

## ARTICLE 124

### Cooperation and Technical Assistance on Customs and Trade Facilitation

The technical assistance measures required for the implementation of this Chapter are established in Articles 53 and 54 of Title VI (Economic and Trade Development) of Part III of this Agreement.

## CHAPTER 4

### TECHNICAL BARRIERS TO TRADE

## ARTICLE 125

### Objectives

1. The objective of this Chapter is to facilitate and increase trade in goods by identifying, preventing and eliminating unnecessary barriers to trade between the Parties, which may arise as a result of the preparation, adoption and application of technical regulations, standards and conformity assessment procedures within the terms of the WTO Agreement on Technical Barriers to Trade (hereinafter referred to as the "TBT Agreement").

2. The Parties undertake to cooperate in strengthening regional integration within the Parties on matters concerning technical barriers to trade.
3. The Parties undertake to establish and enhance technical capacity on matters concerning technical barriers to trade with the aim of improving access to their respective markets.

## ARTICLE 126

### General Provisions

The Parties reaffirm their existing rights and obligations with respect to each other under the TBT Agreement, which is hereby incorporated into and made part of this Agreement. The Parties take special account of Article 12 of the TBT Agreement on special and differential treatment.

## ARTICLE 127

### Scope and Coverage

1. This Chapter applies to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures as defined in the TBT Agreement, which may affect trade in goods between the Parties.

2. Notwithstanding paragraph 1, this Chapter does not apply to sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (hereinafter referred to as the "SPS Agreement"), nor to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies which will be regulated by Title V (Government Procurement) of Part IV of this Agreement.

## ARTICLE 128

### Definitions

For the purposes of this Chapter, the definitions of Annex I to the TBT Agreement shall apply.

## ARTICLE 129

### Technical Regulations

The Parties agree to make the best use of good regulatory practices, as indicated in the TBT Agreement. In particular, the Parties agree to:

- (a) use relevant international standards as a basis for technical regulations including conformity assessment procedures, except when such international standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued; and where international standards have not been used as a basis, to explain, upon request of the other Party, the reasons why such standards have been judged inappropriate or ineffective for the aim being pursued;
- (b) promote the development of regional technical regulations and that these replace any existing national ones, in order to facilitate trade with and between the Parties;
- (c) establish mechanisms for improved information to the other Party' industries on technical regulations (for example, through a public website); and
- (d) provide upon request and without undue delay, information, and where appropriate, written guidance on compliance with their technical regulations to the other Party or its economic operators.

## ARTICLE 130

### Standards

1. The Parties confirm their obligation 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.
2. The Parties undertake to:
  - (a) ensure appropriate interaction of regulatory authorities and national, regional or international standardisation bodies;
  - (b) ensure the application of 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 TBT Committee on 13 November 2000;
  - (c) ensure that their standards bodies cooperate in order that international standardisation work is, where possible, used as a basis for the development of standards at regional level;
  - (d) promote the development of regional standards. When a regional standard is adopted, it will fully replace all existing national standards;

- (e) exchange information on the Parties' use of standards in connection with technical regulations and to provide as far as possible, that standards shall not be made mandatory; and
- (f) exchange information and expertise on the work done by international, regional and national standardisation bodies, and on the extent to which international standards are used as a basis for their national and regional standards; as well as general information on cooperation agreements used by either Party in standardisation.

## ARTICLE 131

### Conformity Assessment and Accreditation

1. The Parties recognise that a broad range of conformity assessment mechanisms exists to facilitate the acceptance of products in the territory of the Parties, including:
  - (a) acceptance of a supplier's declaration of conformity;
  - (b) designation of conformity assessment bodies located in the other Party's territory;
  - (c) acceptance of the results of conformity assessment procedures by bodies located in the other Party's territory; and
  - (d) voluntary arrangements between conformity assessment bodies in each Party's territory.

2. In line with this, the Parties undertake:
- (a) in conformity with Article 5.1.2 of the TBT Agreement, to require conformity assessment procedures that are not stricter than necessary;
  - (b) to ensure that, where several conformity assessment bodies have been authorised by a Party in accordance with its applicable domestic legislation, legislative measures adopted by such Party will not restrict the operators' freedom to choose where to carry out the relevant conformity assessment procedures; and
  - (c) to exchange information on accreditation policy, and to consider how to make best use of the international standards for accreditation, and international agreements involving the Parties' accreditation bodies, for example, through the mechanisms of International Laboratory Accreditation Cooperation (ILAC) and International Accreditation Forum (IAF).

