

CHAPTER 5

TECHNICAL BARRIERS TO TRADE

Article 5.1

Objectives

The objective of this Chapter is to facilitate and increase trade in goods between the Parties, by providing a framework to prevent, identify and eliminate unnecessary barriers to trade within the scope of the TBT Agreement.

Article 5.2

Scope and Definitions

1. This Chapter shall apply 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, directly or indirectly, affect trade in goods between the Parties, regardless of the origin of those goods.
2. Notwithstanding paragraph 1 of this Article, this Chapter shall not apply to:
 - (a) purchasing 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 SPS Agreement which are covered by Chapter 4 (Sanitary and Phytosanitary Measures).
3. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement shall apply, *mutatis mutandis*.

Article 5.3

Affirmation and Incorporation of the TBT Agreement

The Parties affirm their existing 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 5.4

International Standards

1. In accordance with Article 2.4 and Article 5.4 of the TBT Agreement, each Party shall use relevant international standards, guides and recommendation, or relevant parts of them, as a basis for its technical regulations and conformity assessment procedures where relevant international standards exist or their completion is imminent, except

when, as duly explained upon request, such international standards, guides and recommendations or their relevant parts are ineffective or inappropriate to fulfil legitimate objectives.

2. In determining whether an international standard, guide, or recommendation within the meaning of Article 2, Article 5 and Annex 3 of the TBT Agreement exists, each Party shall apply the principles set out in 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*, adopted by the WTO Committee on Technical Barriers to Trade, G/TBT/1/rev.12, 21 January 2015 and the subsequent revisions.
3. The Parties shall co-operate with each other, where appropriate, in the context of their participation in international standardising bodies to ensure that international standards developed within such bodies that are likely to become a basis for technical regulations are trade facilitating and do not create unnecessary obstacles to international trade.
4. The Parties undertake to exchange information on:
 - (a) their use of standards in support of technical regulations;
 - (b) each other's standardisation processes, and the extent of use of international standards or regional standards as a base for their national standards; and
 - (c) co-operation agreements implemented by either Party on standardisation, provided the information can be made available to the public.

Article 5.5 **Technical Regulations**

1. The Parties agree to make best use of good regulatory practice with regard to the preparation, adoption and application of technical regulations, as provided for in the TBT Agreement, including:
 - (a) when developing a technical regulation, to consider, *inter alia*, the impact of the envisaged technical regulation and the available regulatory and non-regulatory alternatives to the proposed technical regulation which may fulfil the Party's legitimate objectives;
 - (b) consistent with Article 2.4 of the TBT Agreement, to use, to the maximum extent possible, relevant international standards as a basis for their technical regulations, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued; where international standards have not been used as a basis, to explain upon request to the other Party the reasons why such standards have been considered inappropriate or ineffective for the aim pursued; and

- (c) consistent with Article 2.8 of the TBT Agreement, wherever appropriate, to specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics.

Article 5.6 **Conformity Assessment Procedures**

1. The Parties recognise that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures, including but not limited to:
 - (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) unilateral recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;
 - (d) use of accreditation procedures to qualify conformity assessment bodies;
 - (e) government designation of conformity assessment bodies, including bodies located in the territory of the other Party;
 - (f) voluntary arrangements between conformity assessment bodies in the respective territories of each Party; and
 - (g) use of regional or international multilateral recognition agreements and arrangements of which both the Parties are signatories to.
2. Having regard in particular to those considerations:
 - (a) the Parties shall:
 - (i) intensify their exchange of information on these and other mechanisms with a view to facilitating the acceptance of conformity assessment results;
 - (ii) exchange information on the criteria used to select appropriate conformity assessment procedures for specific products and, in line with Article 5.1.2 of the TBT Agreement, require conformity assessment procedures that are not more strict or are not applied more strictly than necessary to give the importing Party adequate confidence that products conform with the applicable technical regulations or standards, taking account of the risks non-conformity would create;

