

**Chapter [ ]**

**Technical Barriers to Trade**

**November 30, 2015**

# RESTREINT EU/EU RESTRICTED

[EU: Article 1

## Objective and Scope

1. The objective of this Chapter is to promote convergence in regulatory approaches by reducing or eliminating conflicting technical requirements as well as redundant and burdensome conformity assessment requirements.
2. This Chapter applies to the preparation, adoption and application of technical regulations, standards and conformity assessment procedures that may affect trade in goods between the Parties.
3. This chapter does not apply to:
  - (a) purchasing specifications prepared by a governmental body for production or consumption requirements of governmental bodies; or
  - (b) sanitary and phytosanitary measures as defined in Annex A of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures.
4. All references in this Chapter to technical regulations, standards and conformity assessment procedures shall be construed to include any amendments thereto and any additions to the rules or the product coverage thereof.]

## [US: Article 1: Scope and Coverage

1. This Chapter applies to the preparation, adoption, and application of standards, technical regulations, and conformity assessment procedures of covered bodies that may, directly or indirectly, affect trade in goods between the Parties, including any amendments thereto and any additions to their rules or product coverage, except amendments and additions of an insignificant nature.
2. Notwithstanding paragraph 1, this chapter does 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 Agreement on the Application of Sanitary and Phytosanitary Measures.]

[EU: Article

## Definitions

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## [US: Article 2: Definitions

For purposes of this Chapter:

**central government body<sup>1</sup>, local government body, conformity assessment procedures, standard, and technical regulation** have the meanings assigned to those terms in Annex 1 of the TBT Agreement; and

<sup>1</sup> [US: A non-governmental entity that a Party has requested or directed to prepare, adopt, or apply standards, technical regulations, or conformity assessment procedures on its behalf or for use in connection with compliance with the Party's domestic requirements, shall be considered a body subject to the control of a covered body for purposes of this Chapter in respect of such activity.]

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**covered body** means a central government body of a Party or a body of the EU, its ministries, and departments or any body subject to its control.

**proposed technical regulation or conformity assessment procedure** means a proposal for a technical regulation or conformity assessment procedure that provides sufficient detail about the likely content of the measure so as to adequately inform persons about whether and how the measure might affect them and, in normal circumstances, includes a draft legal text.]

[EU: Article 2

### **Incorporation of the WTO Agreement on Technical Barriers to Trade**

1. The WTO Agreement on Technical Barriers to Trade (hereinafter referred to as “the TBT Agreement”) is hereby incorporated into and made part of this Agreement.
2. References to “this Agreement” in the TBT Agreement, as incorporated into this Agreement are to be read, as appropriate, as references to this Agreement (the TTIP).
3. The term “Members” in the TBT Agreement, as incorporated into this Agreement, shall have the same meaning in this Agreement as it has in the TBT Agreement.
4. Terms referred to in this Agreement, shall have the same meaning in this Agreement as they have in the TBT Agreement.]

### **[US: Article 3: Affirmation of the WTO TBT Agreement**

1. The Parties affirm their rights and obligations with respect to each other under the *TBT Agreement*.]

[EU: Article 4

1. The Parties undertake to co-operate as far as possible to ensure that their technical regulations are compatible with one another.
2. If a Party expresses an interest in developing a technical regulation of equivalent scope to one existing in or being prepared by the other Party, that other Party shall on request provide to the interested Party, to the extent practicable, relevant data upon which it has relied in the preparation of the technical regulation, and on request discuss the possibility of developing harmonized or compatible technical regulations. The Parties recognize that it may be necessary to clarify and agree on the scope of a specific request, and that confidential information may be withheld. A Party planning to introduce a technical regulation shall, on request of the other Party, discuss the possibility of the elaboration of compatible technical regulations, or the enhancement of the compatibility of existing technical regulations by the Parties.
3. The Parties undertake to co-operate towards global harmonization of technical requirements in the framework of existing or planned international agreements or organizations in which the US and the EU or its Member States participate.
4. Each Party shall endeavor to ensure that products originating in the other Party that are subject to technical regulation can be marketed or used across all the territory of each Party on the basis of a single authorization, approval or certificate of conformity ]

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[EU: Article 5

## Transparency

1. In line with Articles 2.9.2, 5.6.2 and 3.2 of the TBT Agreement, the Parties agree: (I) to notify all relevant draft technical regulations and conformity assessment procedures to the WTO, regardless of the kind or form of the legal act, the level of government (central or local), or the authority adopting them, (ii) to make the draft text publicly available; (iii) in principle, to allow a period of no less than 60 calendar days following notification for the other Party to provide comments in writing to the proposal.

