

## **FTAA – Free Trade Area of the Americas**

### **Draft Agreement**

#### **Chapter XIII Standards and Technical Barriers to Trade**

## [CHAPTER XIII Standards and Technical Barriers to Trade

### Section A General Aspects

#### [Article 1. Definitions]

[[For the purposes of this Chapter] [The Terms set out in][the definitions and explanatory notes of Annex 1 of the WTO TBT Agreement, in [accordance with] the current ISO/IEC Guide 2 “General Terms and Their Definitions Concerning Standardization and Related Activities.” shall apply[. The][, as will the] International Vocabulary of Basic and General Terms in Metrology (VIM) jointly prepared by ISO, IEC, BIPM, IFCC, IUPAC and OIML [shall apply].] [In addition, for the purposes of this Chapter the following definitions shall apply:] [In addition the following shall be defined as detailed below]:

[**Administrative refusal** means actions taken by a public administration body in the importing Party, in the exercise of its rights, to refuse a shipment entry to its territory [or the provision of a service], for technical reasons.]

[**Authorization procedure** means any administrative process that is obligatory for obtaining registration, a permit, license or any other authorization, with the aim that a good or service may be [produced,] marketed or used for defined purposes or according to established conditions.]

[**International standard** means a standard, or other guide or recommendation, adopted by an international standardization body and made available to the public.]

[An **international standard** is a standard that has been developed according to the principles set out in document G/TBT/1/Rev.7 Section IX (*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*), issued by the WTO Committee on Technical Barriers to Trade.]

[**International [standardizing] [standardization] body**] [**bodies for standardization and metrology**] means a standardizing body whose membership is open to the relevant bodies belonging to at least all the Parties in the WTO TBT Agreement on Technical Barriers to Trade, including the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the Codex Alimentarius Commission, the International Organization for Legal Metrology (OILM), the International Commission on Radiation Units and Measures (ICRU), or any other body designated by the Parties.]

[**To make compatible** means to bring different standards-related measures of the same scope approved by different standards-related bodies, to a level such that they are either identical, equivalent or have the effect of permitting goods [or services] to be used in place of one another or fulfill the same purpose.]

[**National standard** means a standard prepared or adopted by a National Standards Body.]

[**Regional standard** means a standard prepared and promulgated by a Regional Standards Body such as the Pan American Standards Commission (COPANT).]

[**Risk assessment** means assessment of the potential damage that any good [or service] traded among the Parties might cause to the achievement of legitimate objectives.]

[**Service** means any service, within the scope of this Agreement [which is subject to standardization or metrology measures and any others that the Parties may agree to in future negotiations].]

[**Standard** means a document approved by a recognized body, that provides, for common and repeated use, rules, guidelines, or characteristics for products [or for services] or related processes and production methods, with which compliance is not mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking, or labelling requirements as they apply to a product [or a service], process or production method or related operation. The definition of standard may also include a pattern or artefact used in metrology.]

[**Standardization body** means any body whose standardization activities are recognized.]

[**Standards-related measures** means standards, technical regulations, or conformity assessment procedures.]

[**Technical regulation** means a document that lays down product characteristics or their related processes and production methods [or the characteristics of services or related operating 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 as they apply to a product, [services], production processes or methods or related operations.]

[**Traceability** means a property of the result of a measurement or the value of a standard whereby it can be related to stated references, usually national or international standards, through an unbroken chain of comparisons all having stated uncertainties.]

**WTO TBT Agreement** means the World Trade Organization (WTO) Agreement on Technical Barriers to Trade.]

## **Article 2. General Objectives**

[2.1. The objectives of this Chapter are:

- a) to facilitate and increase hemispheric trade by preventing the preparation, adoption, and application of standards, technical regulations, conformity assessment procedures and metrology measures from becoming unnecessary barriers to hemispheric trade;
- b) to deepen cooperation with the objective of effectively implementing the provisions of the WTO TBT Agreement in the hemisphere and strengthening systems of standardization, technical regulations, conformity assessment, and metrology;
- c) to promote participation [of the Parties] in regional and international organizations with activities related to those set forth in Article 3.1 of this Chapter.]

## **Article 3. Scope and Coverage**

[3.1. The provisions of this Chapter cover the preparation, adoption and application of standards, technical regulations, conformity assessment procedures [and metrology] that could affect [, directly or indirectly,] trade in goods [and services] among the Parties.]

3.2. The provisions of this Chapter apply to all goods [and services].

3.3. The provisions of this Chapter do not apply to:

- a) sanitary and phytosanitary measures as covered by the [[Section][Chapter] on Sanitary and Phytosanitary Measures];
- b) government procurement as covered by the [Chapter on Government Procurement];
- [c) services as covered by the [Chapter on Services] .]