## ARTICLE 132

### Special and Differential Treatment

In accordance with the provisions of Article 126 of this Chapter, the Parties agree to:

- (a) ensure that legislative measures do not restrict the conclusion of voluntary agreements between conformity assessment bodies located in the Republics of the CA Party and those located in the EU Party and promote the participation of such bodies in these agreements;

- (b) when one of the Parties identifies a particular problem related to an actual or proposed technical regulation, standard or conformity assessment procedure that may affect trade between the Parties, that exporting Party may seek clarification and guidance on how to comply with the measure of the importing Party. The latter will promptly give due attention to this request and take into consideration the concerns expressed by the exporting Party;
- (c) at the request of the exporting Party, the importing Party shall undertake to promptly deliver through its competent authorities information with respect to the technical regulations, standards and conformity assessment procedures applicable to a group of goods or a particular good for its commercialization in the territory of the importing Party; and
- (d) in accordance with Article 12.3 of the TBT Agreement, the EU Party, in the preparation or application of technical regulations, standards and conformity assessment procedures, shall take into account the special development, financial and trade needs of the Republics of the CA Party, with a view to ensuring that such technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to their exports.

## ARTICLE 133

### Cooperation and Technical Assistance

The Parties agree that it is in their common interest to promote mutual cooperation and technical assistance initiatives on issues related to technical barriers to trade. In this respect, the Parties have identified a number of cooperation activities which are set out in Article 57 of Title VI (Economic and Trade Development) of Part III of this Agreement.

## ARTICLE 134

### Collaboration and Regional Integration

The Parties agree that collaboration between national and regional authorities dealing with technical barriers to trade matters, within both the public and private sectors, is important to facilitate trade within the regions and between the Parties themselves. To this end, the Parties undertake to carry out joint actions that may include:

- (a) strengthening their cooperation in the field of standards, technical regulations, metrology, accreditation and conformity assessment with a view to increasing mutual understanding of their respective systems and, in areas of common interest, explore trade facilitation initiatives which lead to the convergence of their regulatory requirements. To this end, they may establish regulatory dialogues at both horizontal and sectoral levels;

- (b) seeking to identify, develop and promote trade facilitating initiatives which may include, but are not limited to:
  - (i) reinforcing regulatory cooperation through, for example, the exchange of information, expertise and data, and scientific and technical cooperation with a view to improving the way technical regulations are developed, in terms of transparency and consultation, and making an efficient use of regulatory resources;
  - (ii) simplifying procedures and requirements; and
  - (iii) promoting and encouraging bilateral cooperation between their respective organisations, public or private, responsible for metrology, standardisation, testing, certification and accreditation;
- (c) on request, a Party shall give appropriate consideration to proposals that the other Party makes for cooperation under the terms of this Chapter.

## ARTICLE 135

### Transparency and Notification Procedures

The Parties agree:

- (a) to fulfil the transparency obligations of the Parties as indicated in the TBT Agreement and provide early warning of the introduction of technical regulations and conformity assessment procedures having a significant effect on trade between the Parties, and when such technical regulations and conformity assessment procedures are introduced, to leave sufficient time between their publication and entry into force for economic operators to adapt to them;
- (b) when making notifications in accordance with the TBT Agreement, to allow the other Party at least sixty days following the notification to provide comments in writing on the proposal except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise and, where practicable, to give appropriate consideration to reasonable requests for extending the comment period. This period will be extended if the WTO TBT Committee so recommends; and
- (c) to give appropriate consideration to the other Party's views where part of the process in the development of a technical regulation or conformity assessment procedure is, prior to the WTO notification process, open to public consultation in accordance with the procedures of each region; and on request to provide written responses to the comments made by the other Party.

## ARTICLE 136

### Market Surveillance

The Parties undertake to:

- (a) exchange views on market surveillance and enforcement activities; and
- (b) ensure that market surveillance is carried out by the competent authorities in an independent manner, with a view to avoid conflicts of interest.

## ARTICLE 137

### Fees

The Parties undertake to ensure that:

- (a) any fees imposed for assessing the conformity of products originating in the territory of one Party are equitable in relation to any fees chargeable for assessing the conformity of like products of national origin or originating in the territory of the other Party, taking into account communication, transportation and other costs arising from differences between the location of the facilities of the applicant and the conformity assessment body;

- (b) a Party shall give an opportunity to the other Party to make a representation against the amount charged for assessing the conformity of products when the fee is excessive in relation to the cost of the certification service and where this undermines the competitiveness of its products; and
- (c) the anticipated processing period for any mandatory conformity assessment is reasonable and equitable for imported and domestic goods.