2.

(a) Each Party shall, upon request of the other Party, provide information regarding the objectives of, legal basis and rationale for, a technical regulation or conformity assessment procedure, that the Party has adopted or is proposing to adopt.

(b) Where a Party has received comments on proposed technical regulations or conformity assessment procedures from the other Party, it shall (i) upon request of the other Party, discuss written comments made by the other Party on such proposed technical regulations or conformity assessment procedures, with the participation of its competent regulatory authority, at a time when they can be taken into account; and (ii) provide written replies to such comments to the other Party no later than the date of publication of the final technical regulation or conformity assessment procedure.

3.

(a) From the date of entry into force of this Agreement, each Party shall make publicly available all new technical regulations, adopted either at central level or by entities at a lower level than Federal (US) or Union (EU).

(b) Within [...] years of the date of entry into force of this Agreement, each Party shall make publicly available a complete registry of all its applicable technical regulations, new or existing, adopted either at a central level or by entities at a lower level than Federal (US) or Union (EU).

(c) Within [...] years of the date of entry into force of this Agreement, each Party shall make publicly available a complete registry of the titles and references of standards that have been selected for reference in, or use in connection with, technical regulations.

(d) The Parties agree to make the information referred to in (a), (b) and (c) of this paragraph accessible to the public through a single information point and to keep it up to date.

4. Where a Party detains at a port of entry a good imported from the territory of the other Party on the grounds that the good has failed to comply with a technical regulation, it shall without undue delay notify the importer of the reasons for the detention of the good, and provide an opportunity for the importer to appeal against the decision to detain the good.]

## [US: Article 4: Transparency

1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures.<sup>2</sup> Each Party shall permit persons of the other Party to

2 [US: <sup>2</sup> A Party shall comply with this obligation with respect to technical regulations and conformity assessment procedures by complying with the obligations contained in paragraph 6 of this Article. A Party may satisfy this obligation with respect to standards, by, for example, providing persons of the other Party with an opportunity to submit comments on the standard to the body preparing the standard at a point when that body may still revise the

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participate in the development of these measures on terms no less favorable than those it accords to its own persons.

2. Each Party shall encourage non-governmental bodies in its territory to observe paragraph 1 in developing standards and voluntary conformity assessment procedures.

3. Each Party shall observe the obligations set out in Articles 2.9.1 through 2.9.4 and 5.6.1 through 5.6.4 of the TBT Agreement with respect to proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards, guides, or recommendations.

4. For purposes of implementing Articles 2.9 and 5.6 of the TBT Agreement and Article 4.3 of this Chapter, each Party shall:

(a) comply with the obligation in Article 2.9.2 and 5.6.2 to notify proposed technical regulations and conformity assessment procedures at an early appropriate stage, when amendments can still be introduced and comments taken into account, by ensuring that it notifies the measure when the body responsible for proposing the measure has sufficient time to review any comments received and is able to revise the measure to take into account such comments;

(b) include with its notifications an explanation of the objectives of the proposed technical regulation or conformity assessment procedure and how the measure would address those objectives; and

(c) include with its notifications a copy of the proposed technical regulation or conformity assessment procedure or an Internet address where the proposed measure may be viewed.

5. For purposes of implementing Articles 2.10 and 5.7 of the TBT Agreement and Article 5.3 of this Chapter, each Party shall include with its notifications a copy of the technical regulation or conformity assessment procedure or an Internet address where the measure may be viewed.

