

CHAPTER 9

STANDARDS-RELATED MEASURES

Article 9.1: Definitions

For purposes of this Chapter:

authorization procedure means any registration, notification or other mandatory administrative procedure granting authorization for a good to be produced, marketed or used for a stated purpose or under stated conditions;

conformity assessment procedure means any procedure used, directly or indirectly, to determine compliance with the provisions on technical regulations or standards. This includes, *inter alia*, sampling procedures, testing and inspection, evaluation, verification and assurance of conformity, registration, accreditation and approval either separately or in combination;

international standard means a standards-related measure, or any other guideline or recommendation, adopted by an international standardizing body and made available to the public;

international standardizing body means a standardizing body whose membership is open to the relevant bodies of at least all the parties to the WTO Agreement, including the International Organization for Standardization, the International Electrotechnical Commission, the Codex Alimentarius Commission, the World Health Organization, the Food and Agriculture Organization of the United Nations, the International Telecommunication Union, and any other body that the Parties designate;

legitimate objective is to guarantee national security requirements, the prevention of deceptive practices, protection of human health or safety, animal or plant life or health, or the environment and any other objective that shall be determined by the Standards-Related Measures Committee;

make compatible means to bring different standards-related measures of the same scope approved by different standardizing bodies to a level such that they are either identical or modified to fulfill the same purpose, or have the effect of permitting that goods are used in place of one another or fulfill the same purpose;

standard means a document, approved by a recognized body, that provides for common and repeated use, rules, guidelines or characteristics for goods or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking and labelling requirements applicable to a good, process or production method;

standardizing body means a body having recognized activities in standardization;

standards-related measures means a standard, technical regulation or conformity assessment procedure; and

technical regulation means a document which lays down the product characteristics or their related processes and production methods, including the applicable

administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements applicable to a product, process, or production method.

Article 9.2: General Provision

The Parties shall apply the provisions set forth in this Chapter in addition to the provisions established by the WTO Agreement.

Article 9.3: Scope and Coverage

1. This Chapter applies to standards-related measures of the Parties that may, directly or indirectly, affect the trade of goods between the Parties and to measures of the Parties relating to such measures.

2. Provisions included in this Chapter shall not apply to sanitary and phytosanitary measures governed by Chapter 8. Technical specifications prepared by governmental bodies for production or consumption requirements of governmental bodies are not subject to the provisions of this Chapter but are addressed in Chapter 15.

Article 9.4: Basic Rights and Obligations

Right to Take Standards-Related Measures

1. Each Party may prepare, adopt, apply or maintain any standards-related measure to ensure that each Party is able to pursue its legitimate objectives, as well as measures ensuring enforcement and compliance with these standardizing measures, including approval procedures.

Extent of Obligation

2. Each Party shall comply with the applicable provisions of this Chapter and adopt the appropriate measures to ensure its observance, as well as those measures of non-governmental standardizing bodies duly accredited in its territory.

3. Each Party shall, in respect of its standards-related measures, accord to goods of the other Party:

(a) national treatment; and

(b) treatment no less favorable than the most favorable treatment that the Party accords to similar goods of any other non-Party.

Unnecessary Obstacles

4. No Party may prepare, adopt, maintain or apply any standards-related measure with a view to or with the effect of creating unnecessary obstacles to trade between the Parties. To that end, standards-related measures shall not be more trade restrictive than necessary to achieve a legitimate objective, taking account of the risks that non-fulfillment would create. An unnecessary obstacle to trade shall not be deemed to be created where:

(a) the demonstrable purpose of the measure is to achieve a legitimate objective;

(b) the measure complies with an international standard; and

(c) the measure does not operate to exclude goods of the other Party that meet that legitimate objective.

Use of International Standards

5. Each Party shall use, as a basis for its own standards-related measures, the relevant international standards in force or whose completion is imminent, except where such standards would be an ineffective or inappropriate means to fulfill its legitimate objectives.

Article 9.5: Compatibility

1. Recognizing the crucial role of standards-related measures in achieving legitimate objectives, the Parties shall, in accordance with this Chapter and the WTO Agreement, work jointly to enhance the level of safety and of protection of human, animal and plant life and health, the environment and consumers.

2. The Parties shall, to the greatest extent practicable, work to make compatible their respective standards-related measures, without reducing the level of safety or of protection of human, animal or plant life or health, the environment or consumers, without prejudice to the rights granted to either Party under this Chapter, and taking into account international standardization activities so as to facilitate the trade of a good between the Parties.

3. A Party shall, upon request of the other Party, seek, as far as possible and through appropriate measures, to promote the compatibility of a specific standard-related measure that is maintained in its territory with the standards-related measures maintained in the territory of the other Party.

4. A Party shall, upon request in writing from the other Party explicitly stating its reasons for the request, consider favorably the possibility of accepting standards-related measures of the other Party as equivalent to its own, even if they differ from its own, provided that, in cooperation with that Party, it is convinced that such measures comply adequately with the legitimate objectives of its own measures.

5. A Party shall provide to the other Party, upon request, its reasons in writing for not accepting standards-related measures as equivalent under paragraph 4.

Article 9.6: Conformity Assessment Procedures

1. Conformity assessment procedures of the Parties shall be prepared, adopted and applied in a manner that provides access to similar goods of the territory of the other Party on terms no less favorable than those granted to similar goods of the Party or any other country in a comparable position.