- (iii) exchange information on accreditation policy, and consider how to make the 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 Co-operation* ("ILAC") and the *International Accreditation Forum* ("IAF");
 - (iv) give positive consideration to accredit 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, to the extent necessary to fulfil their obligations under the ILAC and the IAF; and
 - (v) ensure that, insofar as two or more conformity assessment bodies are authorised by a Party to carry out conformity assessment procedures required for placing the product on the market, economic operators may choose among them.
- (b) a Party shall, on the request of the other Party, explain in writing its reasons for not accepting the results of a conformity assessment procedure performed in the territory of that Party.
3. Before accepting the results of a conformity assessment procedure, and to enhance confidence in the continued reliability of each other's conformity assessment results, the Parties may consult on such matters as the technical competence of the conformity assessment bodies involved, as appropriate.
4. Upon request by either Party, the Parties may decide to engage in 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 substantiate it with relevant information on how this sectoral initiative would facilitate trade between the Parties. In these consultations, all mechanisms described in paragraph 1 of this Article may be considered. Where a Party declines such a request from the other Party, it shall, upon request, explain its reasons.

Article 5.7

Transparency

1. The Parties reaffirm their transparency obligations under the TBT Agreement with regard to the preparation, adoption and application of standards, technical regulations and conformity assessment procedures.
2. The Parties agree, where a part of the process of developing a standard, technical regulation or conformity assessment procedure is open to public consultation, to take the other Party's views into account and, without discrimination, to provide reasonable opportunities for the other Party and its interested persons to make comments.

3. Where a Party makes a notification under Article 2.9 and Article 5.6 of the TBT Agreement, the Parties agree:
 - (a) to allow at least sixty (60) days following the notification for the other Party to provide comments in writing on the proposal and where practicable, to give appropriate consideration to reasonable requests for extending the comment period;
 - (b) to allow a period of not less than six (6) months between the publication of technical regulations or conformity assessment procedures and their entry into force for economic operators of the other Party to demonstrate the conformity of their goods with the relevant requirements of the technical regulation, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise;
 - (c) to ensure that its notifications contain sufficient detail about the likely content of the proposed technical regulations and conformity assessment procedures; and
 - (d) to include in the notification an explanation of the objectives of the proposal and how it would address those objectives.
4. The notification of technical regulations and conformity assessment procedures shall include an online link to, or a copy of, the complete text of the notified document in English.
5. Each Party shall publish all standards, technical regulations, and conformity assessment procedures in force.
6. Each Party shall make available, as appropriate and available, written guidance on compliance with its standards, technical regulations, and conformity assessment procedures to the other Party or its economic operators, upon request and without undue delay.
7. No later than the date of publication of a final technical regulation or conformity assessment procedure that may have a significant effect on trade, each Party shall, preferably electronically:
 - (a) make publicly available an explanation of the objectives and how the final technical regulation or conformity assessment procedure achieves them;
 - (b) provide as soon as possible, but no later than sixty (60) days after receiving a request from the other Party, a description of alternative approaches, if any, that the Party considered in developing the final technical regulation or conformity assessment procedure and the merits of the approach that the Party selected; and

- (c) provide as soon as possible, but no later than sixty (60) days after receiving a request from the other Party, a description of significant revisions, if any, that the Party made to the proposal for the technical regulation or conformity assessment procedure, including those made in response to comments.

Article 5.8 **Market Surveillance**

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

Article 5.9 **Marking and Labelling**

1. For the purposes of this Article, and in accordance with paragraph 1 of Annex 1 of the TBT Agreement, a technical regulation may include or deal exclusively with marking or labelling requirements.
2. The Parties agree that, where their technical regulations contain mandatory marking or labelling, they will ensure that these are not 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, as referred to under Article 2.2 of the TBT Agreement.
3. For the purposes of this Agreement, where a Party requires mandatory marking or labelling of products:
 - (a) the Party shall endeavour to restrict its requirements only to those which are relevant for consumers or users of the product or to indicate the product's conformity with the mandatory requirements;
 - (b) the Party may specify the information to be provided on the label and may require compliance with certain regulatory requirements for the affixing of the label, but shall not require any prior approval or certification of labels and markings as a precondition for sale of the products in its market unless this is deemed necessary in the light of the risk of the product to human, animal or plant health or life;
 - (c) where the Party requires the use of a unique identification number by economic operators, the Party shall ensure that such numbers are issued to the relevant economic operators 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, the Party shall 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) in order to facilitate trade, the Party shall, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby and where applicable, endeavour to develop processes and procedures to accept alternative forms of labelling, such as electronic labels, non-permanent or detachable labels, or marking or labelling in the accompanying materials packaged with the product.
4. Without prejudice to the Parties' rights and obligations under the WTO Agreement, paragraph 3 of this Article shall apply to agricultural products, industrial products, and processed agricultural food products including beverages and spirits.