6. Where a Party prepares or proposes to adopt a technical regulation or conformity assessment procedure, it shall:

(a) publish, in print or electronically, the proposed technical regulation or conformity assessment procedure;

(b) allow any person to comment in writing on the proposed technical regulation or conformity assessment procedure;

(c) publish and allow for comment on the proposed technical regulation or conformity assessment procedure in accordance with subparagraphs (a) and (b) when the body proposing the measure has had sufficient time to review any comments received from another Party or any person of a Party and is able to revise the measure to take into account such comments;

(d) review and consider comments it receives on the proposed technical regulation or conformity assessment procedure and do so on no less favorable terms with respect to persons of the other Party than it accords its own persons; and

*[Note: We intend to include a general exception that ensures that nothing in the Agreement requires a Party to disclose confidential business information]*

(e) publish, in print or electronically, any written comments it receives on the proposed technical

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measure, and by ensuring that the body takes those comments into account in revising the measure or deciding not to revise the measure.]

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regulation or conformity assessment procedure.

7. Each Party shall publish, in print or electronically, all proposed and final technical regulations and conformity assessment procedures in a single official journal or website.

8. No later than the date of publication of a final technical regulation or conformity assessment procedures, each Party shall make publicly available, preferably by electronic means:

(a) an explanation of the objectives and how the final technical regulation or conformity assessment procedure achieves them;

(b) a description of alternative approaches that the Party considered in developing the final technical regulation or conformity assessment procedure, if any, and the merits of the approach that the Party selected;

(c) the Party's evaluation of significant issues raised in comments it received from persons of the other Party, or evaluation of the substantive issues presented in those comments; and

(d) an explanation of any significant revisions that the Party made to the proposal for a technical regulation or conformity assessment procedure, including those made in response to comments.

9. Paragraphs 6, 7 and 8 and the footnote to paragraph 1 do not apply, for the United States, to any measure of the US Congress or, for the EU, any measure initiated within the European Parliament or a parliament of a Member State.]

[EU: Article 7

### Conformity Assessment Procedures

1. The Parties undertake to co-operate with a view to reducing unnecessary burdens arising from differences in their respective conformity assessment requirements.

2. To that end, the Parties undertake to review within [*timeline to be discussed*] their conformity assessment procedures in order to move progressively towards the least burdensome possible procedures, commensurate with the risk that the underlying technical regulations are intended to address. Priority areas for consideration shall include electrical safety, electro-magnetic compatibility, machinery and telecommunications.

3. [*Placeholder for referencing specific outcomes on conformity assessment resulting from the negotiations in individual sectors*]

4. Where Parties require third party conformity assessment of products as a condition of compliance with technical regulations applicable on their respective territories, the Parties undertake to give consideration to mechanisms to facilitate the mutual acceptance of the results of conformity assessment conducted by conformity assessment bodies (CABs) located on the territory of the exporting Party.

5.

(a) The Parties shall take measures sufficient to avoid actual or potential conflicts of interest between conformity assessment bodies and standardization bodies, notably by establishing a clear separation of functions between them in cases where a standard referenced in technical regulations or otherwise allowed to be used to achieve compliance with technical regulations is set by an entity that also operates in the conformity assessment market.

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(b) The Parties shall ensure that standards referenced in technical regulations do not contain technical requirements that limit the choice of CABs or that refer to specific CABs.

6. The Parties agree that, where a class of products is subject to conformity assessment procedures, and where components or parts of such products are also subject to conformity assessment procedures (and thus constitute products in their own right), CABs approved by the regulator to assess products that include such components or parts shall be obliged by the regulator not to require as a condition of assessing the product as a whole, that such components or parts be re-assessed by the CABs themselves, independently of the final product.

7. The Parties shall take appropriate steps to prevent the establishment or abuse of dominant positions by any CAB in the market of its territory for the assessment of a specific product or class of risks.

8. In those areas where registration or authorization procedures or similar requirements apply in both Parties, the Parties undertake to co-operate with a view to making such procedures and related requirements as compatible as possible and to identify opportunities for administrative simplification that would alleviate burdens for economic operators and facilitate bilateral trade in the products concerned.]

### **[US: Article 5: Conformity Assessment Procedures**

1. Each Party shall accredit, approve, license, or otherwise recognize conformity assessment bodies in the territory of the other Party on terms no less favorable than those it accords to conformity assessment bodies in its territory.

2. In order to ensure that it accords no less favorable treatment pursuant to paragraph 1, each Party shall treat conformity assessment bodies located in the territory of the other Party as follows:

(a) No Party shall require a conformity assessment body to be located within its territory as a condition to accredit, approve, license or otherwise recognize the conformity assessment body or impose requirements on the conformity assessment body that would effectively require it to operate an office in the Party's territory.