[3.4. Each Party shall ensure that it takes all measures necessary to fulfill the provisions of this Chapter at the central or federal government level [and shall strive to ensure that such measures are adopted at other levels of government, as appropriate].]

#### **Article 4. Relation to Other Provisions**

4.1. The Parties affirm their existing rights and obligations under the WTO TBT Agreement.

[4.2. The WTO TBT Agreement continues to govern the rights and obligations of the Parties in respect of matters covered by that Agreement.]

### **Section B Substantive Provisions**

#### **Article 5. General Principles**

[5.1. To fulfill this Agreement, the Parties shall take steps, whenever possible, to make the activities set forth in Article 3.1 of this Chapter compatible with the guidelines and practices established by the corresponding international technical bodies.]

#### **[Article 6. Identification of Technical Barriers to Trade]**

[6.1. The Parties undertake to permanently eliminate unnecessary technical barriers to hemispheric trade as identified and notified by the other Parties. To this end, the Parties shall adopt compatible methodologies.]

[6.1. The Parties reaffirm their commitment to identify, on an ongoing basis and with a view to eliminating them, technical barriers to trade arising from the application of standards, technical regulations, conformity assessment procedures, and metrology measures. For this purpose, the Parties shall endeavor to adopt compatible methodologies for identifying unnecessary technical barriers to hemispheric trade.]

#### **Article 7. Standards**

[7.1. The Parties shall favour, whenever possible, the adoption of existing international standards, or, where none exist, the use of regional or subregional standards.]

[7.2. The objective of international standardization activities, established by consensus in international standardization organizations, is to establish technical standards that reflect the state of the art in applied

knowledge, with a view to improving the organization of production and trade systems as well as objectives of security and protection of the population and the environment.]

[7.3. Wherever appropriate, the Parties shall encourage their standardization bodies to develop standards based on product requirements in terms of performance rather than design or descriptive characteristics.]

### **Participation in International Bodies**

7.4. The Parties shall endeavor to increase their effective participation in international standardization bodies and shall encourage the cooperation of the hemisphere's standardization bodies with bodies from other regions.

### **[Article 8. Trade Facilitation**

8.1. The Parties shall intensify their joint work in the field of standards, technical regulations, and conformity assessment procedures with a view to facilitating access to their respective markets. In particular, the Parties shall endeavor to identify initiatives suited to specific matters or sectors. These initiatives may include cooperation on regulatory issues, such as the convergence or equivalence of technical regulations and standards, alignment with international standards, [confidence in a supplier's declaration of conformity,] and the use of accreditation to certify conformity assessment bodies as well as cooperation through mutual recognition.]

### **Article 9. Technical Regulations**

[9.1. The Parties shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to hemispheric trade. [For this purpose, technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create.]]

[9.2. Without detracting from the rights conferred to them under this Chapter, and taking into account international standardization activities, Parties shall, as far as possible, make their respective technical regulations compatible, without lessening standards regarding safety or protection of human, animal or plant life or health, the environment or consumers.]

[9.3. As a basis for their technical regulations, the Parties shall use international standards or relevant parts of them where relevant international standards exist or their completion is imminent [, or, where international standards do not exist, they shall use regional or sub-regional standards, except in cases of unique geographical, climatic or other factors, as established in the WTO TBT Agreement.] [In absence of these, or when unique geographical, climatic, or other factors arise, or when these are not an appropriate means for achieving legitimate objectives pursued in the terms established in the WTO TBT Agreement, the Parties agree to encourage the use, when appropriate, of regional or subregional standards. ]]

### **[Equivalence]**

[9.4. The Parties shall give positive consideration to accepting as equivalent technical regulations of other Parties, even if these regulations differ from their own, provided they are satisfied that these regulations adequately fulfil the objectives of their own regulations.]

[9.5. At the request of the exporting Party, the importing Party shall notify in writing its reasons for not accepting a technical regulation of the exporting Party as equivalent. The Parties may, in addition, hold discussions [to facilitate its acceptance][with a view to its possible acceptance].]

**[Risk Assessment]**

[9.6. In pursuing its legitimate objectives, each Party may conduct risk assessments. [In doing so, a Party shall take into account, among other elements:

- a) risk assessments conducted by national and international bodies;
- b) available scientific evidence or technical information;
- c) related processing technology;
- d) the intended end uses;
- e) related processes or production methods provided that they affect the characteristics of the goods;
- f) operating, inspection, sampling or testing methods;
- g) environmental conditions.]]

**Article 10. Conformity Assessment**

[10.1. The purpose of conformity assessment activities shall be to verify and demonstrate the conformity of goods, processes, systems [, services], and other results of productive activities with specified technical requirements. The Parties [shall endeavor to] [shall] ensure the consistency and transparency of conformity assessment activities, as a means of preventing unnecessary barriers to trade within the scope of application of this Chapter.]