Article 5.10 **Information Exchange**

1. Each Party shall respond expeditiously to any enquiry from the other Party on standards, technical regulations or conformity assessment procedures relating to any goods and/or assessments of manufacturers or manufacturing processes of goods traded between the Parties. The explanation provided shall be given in print or electronically in English.
2. The Parties shall endeavour to resolve the matter as expeditiously as possible, recognising that the time required to resolve a matter will depend on a variety of factors, and that it may not be possible to resolve every matter through technical discussions.
3. Nothing in this Chapter shall be construed to require either Party to furnish or allow access to information the disclosure of which it considers would:
 - (a) be contrary to its essential security interests;
 - (b) be contrary to the public interest as determined by its domestic laws, regulations and administrative provisions;
 - (c) be contrary to any of its domestic laws, regulations and administrative provisions including but not limited to those protecting personal privacy or the financial affairs and accounts of individual customers of financial institutions;
 - (d) impede law enforcement; or

- (e) prejudice legitimate commercial interests of particular public or private enterprises

Article 5.11 **Co-operation**

1. The Parties shall strengthen their co-operation 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.
2. The Parties shall seek to identify, develop and promote trade facilitating initiatives which may include, but are not limited to:
 - (a) exchanging information and experiences on the preparation and application of their technical regulations and the use of good regulatory practice;
 - (b) where appropriate, simplifying technical regulations, standards and conformity assessment procedures;
 - (c) avoiding unnecessary divergence in their approaches to technical regulations and conformity assessment procedures, and working towards the possibility of converging or aligning technical regulations with international standards;
 - (d) encouraging cooperation between their respective bodies, public or private, responsible for metrology, standardisation, testing, certification and accreditation;
 - (e) conducting joint studies, symposiums and seminars;
 - (f) exchanging information in respect of technical regulations, standards, conformity assessment procedures and good regulatory practice;
 - (g) reinforcing the role of international standards as a basis for technical regulations and conformity assessment procedures;
 - (h) promoting the accreditation of conformity assessment bodies on the basis of relevant standards and guides of the International Organization for Standardization (“ISO”) and the International Electrotechnical Commission (“IEC”);
 - (i) ensuring efficient interaction of regulatory authorities at national, regional and international levels, for instance, by referring enquiries from a Party to the appropriate regulatory authorities; and

- (j) exchanging information on developments in relevant regional and multilateral *fora* related to standards, technical regulations and conformity assessment procedures.
- 3. The Parties shall promote bilateral cooperation between their public and private institutions in the field of:
 - (a) food labelling standards, regulations, and certification;
 - (b) pharmaceuticals and medical devices;
 - (c) apparels; and
 - (d) other sectors of mutual interest.
- 4. Upon request, a Party shall give appropriate consideration to proposals that the other Party makes for cooperation under the terms of this Chapter.
- 5. The Parties may enter into mutual recognition agreements (“MRAs”) to strengthen their cooperation in the field of technical regulations, standards and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.
- 6. The financial arrangements to cover expenses for the cooperative activities undertaken shall be mutually agreed upon by the Parties on a case by case basis subject to the availability of funds.

Article 5.12

Joint Sub-Committee on Sanitary and Phytosanitary (“SPS”) Measures and Technical Barriers to Trade (“TBT”)

- 1. The Parties hereby establish the Joint Sub-Committee on Sanitary and Phytosanitary Measures and Technical Barriers to Trade (“Joint Sub-Committee”), comprising representatives from the relevant authorities of each Party. The Joint Sub-Committee shall be co-ordinated by the co-ordinators from both Parties specified in this Chapter.
- 2. The functions of this Joint Sub-Committee may include the following:
 - (a) reviewing the functioning of and work done by the Co-ordinators of the SPS and TBT Chapters;
 - (b) strengthening technical co-operation and communication on SPS and TBT issues to enhance the relationship between the Parties;
 - (c) consulting on agendas, issues, and positions for meetings covering SPS and/or TBT issues in relevant WTO Committees and International Organisations;

