

**CHILEAN PROPOSAL  
CHAPTER XX  
TECHNICAL BARRIERS TO TRADE**

**ARTICLE X.1: Objectives**

The objectives of this Chapter are:

- (a) To enhance and facilitate trade and obtain effective market access through the improvement of the implementation of the TBT Agreement;
- (b) To deepen the integration of existing agreements between the Parties in areas concerning technical barriers to trade;
- (c) To ensure that the standards, technical regulations and conformity assessment procedures do not create unnecessary technical barriers to trade;
- (d) To facilitate, increase and promote cooperation between the Parties.

**ARTICLE X.2: Scope of Application**

1. The provisions of this Chapter apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures of the Parties<sup>1</sup>, including those of central level of government bodies or federal level and local government bodies that may directly or indirectly affect trade in goods between the Parties.
2. The provisions of this Chapter are not applicable to sanitary and phytosanitary measures, which shall be covered by Chapter 6 (Sanitary and Phytosanitary Measures).
3. The procurement specifications developed by government bodies for the production or consumption requirements of those bodies, shall not be subject to the provisions of this Chapter, and shall be covered by Chapter XX (Government Procurement).

**ARTICLE X.3: Incorporation of the TBT Agreement**

The TBT Agreement shall be incorporated in this Chapter and is an integral part of it, *mutatis mutandis*.

**ARTICLE X.4: International Standards**

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<sup>1</sup> Any reference made in this Chapter to standards, technical regulations and conformity assessment procedures, includes those related to metrology.

1. On determining that an international standard, guideline or recommendation exists in the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, the Parties shall apply the principles established in the *Decisions and Recommendations adopted by the Committee since 1 January 1995*,<sup>2</sup> Annex of Part I B (*Decision of the Committee relating to Principles for the Creation of International Standards, Guidelines and Recommendations in accordance with Articles 2, 5 and Annex 3 of the Agreement*), issued by the WTO Committee on Technical Barriers to Trade.

## **ARTICLE X.5: Cooperation and Trade Facilitation**

1. The Parties shall seek to identify, develop and promote trade facilitation initiatives, that are appropriate for the issues and sectors concerned, related to standards, technical regulations and conformity assessment procedures, taking into consideration, where appropriate, the Parties' respective experience in other bilateral, regional or multilateral agreements. Such initiatives may consist, among others, in the following:

- (a) Intensifying joint cooperation to increase knowledge and understanding of their respective systems with the aim of facilitating market access;
- (b) Promoting the compatibility or equivalence of technical regulations and conformity assessment procedures;
- (c) Using accreditation as a tool to recognise conformity assessment bodies established in the other Parties' territories in accordance with international practices and standards, as well as cooperation through mutual recognition agreements;
- (d) Favouring the convergence or harmonisation with international standards; and
- (e) Recognising and accepting the results of conformity assessment procedures.

2. The Parties recognise the existence of a wide range of mechanisms to support greater regulatory coherence and eliminate unnecessary technical barriers to trade in the region, including:

- (a) Encouraging regulatory dialogue and cooperation with the aim of:
  - (i) Exchanging information on regulatory approaches and practices;
  - (ii) Promoting the use of good regulatory practices to improve the efficiency and effectiveness of standards, technical regulations and conformity assessment procedures;
  - (iii) Providing technical advice and assistance, on mutually agreed terms and conditions, to improve practices related to the development, implementation and review of technical regulations, standards and conformity assessment procedures;

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<sup>2</sup> G/TBT/I/Rev.10, 9 June 2011.

- (iv) Providing, among others, technical assistance and cooperation, on mutually agreed terms and conditions, to improve competition and support the implementation of this Chapter;
  - (b) Promoting, disseminating and exchanging experiences and information with regards to the possibility of accepting the technical regulations of other Parties as equivalent;
  - (c) Increasing, as much as possible, the harmonisation of national standards with international standards; and
  - (d) Encouraging greater use of international standards, guides and recommendations as a basis for technical regulations and conformity assessment procedures.
3. With respect to the provisions of paragraphs 1 and 2, the Parties recognise that the choice of the appropriate mechanisms in a given regulatory context shall depend on a variety of factors, such as: the product and sector involved, the volume and direction of trade, the relationship between the Parties' respective regulators, the legitimate objectives pursued and the risks of non-fulfilment of those objectives.
4. The Parties shall intensify the exchange and collaboration on mechanisms to facilitate the acceptance of conformity assessment results, to support greater regulatory coherence and 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. When a Party detains at the point of entry a good originating in the territory of another Party, due to non-fulfilment of a technical regulation, it must notify the importer or respective customs agent, as soon as possible the reasons for the detention.
7. The Parties shall exchange information on the use of standards in connection with the technical regulations and shall ensure, to the extent possible, that those standards referred are provided upon request of the other Parties.
8. The Parties shall endeavour, to the extent possible, to present a common position based on mutual interests in international standardisation forums.