[10.2. Parties are encouraged to accredit or approve the participation of conformity assessment institutions located in the territory of other Parties under conditions no less favourable than those accorded to bodies located in their own territories or that of any other country. [If an importing Party refuses to authorize the conformity assessment institutions of another Party to participate in its conformity assessment procedures, it shall explain in writing to whomever so requests the reasons for its objections.]]

[10.3. The Parties shall ensure that, whenever possible, results of conformity assessment procedures in other Parties are accepted, even when those procedures differ from their own, provided they are satisfied that these procedures offer an assurance of conformity with relevant technical regulations or standards equivalent to their own procedures. At the request of the exporting Party, the importing Party shall explain in writing the reasons for not accepting the results of the conformity assessment procedures. [It may, in addition, hold discussions [to facilitate acceptance] [with a view to possible acceptance].] [It is recognized that prior consultations may be necessary in order to arrive at a mutually satisfactory understanding.]]

[10.4. For the acceptance of the results provided for in the previous paragraph, each Party will recognize the conformity assessment results of accredited bodies of another Party under conditions no less favourable than those granted to bodies in their territory.]

[10.5. When international institutions with standardization activities have published or are about to publish relevant standards, guides, guidelines, documents, or recommendations, the Parties shall ensure that their institutions base conformity assessment procedures on these standards, guides, guidelines, documents, or recommendations, or the relevant parts thereof. When the interested Parties do not find these guides, guidelines, documents, or recommendations, or the relevant parts thereof, appropriate due to reasons of national security, the prevention of practices that may lead to error, the protection of human health and safety or of the life and health of animals, plants, or the environment, climatic factors, or other fundamental geographical factors or technological or infrastructure problems, explanations shall be provided upon request.]

[10.6. The Parties shall participate, within the limits of their resources, in the preparation of guidelines or recommendations referring to conformity assessment procedures by international institutions engaging in standardization activities.]

[10.7. The Parties shall carry out actions necessary for the creation and strengthening of conformity assessment systems based on the recommendations of specialized hemispheric organizations in order to sustain Mutual/Multilateral Recognition of conformity assessment systems.]

#### **[Mutual Recognition Agreements]**

[10.8. The Parties shall [endeavor to facilitate] [facilitate] the conclusion of Mutual/Multilateral Recognition Agreements.]

#### **[[Authorization][Approval] Procedures]**

[10.9. The Parties shall endeavour to ensure that conformity assessment procedures, when conducted by, or on behalf of, regulatory authorities, are consistent with provisions adopted by international bodies on these matters.]

#### **[Article 11. Metrology]**

[11.1. Metrological activities shall be guided by the Convention of the Metre, the International System of Units (SI), and by any subsequent provisions, agreements, or arrangements adopted in the context of the [International Bureau of Weights and Measures (BIPM)][International Committee of Weights and Measures (CIPM)] and of the International Organization of Legal Metrology (OIML), securing the organization of measurement systems according to a traceability structure at the international level.]

[11.2. Each Party undertakes to adopt the International System of Units (SI). In this regard, each Party shall establish timeframes and develop strategies and the legal and any other instruments necessary for adapting national structures to the technological changes that must result from the adoption of this system.]

[11.3. The Parties undertake to safeguard, preserve and disseminate their national standards and measuring instruments, maintaining the traceability thereof, based on international measurement

standards in accordance with the recommendations of the International Bureau of Weights and Measures (BIPM).]

### **Section C Procedures and Institutions**

#### **Article 12. Transparency Requirements and Information Systems**

##### **[Enquiry Points]**

[12.1. Parties shall endeavor to develop and improve their information systems and enquiry points [involved in the activities set forth in Article 3.1 of this Chapter].]

[12.2. Each Party shall ensure that [at least one (1)] [an] entity is designated to respond to all reasonable requests for information from other Parties or interested parties of the other Parties and to provide the relevant documents on its activities related to the activities set forth in Article 3.1 of this Chapter.]

[12.3. When a Party designates more than one (1) enquiry point, it shall inform the other Parties as to the scope of responsibility of each enquiry point and ensure that requests sent to the wrong enquiry point are forwarded to the correct enquiry point in a timely manner.]

##### **[Notifications]**

[12.4. Parties shall, to the extent possible, provide the other Parties to this Agreement with information on the activities set forth in Article 3.1 of this Chapter.]

[12.5. Each Party shall notify to the other Parties, preferably through electronic means, and with a copy to the Committee on Technical Barriers to Trade, any measure related to the activities set forth in Article 3.1 of this Chapter that it proposes to introduce as mandatory, including those notifications made to the WTO pursuant to the WTO TBT Agreement, in order that interested parties are provided no less than [sixty (60)][ninety (90)] days to make comments in writing on the draft proposed measure.]