2. Each Party shall, with respect to its conformity assessment procedures, ensure that:

(a) such procedures are initiated and completed as expeditiously as possible and in a non-discriminatory order;

(b) the normal processing period for each one of such procedures is published or the estimated processing period is communicated to the applicant upon request;

(c) the competent body or authority:

(i) upon receipt of an application, promptly examines the completeness of the documentation and informs the applicant in a precise and complete manner of any deficiency;

(ii) transmits to the applicant as soon as possible the results of the assessment in a precise and complete manner, so that the applicant may take any necessary corrective action;

(iii) even if the application is deficient, proceeds as far as practicable with the conformity assessment if so requested by the applicant; and

(iv) informs the applicant, on request, of the status of the application and the reasons for any delay;

(d) it limits the information the applicant is required to supply to what is necessary to conduct the conformity assessment procedure and to determine appropriate fees;

(e) the confidential nature of information arising from, or supplied in connection with such procedures for a good of the other Party is respected in the same manner as the treatment accorded to a good of that Party, so as to protect legitimate commercial interests;

(f) any fee it imposes for conducting the conformity assessment procedure of a good of the other Party is no higher than is equitable in relation to any such fee imposed for like goods of that Party, taking into account communication, transportation and other related costs derived from the different locations of the facilities of the applicant and those of the conformity assessment body;

(g) the location of facilities at which conformity assessment procedures and sampling selection procedures are conducted does not cause unnecessary inconvenience to the applicant or its agents;

(h) whenever the specifications for a good are modified subsequent to a determination that the good conforms to the applicable technical regulation or standard, the conformity assessment procedure of the modified good is limited to what is necessary to determine that the good continues to conform to the technical regulation or standard; and

(i) there is a procedure in place to review complaints concerning the operation of a conformity assessment procedure and that corrective action is taken when a complaint is justified.

3. Each Party shall give positive consideration to a request by the other Party to negotiate agreements for the mutual recognition of the results of their respective conformity assessment procedures.

4. Each Party shall, wherever possible, accept the results of the conformity assessment procedures conducted in the territory of the other Party, provided that the procedure offers a satisfactory assurance, equivalent to that provided by a procedure it conducts or a procedure conducted in its territory, the results of which it accepts, and that the relevant good complies with the applicable technical regulation or standard adopted or maintained in that Party's territory.

5. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph

4, and in order to enhance confidence in the permanent reliability of each one of the conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved, including verified compliance with relevant international standards through means such as accreditation.

6. Recognizing that it should be to the mutual advantage of the Parties, each Party shall accredit, approve, or otherwise recognize conformity assessment bodies in the territory of the other Party, on terms no less favorable than those accorded to conformity assessment bodies in its territory.

Article 9.7: Authorization Procedures

Each Party shall apply, with such modifications as may be necessary, the relevant provisions of Article 9.6.2, to its authorization procedures.

Article 9.8: Transparency

1. Each Party shall keep a list of its standards-related measures and make them available to the other Party, upon request, and ensure that where full copies of documents are requested by the other Party or by interested persons of the other Party, they are supplied at the same price, apart from the actual cost of delivery, as the price for domestic purchase.

2. Where a Party allows non-governmental persons in its territory to participate in the process of preparation of standards-related measures, it shall also allow non-governmental persons from the territory of the other Party to participate. In such participation, nongovernmental persons from the territory of the other Party shall be allowed to express their opinions and comments on the preparation of the standards-related measure.

Article 9.9: Limitations on the Provision of Information

Nothing in this Chapter shall be construed to require a Party to furnish any information the disclosure of which they consider is contrary to its essential security interests.

Article 9.10: Committee on Standards-Related Measures

1. The Parties hereby establish the Committee on Standards-Related Measures, comprising representatives of each Party, pursuant to Annex 9.10.

2. The Committee's functions shall include:

- (a) monitoring the implementation, enforcement and administration of this Chapter;
- (b) considering any specific matter relating to the standards-related and metrology-related measures of the other Party or any other related measures, whenever a Party has any doubts on the interpretation or application of this Chapter, including the provision of non-mandatory technical advice and recommendations;
- (c) facilitating the process by which the Parties make compatible their standards-related and metrology-related measures;
- (d) providing a forum for the Parties to consult on issues relating to standards-related and metrology-related measures;
- (e) fostering technical cooperation activities between the Parties;
- (f) enhancing cooperation on the development and strengthening of standardization systems, technical regulations, conformity assessment procedures and metrology systems of the Parties;
- (g) reporting annually to the Commission on the implementation of this Chapter;
- (h) facilitating the process of negotiating agreements for mutual recognition between the Parties; and
- (i) establishing sub-committees as deemed necessary and determining the scope of action and mandate of such sub-committees.

3. The Committee shall meet as mutually agreed but not less than once a year. The meetings may also be held by telephone, video conference or other means, upon the agreement of the Parties.

Article 9.11: Technical Cooperation

1. Each Party shall, upon request of the other Party, provide:

- (a) information and technical assistance on mutually agreed terms and conditions to enhance the standards-related measures of that Party, as well as its activities, processes and systems in this matter; and
- (b) information on its technical cooperation programs linked to standards-related measures in specific areas of interest.

2. Each Party shall encourage standardizing bodies in its territory to cooperate with the standardizing bodies in the territories of the other Party, as appropriate, in standardizing activities, such as through membership in international standardizing bodies.

3. Each Party shall, to the fullest extent practicable, inform the other Party of the international agreements or programs it has executed on standards-related measures.

Annex 9.10

Members of the Standards-Related Measures Committee

1. For purposes of Article 9.10, members of the Committee will be representatives from:

(a) in the case of Chile, the Ministerio de Economía, through the Departamento de Comercio Exterior, or its successor; and

(b) in the case of Korea, the Ministry of Commerce, Industry and Energy, through a department responsible for standards-related measures, or its successor.

2. Each member shall invite, as it deems necessary or upon request of the other Party, other relevant government organizations responsible for standards-related measures, to participate in the Committee.