#### **ARTICLE X.6: Technical Regulations**

A Party, upon request of another Party, shall explain the reasons why that Party has not recognized the requesting Party's technical regulation as equivalent, without prejudice to the provisions established in Article 2.7 of the TBT Agreement.

#### **ARTICLE X.7: Conformity Assessment**

1. Recognising the existence of differences in the conformity assessment procedures in their respective territories, the Parties shall make their conformity assessment procedures

compatible to the greatest extent possible with international standards and the provisions established in this Chapter.

2. Each Party recognises that there is a wide range of mechanisms that facilitate the acceptance of conformity assessment results carried out in the territory of the other Parties, including:

- (a) Voluntary agreements between the conformity assessment bodies in the territory of the Parties;
- (b) Agreements on the mutual acceptance of the results of the conformity assessment procedures with regards to specific technical regulations, carried out by bodies located in the other Parties' territories;
- (c) Accreditation procedures to qualify conformity assessment bodies;
- (d) Government approval or designation of conformity assessment bodies;
- (e) Recognition of the results of conformity assessment bodies in the other Parties' territories; and
- (f) Acceptance by the importing Party of the supplier's declaration of conformity.

3. The Parties shall intensify their exchange of information in relation to these and similar mechanisms, in order to facilitate the acceptance of the results of the conformity assessment.

4. If a Party does not accept the results of the conformity assessment procedures carried out in other Party's territory, it must, upon the other Party's request, explain the reasons for its decision so corrective actions are taken, if necessary.

5. Each Party shall accredit, approve, authorise or recognise the conformity assessment bodies located in the other Parties' territories, in terms no less favourable than those granted to the conformity assessment bodies located in its own territory. When, despite proceeding in this manner, a Party refuses to accredit, approve, authorise or recognise a body that assesses the conformity of a specific technical regulation in the territory of the other Parties, it must, upon request, explain the reasons for its refusal in order to take corrective actions, if necessary.

6. The Parties shall favourably consider negotiating Mutual Recognition Agreements for the results of their respective conformity assessment procedures carried out by bodies in the territory of the other Parties. If any of the Parties refuses to begin these negotiations it must, upon request, explain the reasons for its decision.

7. With the aim of building mutual confidence in the conformity assessment results, the Parties may request information on aspects such as the technical competence of the conformity assessment bodies involved.

## **ARTICLE X.8: Transparency**

1. The Parties shall notify to each other electronically, through the enquiry point established by each Party in accordance with Article 10 of the TBT Agreement, the proposals for new technical regulations and conformity assessment procedures, and amendments to existing technical regulations and conformity assessment procedures, as well as those adopted to address urgent problems in the terms established by the TBT Agreement, at the same time that they send the notification to the WTO Central Registry of Notifications. This notification shall include an electronic link to the notified document, or a copy of that document.

2. The Parties shall notify even those technical regulations and conformity assessment procedures that are consistent with the technical content of relevant international standards,

3. Each Party shall respond formally to the comments received from the other Parties during the consultation period stipulated in the notification, no later than the date of publication of the final version of the technical regulation or conformity assessment procedure. Furthermore, each Party shall publish, make available to the public or the other Parties, printed or by electronic means, its responses to the main submissions received from the other Parties, no later than the date of publication of the final version of the technical regulation or conformity assessment procedure.

4. The Parties shall ensure that the information related to proposals and final versions of technical regulations and conformity assessment procedures, is available to the public on a central website.

5. Each Party shall allow, in accordance with its own internal procedures, interested persons from other Parties to participate in the development of its standards, technical regulations and conformity assessment procedures, in terms no less favourable than those granted to its own nationals.

6. Each Party shall allow a period of at least 60 days, from the notification referred to in paragraph 1 of this Article, in order to the other Parties present written comments on the proposed technical regulations and conformity assessment procedures, except when urgent problems arise or threaten to arise. Each Party shall positively consider reasonable requests of the other Parties to extend the comment period.