(b) Each Party shall apply no less favorable procedures, criteria or other conditions to accredit, approve, license or otherwise recognize conformity assessment bodies located in the other Party's territory as it applies to accredit, approve, license or otherwise recognize conformity assessment bodies located in its territory, including by permitting conformity assessment bodies located in the other Party's territory to apply to be accredited, approved, licensed or otherwise recognized by a body located in the Party's territory.

(c) Each Party shall permit any conformity assessment body located in the territory of the other Party to apply to the Party, or any body that it has recognized or approved for this purpose, to be accredited, approved, licensed or otherwise recognized under any procedures, criteria and other conditions the Party applies to accredit, approve, license or otherwise recognize conformity assessment bodies.

3. For greater certainty, paragraphs 1 and 2 shall not preclude a Party from limiting recognition of conformity assessment bodies in relation to specific products to specified government bodies of the Party located within the Party's territory or the territory of the other Party.

4. Where a Party does not accept the results of a conformity assessment procedure conducted by a conformity assessment body located in the territory of the other Party, it shall provide the person that submitted the results, and upon request of the other Party, with an explanation of the reasons for not

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accepting the results.

5. Where a Party refuses to accredit, approve, license, or otherwise recognize a conformity assessment body located in the territory of the other Party, it shall inform the other Party. In addition, the Party shall provide the conformity assessment body, and upon request, the other Party, with an explanation of the reasons for its refusal. Furthermore, the Party shall ensure a procedure exists to review complaints regarding the refusal and to take corrective action when a complaint regarding the refusal is justified.

6. In relation to any technical regulation or standard for which a Party requires third-party conformity assessment, each Party shall make publicly available a list of the bodies that it has accredited, approved, licensed or otherwise recognized to perform such conformity assessment and relevant information on the scope of each such body's accreditation, approval, license or recognition.

7. Where a Party undertakes conformity assessment in relation to specific products within specified government bodies located in its own territory or the other Party's territory, the Party shall, upon the request of the other Party or the applicant, explain:

- (a) the order in which conformity assessment procedures are undertaken and completed;
- (b) how fees for its conformity assessment procedures are calculated;
- (c) how the information it requires is necessary to assess conformity and determine fees;
- (d) how the Party ensures that the confidentiality of the information is respected in a manner that ensures the protection of legitimate commercial interests; and
- (e) the procedure to review complaints concerning the operation of the conformity assessment procedure and to take corrective action when a complaint is justified.

8. Where a Party requires conformity assessment as a positive assurance that a product conforms with a technical regulation or standard, it shall not prohibit a conformity assessment body from using subcontractors, or refuse to accept the results of conformity assessment on account of the conformity assessment body using subcontractors, to perform testing or inspections in relation to the conformity assessment, including subcontractors located in the territory of the other Party. For greater certainty, nothing in this paragraph shall be construed to prohibit a Party from requiring subcontractors to meet the same requirements that the conformity assessment body to which it is contracted would be required to meet in order to perform the contracted tests or inspection itself.

9. With respect to an accreditation body located in the territory of the other Party, no Party shall refuse to accept, or take actions which have the effect of, directly or indirectly, requiring or encouraging the refusal of acceptance of conformity assessment results performed by a conformity assessment body in the other Party's territory because the accreditation body that accredited the conformity assessment body:

- (a) operates in the territory of a Party where there is more than one accreditation body;
- (b) is a non-governmental body;
- (c) is domiciled in the territory of a Party that does not maintain a procedure for recognizing accreditation bodies;
- (d) does not operate an office in the Party's territory; or

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(e) is a for-profit entity.

10. Each Party shall ensure that its authorities may adopt, or have the discretion to adopt, procedures to accredit, approve, license or otherwise recognize conformity assessment bodies through international accreditation agreements or arrangements.

11. Each Party shall issue guidance to encourage its authorities to rely on international accreditation agreements or arrangements to accredit, approve, license or otherwise recognize conformity assessment bodies where effective and appropriate to fulfill the Party's legitimate objectives.

12. Each Party shall ensure where it accredits, or entrusts, or directs a non-governmental body to accredit a conformity assessment body located in its territory to conduct conformity assessment procedures in its territory, it recognizes that accreditation throughout the Party's territory.