#### **[Article 13. Treatment of the Differences in the Levels of Development and Size of Economies]**

[13.1. In applying and implementing this Chapter, the Parties shall take into account the problems and constraints stemming from differences in development levels and the size of the economies of the countries. In this regard, they shall implement technical and financial cooperation and technical assistance programs on mutually agreed terms and conditions for strengthening institutions and infrastructure relevant for the activities set forth in Article 3.1 of this Chapter, as well in connection with technological development, so as not to create technical barriers to the expansion and diversification of trade flows among them.]

#### **Article 14. Technical Cooperation and Assistance**

[14.1. The Parties agree that there is a need for structured action in the field of cooperation and technical assistance taking as a starting point the different levels of development in the institutions engaging in standardization, technical regulation, conformity assessment, and metrology activities in each of the Parties, through specific programs to meet their needs and establish ties of technical confidence among countries of the region.]

[14.2. Specific assistance and cooperation programs in the areas set forth in Article 3.1 of this Chapter could be conducted by bodies competent in these areas and could involve, as appropriate, national, international and multilateral entities.]

[14.3. The Parties shall foster cooperation in the areas set forth in Article 3.1 of this Chapter, *inter alia*:

- a) strengthening cooperation among calibration and testing laboratories, certification bodies, accreditation bodies and inspection bodies [with the objective of promoting mutual acceptance of conformity assessment and its results];
- b) supporting cooperation among their national metrology institutes, and supporting the activities of the Inter- American Metrology System (SIM).]

[14.4. Parties shall provide technical assistance to other Parties, on mutually agreed terms and conditions, consistent with the WTO TBT Agreement, in the activities set forth in Article 3.1, *inter alia*:

- a) implementing this Chapter;
- b) implementing the WTO TBT Agreement;
- c) fostering hemispheric exchanges of institutional and regulatory information and technical cooperation;
- d) fostering more active participation in international processes related to standardization, conformity assessment and metrology;
- e) strengthening the physical and technical infrastructure of national systems of standardization, technical regulation, conformity assessment, and metrology; including by exploring, whenever possible, opportunities to share the infrastructure of national metrology institutes as a way of taking optimal advantage of installed capacity;
- f) supporting the development and implementation of international and regional standards; and
- g) instructing, educating and training necessary human resources.]

**[Article 15. Consultations and Dispute Settlement]**

[15.1. In the event of a dispute between Parties regarding the provisions of this Chapter, the Party affected may have recourse to either the Committee on Technical Barriers to Trade, or the dispute settlement mechanism under this Agreement. Parties may not seek remedies through both channels simultaneously.]

[15.1. In the event of a disagreement between Parties regarding the provisions of this Chapter, the Parties may hold consultations. If no solution is found, the affected Party may have recourse to the Committee on Technical Barriers to Trade.]

[15.2. In the event that the technical recommendation issued by the Committee fails to settle the dispute between the Parties, the Parties may invoke the dispute settlement mechanism established in the Agreement. The technical information produced by the Committee shall be considered if consultations are convened under the dispute settlement mechanism.]

[15.2. In the event that the technical recommendation issued by the Committee fails to settle the disagreement between the Parties, the Parties may invoke the dispute settlement mechanism established in the Agreement.]

**[Article 16. Committee on Technical Barriers to Trade]**

[16.1. The Parties hereby establish a Committee on Technical Barriers to Trade, made up of representatives of the Parties, to review the implementation of this Chapter, including matters relating to technical cooperation and assistance to the countries in the region. The Committee on Technical Barriers to Trade shall meet as necessary, at least once each year, to give the Parties an opportunity to consult with one another on any question relating to the operation of this Chapter. In order to complete these tasks, the Committee may establish technical committees or *ad hoc* groups.]

[16.2. The committee on Technical Barriers to Trade would have under its authority the task of interpreting any eventual differences in definitions, with a view to promoting trade in the region.]]

**[TECHNICAL BARRIERS TO TRADE**

**Section A General Aspects**

**Article 1. Relation to the WTO Agreement on Technical Barriers to Trade (WTO TBT Agreement)**

1.1. The WTO TBT Agreement continues to govern the rights and obligations of the Parties in respect of matters covered by that Agreement.

**Section B Substantive Provisions**

**Article 2. Technical Cooperation and Assistance**

2.1. In order to assist the less developed Parties to this Agreement better fulfill their commitments the more developed Parties shall provide technical assistance on mutually agreed terms and conditions.

**Section C Procedures and Institutions**

**Article 3. Committee on Technical Barriers to Trade**

3.1. The Parties hereby establish a Committee on Technical Barriers to Trade which shall meet [whenever required, normally each year] [every two (2) years] to review matters related to this Chapter, including any matter falling under the scope of the subject matter of the TBT noted in Paragraph 1.1 above that has a particular interest to Parties to the Agreement, as well as issues related to the technical assistance as provided in paragraph 2.1 above.]