- (d) arranging the establishment of *ad hoc* working groups as mutually agreed by the Parties;
 - (e) monitoring the progress of work programmes and the implementation of Article 5.11 (Cooperation) and Article 5.14 (Sectoral Annexes); and
 - (f) other functions mutually agreed by the Parties.
3. Each Party shall ensure the participation of its representatives with responsibility for the items on the agenda for each meeting of the Joint Sub-Committee. Upon mutual agreement, the Parties may invite representatives from industry, business associations or other relevant organisations to participate in parts of the meetings of the Joint Sub-Committee on a case by case basis.
4. The Joint Sub-Committee shall meet at least once every two (2) years unless the Parties agree otherwise. Meetings may be conducted in person, by teleconference, by videoconference, or any other means as mutually agreed by the Parties. The Parties may avail themselves of the opportunity to meet in conjunction with other FTA related meetings or on the margins of international meetings, where possible.
5. The Parties shall inform each other of any significant changes in the structure, organisation and division of responsibility within its competent authorities or co-ordinators.

Article 5.13

Co-ordinators

1. To facilitate the implementation of this Chapter and co-operation between the Parties, each Party shall designate a Co-ordinator, who shall be responsible for co-ordinating with interested authorities in the Party's territory and communicating with the other Party's Co-ordinator on all matters pertaining to this Chapter.
2. The Co-ordinators' functions shall include:
- (a) developing the necessary procedures or arrangements for the implementation and administration of this Chapter;
 - (b) monitoring the implementation and administration of this Chapter;
 - (c) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations or conformity assessment procedures;
 - (d) exchanging information on standards, technical regulations, and conformity assessment procedures, including referring enquiries from a Party to the

- appropriate regulatory authorities, in response to all reasonable requests for such information from a Party;
- (e) considering and facilitating any sector-specific proposal a Party makes to further the objectives of this Chapter;
 - (f) facilitating the consideration of a request by a Party for the recognition of the results of conformity assessment procedures, including a request for the negotiation of an agreement, in a sector nominated by that Party;
 - (g) 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; and
 - (h) simultaneously informing the contact points set out in Article 17.16 (Contact Points) of Chapter 17 (Institutional, General and Final Provisions) of any communication between the Parties.
3. The Co-ordinators may communicate through teleconference, videoconference, or any other means, as mutually determined by the Parties.
4. Each Party shall notify the other Party promptly of any change in their Co-ordinator or any amendment to the details of the relevant officials.
5. For the purposes of this Article, the Co-ordinator for:
- (a) Singapore shall be:

Ministry of Trade and Industry,
Trade Division,
100 High Street #09-01 The Treasury,
Singapore 179434
Tel: (65) 6225 9911
Fax: (65) 6332 7260
Email: mti_email@mti.gov.sg

or its successor;
 - (b) Sri Lanka shall be:

Department of Commerce
4th Floor,
Rakshana Mandiraya
21, Vauxhall Street
Colombo 02, Sri Lanka
Email: fortrade@doc.gov.lk ; spssrilanka@doc.gov.lk

or its successor.

Article 5.14

Sectoral Annexes

1. The Parties may conclude as appropriate, Sectoral Annexes, including MRAs, on product sectors which shall provide the implementing arrangements for such sectors.
2. A Sectoral Annex shall minimally include:
 - (a) provisions on scope and coverage; and
 - (b) applicable laws, regulations and administrative provisions i.e. mandatory requirements of each Party concerning the scope and coverage.
3. The Parties shall:
 - (a) specify and communicate to each other the applicable articles or annexes contained in the mandatory requirements set out in the Sectoral Annexes;
 - (b) exchange information concerning the implementation of the mandatory requirements specified in the Sectoral Annexes; and
 - (c) notify each other of any scheduled changes in their respective mandatory requirements as and when they are made.
4. Unless otherwise provided for, a Sectoral Annex concluded pursuant to paragraph 2 of this Article shall enter into force on the first day of the second month following the date on which the Parties have exchanged notes confirming the completion of their respective procedures for the entry into force of that Sectoral Annex.
5. A Party may terminate an MRA in its entirety by giving the other Party one year's advance notice in writing unless otherwise stated in the relevant Sectoral Annex. However, a Party shall continue to accept the results of conformity assessment or equivalence for the duration of the one year notice period.
6. Where urgent problems of safety, health, consumer or environment protection or national security arise or threaten to arise for a Party, that Party may suspend the operation of any Sectoral Annex, in whole or in part, immediately. In such a case, the Party shall immediately advise the other Party of the nature of the urgent problem, the products covered and the objective and rationale of the suspension.