13. The Parties recognize that the choice of conformity assessment procedures in relation to a specific product covered by a technical regulation or standard should include an evaluation of the risks involved, the need to adopt procedures to address those risks, relevant scientific and technical information, incidence of non-compliant products and possible alternative approaches.

14. Any conformity assessment fees imposed by a Party shall be limited in amount to the approximate cost of services rendered.

15. Upon the request of an applicant for conformity assessment, each Party shall explain how any fee it imposes for such conformity assessment are limited in amount to the approximate cost of services rendered.

16. No Party shall apply a new or modified conformity assessment fee until the fee and the method for assessing the fee is published. Each Party shall provide an opportunity for interested persons to comment on its proposed introduction or modification of a conformity assessment fee.

17. No Party shall require consular transactions, including related fees and charges, as a condition of marketing, distribution, or sale of the product in the Party's territory.

18. No Party shall require that a product be accompanied by a certificate of free sale as a condition of marketing, distribution, or sale of the product in the Party's territory.]

### **[EU: Article 6 Standardization**

1. The Parties shall promote closer cooperation between the standardization bodies located within their respective territories with a view to facilitating, *inter alia*:

(a) the exchange of information about their respective *activities*,

(b) the harmonization of standards based on mutual interest and reciprocity, according to modalities to be agreed directly by the standardization bodies concerned,

(c) the development of common standards, and

(d) the identification of suitable areas for such co-operation, in particular in new technologies.]

2. The Parties shall use their best endeavors to ensure that standardization bodies located within their

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respective territories (i) provide information in advance on their planned standardization activities that concern the development of new, or the review of existing, standards intended to support public policies, including the scope and purpose of the planned standards, and the prospective timetable procedures for their adoption, and (ii) publish drafts for public comment before finalizing or adopting such standards.

3. If a Party intends to select an existing or planned voluntary standard for reference in technical regulations, such selection shall be subject to objective, clear and transparent criteria, which shall be published before the selection is made. Standards for reference in technical regulations applicable on all or part of the territory of the Parties shall be selected following consideration of relevant international standards and other standards developed through an open and transparent process, including standards developed by standardization bodies located within the territory of the other Party.

4. The Parties undertake to keep references to standards in support of technical regulations up to date with the latest version of the standard and the latest review of the technical regulation.

5. The Parties shall endeavor to ensure that, in using standards to achieve compliance with the requirements of technical regulations or parts thereof, suppliers are free to use standards other than those chosen by domestic regulators for reference in such technical regulations, without prior authorization from the regulator, provided that such suppliers can demonstrate (e.g., through adequate technical documentation) that the applied alternative solution complies with the requirements of the technical regulation, or parts thereof.]

### [US: Article 6: Standards

1. Each Party shall apply the Decision of the TBT Committee on Principles for the Development of the International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the TBT Agreement (the „Committee Decision“), issued by the WTO Committee on Technical Barriers to Trade (G/TBT/1Rev.10) in determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement or Article 4 of this Chapter exists.

2. Each Party shall treat any standard, guide or recommendation that is developed in accordance with the principles set forth in the Committee Decision as an international standard, guide, or recommendation for purposes of Articles 2, 5 and Annex 3 of the TBT Agreement. Accordingly, no Party shall refuse to treat a standard as an international standard based on:

(a) the domicile of the body that developed the standard;

(b) whether the body that developed the standard is an intergovernmental body; or

(c) whether the body that developed the standard provides for participation in its standards activities through national delegations or limits participation in its standards activities to persons affiliated with a government.

3. Where a Party requests or directs a body or bodies to prepare a standard with a view to mandating that a product comply with that standard, establishing a generally applicable presumption that a product complies with a technical regulation or conformity assessment procedure if it conforms to that standard, or otherwise allowing the standard to be used as a basis for or in support of compliance with technical regulation or conformity assessment procedure it shall observe, *mutatis mutandis*, the obligations set out in Articles 2.9.1 through 2.9.4 and 5.6.1 through 5.6.4 of the TBT Agreement and Article 4 of this Chapter.

