

CHAPTER SIX

TECHNICAL BARRIERS TO TRADE

Article 6.1: Objectives

The objectives of this Chapter are to:

- (a) increase and facilitate trade between the Parties, through the improvement of the implementation of the TBT Agreement;
- (b) avoid the creation of unnecessary technical barriers to trade;
and
- (c) enhance joint cooperation between the Parties.

Article 6.2: Affirmation of the TBT Agreement

The Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement, and to this end the TBT Agreement is incorporated into and made part of this Agreement, *mutatis mutandis*.

Article 6.3: Scope and Definitions

1. This Chapter shall apply to all standards, technical regulations, and conformity assessment procedures of central and local government bodies that may affect the trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter shall not apply to sanitary and phytosanitary measures as defined in Annex A to the SPS Agreement or to technical specifications prepared by governmental bodies for production or consumption requirements of such bodies.
3. The definitions of Annex 1 to the TBT Agreement shall apply.

Article 6.4: International Standards

1. As a basis for its technical regulations and conformity assessment procedures, each Party shall use relevant international standards, guides, and recommendations to the extent provided in Articles 2.4 and 5.4 of the TBT Agreement.

2. In determining whether an international standard, guide, or recommendation within the meaning of Articles 2.4, 5.4 and Annex 3 of the TBT Agreement exists, each Party shall apply the *Decision of the Committee on Principles for the Development of International Standards, Guides and Recommendations with relation to Articles 2, 5 and Annex 3 of the Agreement* adopted on 13 November 2000 by the *WTO Committee on Technical Barriers to Trade* (Annex 2 to PART 1 of G/TBT/1/Rev. 14), and any subsequent development thereof.

Article 6.5: Technical Regulations

1. Each Party shall, upon written request of the other Party, give favorable consideration to accepting as equivalent technical regulations of the other Party, even if these regulations differ from its own, provided that it is satisfied that these regulations adequately fulfill the objectives of its own regulations.

2. Where a Party does not accept a technical regulation of the other Party as equivalent to its own, it shall endeavor to, upon request of the other Party, explain the reasons for its decision.

Article 6.6: Conformity Assessment Procedures

1. The Parties shall accept, whenever possible, the results of conformity assessment procedures conducted in the territory of the other Party, even where those procedures differ from its own, provided that those procedures offer a satisfactory assurance of applicable technical regulations or standards equivalent to its own procedures.

2. The Parties recognize that a broad range of mechanisms exist to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party's territory.

For example:

- (a) a Party may agree with the other Party to accept the results of conformity assessment procedures of the bodies located in the other Party's territory;
- (b) a Party may adopt accreditation procedures to qualify conformity assessment bodies located in the other Party's territory;
- (c) a Party may designate conformity assessment bodies located

in the other Party's territory;

- (d) a Party may recognize the results of conformity assessment procedures conducted in the other Party's territory;
- (e) conformity assessment bodies located in each of the Parties' territories may enter into voluntary arrangements to accept the results of each other's assessment procedures; and
- (f) the importing Party may rely on a supplier's declaration of conformity.

3. The Parties shall exchange information on the range of the mechanisms used in their territories with a view to facilitating the acceptance of the results of conformity assessment procedures.

4. A Party shall, whenever possible, upon request of the other Party, explain its reasons for not accepting the results of any conformity assessment procedure performed in the territory of that other Party.

5. Each Party shall give positive consideration to the request of the other Party to enter into negotiations for possible mutual recognition agreement to accept the results of the conformity assessment procedures, as referred to in paragraph 1.

Article 6.7: Transparency

1. Upon request of the other Party, each Party shall provide, whenever possible, to the other Party with an on-line link to, or a copy of, the complete text or summary of the technical regulations and conformity assessment procedures which are notified according to Articles 2.9.3 and 5.6.3 of the TBT Agreement.

2. Each Party shall allow, whenever possible, a period of at least 60 days following the notification of its proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments, except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise.

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

4. A Party shall endeavor to give positive consideration to a reasonable request of the other Party, received prior to the end of the comment period

following the notification of a proposed technical regulation, for extending the period of time between the publication of the technical regulation and its entry into force, except where this would be ineffective in fulfilling the legitimate objectives pursued.

5. The Parties shall ensure, whenever possible, that all adopted technical regulations and conformity assessment procedures are available on official websites.

6. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested parties to participate, when amendments can still be introduced and comments taken into account, except if urgent problems of safety, health, environmental protection, or national security arise or threaten to arise. If consultations respecting the development of technical regulations and conformity assessment procedures are open to the public, each Party shall permit persons of the other Party to participate on terms no less favorable than those accorded to its own persons.

7. A Party shall give appropriate consideration to the comments received from the other Party when a proposed technical regulation is submitted to public consultation and, upon request of the other Party, provide written answers to the comments made by such other Party.

8. Except in urgent circumstances, the Parties shall allow a reasonable interval¹ between the publication of technical regulations and their entry into force in order to allow time for producers in the exporting Party to adapt their products or methods of production to the requirements of the importing Party.

Article 6.8: Technical Cooperation

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, and conformity assessment procedures with a view to increasing the mutual understanding of their respective systems and facilitating access to their respective markets.

In particular, the Parties will seek to identify, develop, and promote trade facilitating initiatives regarding standards, technical regulations, and conformity assessment procedures that are appropriate for particular issues or sectors.