## ARTICLE 138

### Marking and Labelling

1. The Parties recall, as stated in Article 1 of Annex 1 of the TBT Agreement, that a technical regulation may include or deal exclusively with marking or labelling requirements, and agree that where their technical regulations require any marking or labelling requirements, they will observe the principles of Article 2.2 of the TBT Agreement.
2. In particular, the Parties agree:
  - (a) to require only marking or labelling relevant to consumers or users of the product or to indicate the product's conformity with the mandatory technical requirements<sup>7</sup>;

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<sup>7</sup> Where labelling for fiscal purposes is required, such a requirement shall be formulated in a manner that is not more trade restrictive than necessary to fulfil a legitimate objective.

- (b) if it is necessary in view of the risk of the products to human, animal or plant health or life, the environment, or national safety, the Parties may:
  - (i) require the approval, registration or certification of labels or markings as a precondition for sale on their respective markets; or
  - (ii) establish requirements on the physical characteristics or design of a label, in particular that the information be placed in a specific part of the product or in a given format or size.

The above is understood without prejudice to the measures adopted by the Parties pursuant to their internal rules to check the compliance of labels with the mandatory requirements and measures they take to control practices which may mislead consumers;

- (c) where a Party requires the use of a unique identification number by economic operators, it shall issue such a number to the other Party's 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 country of destination of the goods, the Parties shall permit the following:
  - (i) information in other languages in addition to the language required in the country of destination of the goods;
  - (ii) international nomenclatures, pictograms, symbols or graphics; and
  - (iii) additional information to that required in the country of destination of the goods;
- (e) the Party shall, where legitimate objectives under the TBT Agreement are not compromised and the information can properly reach the consumer, endeavour to accept non-permanent or detachable labels, or marking or labelling in the accompanying documentation rather than physically attached to the product; and
- (f) the Parties shall allow that labelling and corrections to labelling take place in the country of destination prior to the commercialisation of the goods.

3. Taking into account paragraph 2, the Parties agree that, when a Party requires marking or labelling of textiles, clothing or footwear, the following information alone may be required to be permanently marked:

- (a) in the case of textiles and clothing: fibre content, country of origin, safety instructions for specific uses and care instructions; and
- (b) in the case of footwear: the predominant materials of the main parts, safety instructions for specific uses and country of origin.

4. The Parties shall apply the provisions of this Article within one year from the entry into force of this Agreement at the latest.

#### ARTICLE 139

##### Sub-Committee on Technical Barriers to Trade

1. The Parties hereby establish a Sub-Committee on Technical Barriers to Trade, in accordance with Article 348 and as set out in Annex XXI (Sub-Committees).

2. The Sub-Committee shall have the following functions:
- (a) discuss any matter relating to the application of this Chapter that could affect trade between the Parties;
  - (b) monitor the implementation and administration of this Chapter; promptly addressing any issue that either Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, and conformity assessment procedures; and at either Party's request, consulting on any matter arising under this Chapter;
  - (c) facilitate the exchange of information on technical regulations, standards and conformity assessment procedures;
  - (d) provide a forum for discussion in order to solve problems or issues that hinder or limit trade, within the limits of the scope and objective of this Chapter;
  - (e) enhance cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; including the exchange of information between the relevant public or private bodies working on these matters and encourage direct interaction between non-governmental actors, such as standard bodies, accreditators and certifiers;

- (f) facilitate the exchange of information about the work being done in non-governmental, regional and multilateral *fora* engaged in activities related to technical regulations, standardisation and conformity assessment procedures;
- (g) explore ways to facilitate trade between the Parties;
- (h) report on the cooperation programs established under Article 57 of Title VI (Economic and Trade Development) of Part III of this Agreement, their achievements and the impact of these projects in facilitating trade and in implementing the provisions of this Chapter;
- (i) review this Chapter in the light of any developments under the TBT Agreement;
- (j) report to the Association Committee on the implementation of the provisions of this Chapter, in particular the advances in the fulfilment of the goals established and the provisions related to special and differential treatment;
- (k) take any other steps the Parties consider will assist them in implementing this Chapter;
- (l) establish dialogues between regulators in accordance with Article 134(a) of this Chapter and, where appropriate, working groups to discuss different topics of interest to the Parties. The working groups may include or consult with non-governmental experts and stakeholders; and
- (m) any other issue instructed by the Association Committee.