4. For purposes of implementing paragraph 3, a Party shall carry out the steps set out in Articles 2.9.1 through 2.9.4 and 5.6.1 through 5.6.4 of the TBT Agreement and Article 4 of this Chapter with respect to any document in which the Party requests or directs a body or bodies to develop the standard and any related

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documents describing the standard to be developed. For greater certainty, the Party shall ensure that it allows any request or direction to develop a standard to be amended to take into account any discussions or comments received.

5. Where a Party requests a body to develop a standard that may be used for purposes of complying in whole or part with technical regulation or conformity assessment procedure, the Party shall specify in the request that the body shall:

(a) allow persons of the other Party with relevant technical expertise to participate in any of its technical bodies, including by accessing working documents, attending meetings, submitting technical proposals and advice concerning development of the standard, and ensuring prompt consideration of any such proposals and advice;

(b) not impose conditions on such participation that impede persons of the other Party with relevant technical expertise from participating, such as obligations to adopt or implement the standard, to withdraw an existing standard, to be affiliated with a national standards body or other entity that includes persons of the Party, or represent a national position or view;

(c) make publicly available, at least upon request, a list of persons and their affiliations that are participating or have participated in the development of the standard; and

(d) consider any relevant standard developed in accordance with the Committee Decision, as the basis for the standard it is requested to develop.

6. Prior to adopting any standard developed by a body in response to a request subject to paragraph 5, the Party shall verify that the body complied with the requirements of the request as specified in subparagraphs (a)-(d) when it developed the standard.

7. If a Party systematically gives preference, for purposes of complying with technical regulations and conformity assessment procedures, to standards that are developed through processes that do not allow persons of the other Party to participate on terms no less favorable than persons of the Party or that do not consider using as a basis for the standard any relevant standard developed in accordance with the Committee, the Party shall:

(a) maintain a process for persons of the other Party to submit an assessment to the Party that a standard other than the standard given preference for purposes of complying with the technical regulation or conformity assessment procedure fulfills the relevant requirements of that technical regulation or conformity assessment procedure; and

(b) no later than {30} days from the date it receives an assessment under subparagraph (a):

(i) decide whether to accept the assessment based on whether the standard fulfills the relevant requirements of the technical regulation or conformity assessment procedure and notify the person of its decision and the reasons therefor; and

(ii) publish its decision, including its reasons therefor, and transmit instructions to its customs and market surveillance authorities that any product from any supplier that conforms to the standard, or for which a conformity assessment procedure was performed in accordance with the standard, shall be presumed to be in conformity with the relevant requirements of the technical regulation or conformity assessment procedure.

8. For purposes of paragraph {7}, a Party:

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(a) may require that an assessment contain supporting documentation adequate to make the decision provided for in subparagraph 7(b)(i);

(b) shall permit an assessment to be conducted by any of the following: a producer, independent expert, or body that developed the standard.

9. Where an administrative authority of a Party incorporates by direct reference a standard in a technical regulation or conformity assessment procedure, it shall:

(a) prior to incorporating the standard into the technical regulation or conformity assessment procedure, consider whether additional standards raised in comments on the proposed technical regulation or conformity assessment procedure could fulfill relevant requirements and therefore also be incorporated or otherwise allowed for purposes of complying with the technical regulation or conformity assessment procedure; and

(b) after adopting the technical regulation or conformity assessment procedure, provide for the consideration of petitions for a rulemaking or a retrospective review to amend the technical regulation or conformity assessment procedure to allow the use of a standard other than the one referenced in the original regulation for purposes of compliance with the regulation.]

[EU: Article 3

### Cooperation

The Parties shall strengthen their co-operation in the areas of technical regulations, standards, metrology, conformity assessment procedures, accreditation, market surveillance and monitoring and enforcement activities in order to facilitate the conduct of trade between the Parties, as laid down in Chapter [...] (*Regulatory Cooperation*). This may include promoting and encouraging cooperation between their respective public or private organizations responsible for standardization, metrology, conformity assessment, accreditation, market surveillance and conformity assessment bodies to participate in cooperation arrangements that promote the acceptance of conformity assessment results.]