7. Subject to the conditions specified in Article 2.12 of the TBT Agreement, regarding the reasonable period between the publication of the technical regulations and their entry into force, the Parties shall interpret that the expression "reasonable period" means, normally, a period of no less than six months, except when this would be ineffective to fulfil the legitimate objectives pursued.

5. In the case of the existence of yearly or half-yearly work programmes related to standards and technical regulations, the Parties shall make their best effort to disclosed to the public this information through printed or electronic publications.

## **ARTICLE X.9: Committee on Technical Barriers to Trade**

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hereinafter the "Committee"), composed of representatives designated by each Party in accordance with Annex 7.9.
2. The committee's functions shall include, among others:
  - (a) Monitoring the implementation and administration of this Chapter;
  - (b) promptly addressing the issues proposed by a Party with regards to the preparation, adoption, implementation or execution of standards, technical regulations or conformity assessment procedures;
  - (c) Increasing cooperation for the preparation and improvement of the standards, technical regulation or conformity assessment procedures;
  - (d) Whenever appropriate, facilitating the sectoral cooperation between governmental and non-governmental bodies in the field of standards, technical regulations and conformity assessment procedures in the Parties' territories, as well as facilitating the process of Mutual Recognition Agreements and equivalence of technical regulations;
  - (e) Exchanging information on the work carried out in non-governmental, regional and multilateral forums and cooperation programmes involved in activities related to standards, technical regulations and conformity assessment procedures;
  - (f) Reviewing this Chapter in the light of any developments within the WTO's Committee on Technical Barriers to Trade and developing recommendations for amendments to this Chapter, if necessary;
  - (g) Reporting to the [Free Trade Commission] on the implementation of this Chapter;
  - (h) Establishing, if necessary for specific issues or sectors, working groups to handle specific matters relating to this Chapter and the TBT Agreement;
  - (i) Addressing, upon request by a Party, technical consultations on any matter arising under this Chapter;
  - (j) Establishing roundtables with the aim of covering topics of interest in the field of regulatory cooperation;
  - (k) Carrying out any other action that the Parties consider necessary to help in the implementation of this Chapter and the TBT Agreement, as well as the facilitation of trade in goods between the Parties;
  - (l) Analysing the most appropriate means with the aim to and with prior agreement between the Parties, the importing Party can accept, expeditiously, the results of the conformity assessment, regarding to its technical regulations, issued by the conformity assessment bodies located in the territory of the exporting Party, as long as these bodies are accredited in the corresponding subject and sector, by the

relevant national accreditation bodies, which have been recognised by the reference international accreditation bodies agreed upon by the Parties; and

(m) Promoting, to the extent possible, the development of yearly or half-yearly work programmes on standards and technical regulations.

3. Upon request, the Committee shall give favourable consideration to any request by a specific sector that a Party identifies to deepen cooperation in accordance with this Chapter.
4. The Committee shall meet in the venues, schedules and times deemed necessary by request of the Parties. The meetings shall be held in person, teleconference, videoconference or through any other means, as agreed by the Parties.

#### **ARTICLE X.10: Information Exchange**

1. Any information or explanation requested by a Party, under the provisions of this Chapter, must be provided by the Party or Parties receiving the request, printed or by electronic means, within the 60-day period following the initial request. The Party or Parties receiving the request shall endeavour to respond every request within the 30-day period following the submission.

#### **ARTICLE X.11: Implementation Annexes**

The Parties may negotiate annexes to deepen the disciplines of this Chapter and the annexes shall constitute an integral part of it.

#### **ARTICLE X.12: Technical Consultations**

1. Each Party shall give prompt and positive consideration to any request by another Party to hold consultations on specific trade concerns, related to the implementation of this Chapter.

2. When the Parties have concluded the consultations under the Article 7.9.2 (i), such consultations, by mutual agreement of the Parties involved, may constitute the consultations referred in the Article XX.X (Consultations).

**ANNEX X.X:  
COMMITTEE ON TECHNICAL BARRIERS TO TRADE**

For the purposes of Article 7.9, the Committee shall be coordinated by:

- (a) in the case of Chile, the General Directorate of International Economic Relations Economic Relations or its successor;
- (b) in the case of Colombia, the Directorate for Regulation of the Ministry of Trade, Industry and Tourism or its successor;
- (c) in the case of Mexico, the Directorate General for International Trade Rules of the Ministry of Economy or its successor; and
- (d) in the case of Peru, the Ministry of Foreign Trade and Tourism or its successor.