60 days following its transmission to the WTO Central Registry of Notifications of proposed technical regulations and conformity assessment procedures for the other Party to provide written comments, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. A Party shall consider any reasonable request from the other Party to extend the comment period.
4. The Party shall 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.
5. 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 adopted technical regulation or conformity assessment procedure.
6. Each Party shall endeavour to publish in a website its responses to comments it receives on its TBT notifications no later than the date of publication of the adopted technical regulation or conformity assessment procedure.
7. Each Party shall, if requested by the other Party, provide information regarding the objectives of, legal basis and rationale for, a technical regulation or conformity assessment procedure that the Party has adopted or is proposing to adopt.
8. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are accessible through official websites or online official journals free of charge.
9. Each Party shall provide information on the adoption and the entry into force of the technical regulation or conformity assessment procedure and the adopted final text through an addendum to the original notification to the WTO.
10. Subject to the conditions specified in Article 2.12 of the TBT Agreement regarding the reasonable interval between the publication of the technical regulations and their entry into force, the Parties shall interpret the term "reasonable interval" to normally mean, a period of not less than six months, except when this would be ineffective to fulfil the legitimate objectives pursued.

11. A Party shall consider any reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation, to extend the period of time between the publication of the technical regulation and its entry into force, except where the delay would be ineffective in fulfilling the legitimate objectives pursued.

Article 9.11

Marking and Labelling

1. The Parties affirm that their technical regulations including or dealing exclusively with marking or labelling will observe the principles of Article 2.2 of the TBT Agreement.
2. Unless it is necessary in view of the legitimate objectives referred to in Article 2.2 of the TBT Agreement, a Party that requires mandatory marking or labelling of products shall:
 - (a) only require information which is relevant for consumers or users of the product or to indicate 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, nor any fee disbursement, as a precondition for placing on its market products that otherwise comply with its mandatory technical requirements.
 - (c) where it requires the use of a unique identification number by economic operators, issue such 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 importing Party of the goods, permit the following:
 - (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) accept that labelling, including supplementary labelling and/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 carry out by approved person for reasons of public health or safety.
 - (f) endeavour to accept non-permanent or detachable labels, or inclusion of relevant information in the accompanying documentation, rather than labels physically attached to the product.

Article 9.12

Technical Discussions and Consultations

1. A Party may request the other Party to provide information on any matter covered by this chapter. The other Party shall provide that information within a reasonable period of time.
2. Each Party may request to discuss any draft or proposed technical regulation or conformity assessment procedure of the other Party that the Party considers might have a significant adverse effect on trade between the Parties. The request shall be made in writing and identify:
 - (a) the measure;
 - (b) the provisions of 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.
3. A Party shall deliver its request to the Contact Point of the other Party designated pursuant to Article 9.13 (Contact Points).
4. At the request of either Party, the Parties shall meet to discuss the concerns raised in the request, in person or via video or teleconference, within 60 days of the date of the request. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter as expeditiously as possible.
5. If the requesting Party believes that the matter is urgent, it may request to the other Party that a meeting takes place within a shorter time frame. In such cases, the responding Party shall consider such a request.
6. For greater certainty, this Article is without prejudice to a Party's rights and obligations under Chapter [XX] (Dispute Settlement).

Article 9.13

Contact Points

1. Each Party shall designate a contact point to facilitate cooperation and coordination under this Chapter, and notify the other Party of its contact details. The Parties shall promptly notify each other of any changes to those contact details.
2. The contact points shall work jointly to facilitate the implementation of this Chapter and cooperation between the Parties on all TBT matters. The contact points shall in particular be responsible for:

- (a) organising technical discussions and consultations referred to in Article X.12;
 - (b) promptly addressing any issue that the other Party raises related to the development, adoption, application or enforcement of standards, technical regulations or conformity assessment procedures;
 - (c) on request of a Party, arranging discussions on any matter arising under this Chapter; and
 - (d) exchanging information on developments in non-governmental, regional and multilateral fora related to standards, technical regulations and conformity assessment procedures.
3. The contact points shall communicate with one another by any agreed method that is appropriate to carry out their functions.

Article 9.14

Sub-Committee on Technical Barriers to Trade

1. The Committee on Technical Barriers to Trade [established pursuant to Article x.x (Sub-Committees and other Bodies of Part X of this Agreement)] shall:
- (a) monitor the implementation and administration of this Chapter;
 - (b) enhance cooperation in the development and improvement of standards, technical regulations and conformity assessment procedures;
 - (c) establish priority areas of mutual interest for future work under this Chapter and consider proposals for new initiatives;
 - (d) monitor and discuss developments under the TBT Agreement;

(e) report to the Trade Committee on the implementation of this Chapter; and

(f) take any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement.

2. The TBT Sub-Committee shall meet at the request of either Party or of the Trade Committee, in person or by any other means.