### [US: Article 7: Cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures to reduce and eliminate unnecessary technical barriers to trade, including costs associated with unnecessary regulatory differences, while achieving the levels of health, safety and environmental protection that each side deems appropriate and otherwise meeting legitimate regulatory objectives. To this end, the Parties shall seek to identify, develop, and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that address particular cross-cutting or sector-specific issues. These initiatives may include cooperation on regulatory issues, such as promoting the adoption of good regulatory practices, establishing procedures to recognize as equivalent standards used as a basis for or in support of compliance with regulations, and instituting mechanisms to facilitate the acceptance of conformity assessment results.

2. The Parties shall encourage cooperation between their respective organizations responsible for standardization, conformity assessment, accreditation and metrology, whether they be public or private, to address matters arising under this Chapter.

3. The Parties shall strengthen opportunities for public input into their cooperation activities, including by making information regarding cooperation activities publicly available and by soliciting public comments

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and taking such comments into account with respect to cooperation activities.]

### **[US: Article X: Agreements with Third Countries**

1. Recognizing that the purpose of an agreement or understanding establishing a customs union or free trade area or providing trade-related technical assistance should be to facilitate trade between the parties' territories and not raise barriers to the trade of non-parties with such territories; and that in their formation or enlargement the parties to such agreements or understandings should to the greatest possible extent avoid creating adverse effects on the trade of other WTO Members:

(a) Each Party shall promote through such agreements and understandings the adoption and use, as the basis for standards, technical regulations and conformity assessment procedures, of any relevant standards, guides or recommendations developed in accordance with the Committee Decision; and

(b) no Party shall include provisions in such agreements and understandings that require a party to the agreement or understanding (“third party”) to: (i) withdraw, or otherwise not use<sup>3</sup> any relevant standard, guide or recommendation developed in accordance with the Committee Decision that the third party had used prior to conclusion or entry into force of the agreement or understanding; or (ii) otherwise take action that results in the third party not accepting for import or sale in its market products that conform to any such standard, guide or recommendation.<sup>4</sup>]

### **[EU: Article 8**

#### **Marking and Labeling**

1. In accordance with Article 2.2 of the *TBT Agreement*, with respect to technical regulations relating to labeling or marking requirements, the Parties shall ensure they are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. For this purpose, such labeling or marking requirements shall not be more trade restrictive than necessary to fulfill a legitimate objective, taking account of the risks that non-fulfillment would create. Compulsory marking requirements, while continuing to provide the necessary information to the user or consumer as well as to public authorities regarding compliance or products with specific requirements, should be limited as far as possible to what is essential and to what is the least trade restrictive to achieve the legitimate objective pursued.

2. The Parties undertake to engage in a review of their marking and labeling requirements with a view to identifying sectors and areas where divergences could be reduced.

3. The Parties undertake to take administrative measures against misleading marking applied by suppliers on their territory. In particular, they undertake to apply measures against products on the market of their territory that bear marking that falsely purports to indicate origin in the territory of the other Party.

4. If a Party applies obligatory country of origin marking or labeling requirements, a marking designating the whole territory of a Party shall be accepted by the other Party as compliant with such requirements.]

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3 [US: <sup>3</sup> For purposes of this paragraph, “use” refers to the use of a standard, guide or recommendation for purposes of complying with a technical regulation or conformity assessment procedure, for example, through indirect reference in a technical regulation or otherwise allowing persons to use the standard as a means of complying with a technical regulation.]

4 [US: <sup>4</sup> This paragraph shall not apply with respect to agreements for the accession of a country to the European Union.]

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### **[US: Article 8: Technical Discussions and Resolution of Trade Concerns**

1. Each Party may request technical discussions to discuss any standard, technical regulation or conformity assessment procedure of the other Party that it considers might adversely affect trade. The request shall be made in writing and identify:

(a) the measure at issue;

(b) the provisions of the Chapter or the WTO TBT Agreement to which the concerns relate; and

(c) the reasons for the request, including a description of the requesting Party's concerns regarding the measure.

2. A Party shall deliver its request to the Chapter Coordinator of the other Party designated pursuant to paragraph 5 of Article 10.

3. The Party to which the request is made shall promptly reply to the request in writing. The Parties shall meet to discuss the concerns raised in the request, in person or via video or teleconference, within {60} days of the date of the request and shall endeavor to resolve the matter as expeditiously as possible. The Parties may convene the Committee as appropriate for this purpose. If a requesting Party believes that the matter is urgent, it may request that a meeting take place within a shorter time frame. In such cases, the responding Party shall give positive consideration to such a request.

4. Unless the Parties otherwise agree, the discussions and any non-publicly available information exchanged in the course of the discussions, shall be confidential and, for greater certainty, without prejudice to a Party's rights and obligations under Chapter XX (Dispute Settlement).]

*[EU: Article 9*

### **Management of the Technical Barriers to Trade Chapter**

P.M.]

### **[US: Article 9: Consultations**

1. A Party may request consultations with the other Party regarding any matter arising under this Chapter by delivering a written request to the Chapter Coordinator of the other Party. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter and may convene the Committee as appropriate for this purpose.

2. For greater certainty, this Article is without prejudice to a Party's rights and obligations under Chapter XX (Dispute Settlement).]

### **[US: Article 10: Committee on Technical Barriers to Trade**

1. The Parties hereby establish a Committee on Technical Barriers to Trade, comprising representatives of each Party.

2. The Committee's functions shall include:

(a) seeking to resolve concerns regarding any matter arising under this Chapter;

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- (b) monitoring and identifying ways to strengthen implementation of this Chapter;
- (c) identifying any potential amendments to, or issues of interpretation regarding, the Chapter for referral to the {Joint Committee/FTA institutional body};
- (d) monitoring any technical discussions on matters arising under the Chapter requested pursuant to Article XX.8 (Technical Exchange and Resolution of Trade Concerns);
- (e) providing a regular forum for exchanging information relating to each Party's standards, technical regulations and conformity assessment procedures and related policies;
- (f) enhancing cooperation between the Parties regarding standards, technical regulations, and conformity assessment procedures, including by:
  - (i) facilitating improved understanding between the Parties related to the implementation of the WTO TBT Agreement and promoting cooperation between the Parties on TBT issues under discussion in multilateral fora, including the WTO TBT Committee and bodies that develop standards in accordance with the WTO TBT Committee Decision principles for the development of international standards, as appropriate;
  - (ii) identifying, developing, and promoting trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures addressing particular cross-cutting or sector-specific issues such as those specified in Article 7 as well as identifying opportunities for greater bilateral engagement which may include technical exchanges;
- (g) discussing at an early stage changes to, or proposed changes to, standards, technical regulations or conformity assessment procedures of either Party;
- (h) encouraging cooperation between non-governmental bodies in the Parties' territories, as well as cooperation between governmental and non-governmental bodies in the Parties' territories in matters pertaining to this Chapter;
- (i) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
- (j) exchanging information, at a Party's request, on the Parties' respective views regarding third country issues concerning standards, technical regulations, and conformity assessment procedures so as to foster a common approach to their resolution;
- (k) providing opportunities for the public to participate in the work of the Committee, such as soliciting and taking into account comments on matters related to the implementation of this Chapter;
- (l) reporting to the Joint Committee on the implementation of this Chapter as appropriate; and
- (m) taking any other steps that the Parties consider will assist them in implementing this Chapter.

3. The Committee shall meet at least once a year unless the Parties otherwise decide.

4. The Committee may, as it considers appropriate, establish and determine the scope and mandate of working groups, including *ad hoc* working groups, comprising representatives of each Party. Subject to

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decision of the Committee and as the Parties may decide, each working group, including an *ad hoc* working group, may:

(a) as it considers necessary and appropriate, include or consult with non-governmental experts and stakeholders; and

(b) determine its work program, taking into account relevant international activities.

5. Each Party shall designate a Chapter Coordinator, and shall provide the other Party with the name of its designated Chapter Coordinator, along with the contact details of the relevant officials in that organization, including telephone, email, and other relevant details.

6. A Party shall notify the other Party promptly of any change of its Chapter Coordinator or any amendments to the details of the relevant officials.

7. The responsibilities of each Chapter Coordinator shall include:

(a) communicating with the other Party's Chapter Coordinator including facilitating discussions, requests and the timely exchange of information on matters arising under this Chapter;

(b) communicating with and coordinating the involvement of relevant government agencies, including regulatory authorities, in its territory on relevant matters pertaining to this Chapter;

(c) consulting and, where appropriate, coordinating with interested persons in its territory on relevant matters pertaining to this Chapter; and

(d) additional responsibilities as the Committee may specify.]