2. These initiatives may include, *inter alia*, cooperation on:

¹Reasonable interval shall be understood to normally mean a period of not less than six months, except when this would be ineffective in fulfilling the legitimate objectives pursued.

- (a) information exchange on standards, technical regulations, and conformity assessment procedures;
- (b) regulatory issues, such as transparency, promotion of good regulatory practices, harmonization with international standards, and use of accreditation to qualify conformity assessment bodies;
- (c) technical assistance directed at reaching effective and full compliance with metrology demands arising from this Chapter and the TBT Agreement;
- (d) use of mechanisms to facilitate the acceptance of results of conformity assessment procedures conducted in the other Party's territory; and
- (e) capacity building activities, aimed at strengthening the national quality infrastructure (e.g. standardization, metrology, testing, certification, and accreditation) and other related issues.

3. The Parties shall cooperate in promoting the harmonization and use of international standards.

4. The Parties shall cooperate in, pursuant to the framework established by the *International Laboratory Accreditation Cooperation* (ILAC), promoting the acceptance of test reports issued by organizations accredited by *Ecuadorian Accreditation Service* (SAE) and *Korean Laboratory Accreditation Scheme* (KOLAS).

5. Upon request of the Party interested in developing similar standards, technical regulations, conformity assessment procedures and in order to minimize the duplication of costs, the other Party shall, to the extent possible, provide the requesting Party with relevant information or other available documents, with the exception of confidential information, on which that Party has relied for the development of such standards, technical regulations, conformity assessment procedures.

6. The Parties agree to strengthen cooperation on information exchange, including sharing, when available, translated English versions of full text of adopted technical regulations and conformity assessment procedures.

7. The Parties shall cooperate, whenever possible, to encourage their national certification bodies to be member of the IECEE-CB scheme to facilitate the acceptance of conformity assessment results of each other.

Article 6.9: Information Exchange

1. Any information or explanation that a Party provides upon request of the other Party pursuant to this Chapter shall be communicated within a reasonable period of time, in written form through regular mail or any other means accepted by the Parties, including electronic mail. A Party shall endeavor to respond to each such request within 60 days.
2. Nothing in this Chapter shall be construed to require a Party to furnish any information, the disclosure of which it considers contrary to its essential security interests.

Article 6.10: Committee on Technical Barriers to Trade

1. For purposes of the effective implementation and operation of this Chapter, the Committee on Technical Barriers to Trade (hereinafter referred to as the “Committee”) shall be established. The Committee shall be composed of representatives of the Parties.
2. The functions of the Committee shall include:
 - (a) facilitating the implementation of this Chapter and cooperation between the Parties in all matters pertaining to this Chapter;
 - (b) monitoring the implementation, enforcement and administration of this Chapter;
 - (c) addressing adequately any issue that a Party raises relating to this Chapter;
 - (d) coordinating and enhancing joint cooperation between the Parties in the areas set out in Article 6.8;
 - (e) identifying mutually agreed priority sectors for enhanced cooperation regarding any proposal made by either Party;
 - (f) facilitating the process for the negotiation of a mutual recognition agreement;
 - (g) exchanging information, upon request of a Party, on standards, technical regulations, and conformity assessment procedures;

- (h) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
- (i) upon written request of a Party, consulting with the aim of solving any matter arising under this Chapter within a reasonable period of time;
- (j) reviewing this Chapter in light of any development under the TBT Agreement and, if necessary, developing recommendations for amendments to this Chapter;
- (k) establishing, if necessary to achieve the objectives of this Chapter, issue-specific or sector-specific *ad hoc* working groups;
- (l) as it considers appropriate, reporting to the Joint Committee on the implementation of this Chapter;
- (m) taking any other steps that the Parties consider will assist them in implementing this Chapter; and
- (n) any other issues related to this Chapter as determined by Joint Committee.

3. The Committee shall meet upon request of a Party. Meetings may be conducted in person, or via teleconference, videoconference, or any other means as mutually agreed by the Parties.

4. Where a Party has recourse to consultations under subparagraph 2(i), if the Parties agree, these will constitute consultations according to the Article 20.4 (Consultations).

5. The Committee shall be coordinated by:

- (a) for Korea, the Korean Agency for Technology and Standards, or its successor; and
- (b) for Ecuador, the Ministry of Production, Foreign Trade, Investment and Fishery; or its successor.

Depending on the issue, responsible ministries or regulatory agencies shall participate in the Committee meetings.

6. Each Party shall designate a contact point who shall have the responsibility to coordinate the implementation of this Chapter; and provide the other Party with the name of this designated contact point and the contact detail of relevant officials in that organization, including information on telephone, facsimile, e-mail and other relevant details. Each Party shall promptly notify the other Party of any change of its contact point or any amendment to the information of the relevant officials. The authorities shall be responsible for coordinating with the relevant institutions and persons in their respective territories as well as for ensuring that such institutions and persons are engaged.

Article 6.11: Market Surveillance

The Parties undertake to exchange views on market surveillance and enforcement activities.

Article 6.12: Measures at the Border

When a Party detains goods originating from the territory of the other Party at a port of entry due to a perceived noncompliance with a technical regulation, the Party detaining the goods shall notify the importer without delay of the reasons for the detention.

Article 6.13: Marking and Labeling

In particular, the Parties agree that where a Party requires mandatory marking or labelling of products:

- (a) the Party shall endeavour to minimise its requirements for marking or labelling other than marking or labelling relevant to consumers or users of the product;
- (b) unless necessary in view of the risk of the product to human, animal or plant, health or life, the environment or national safety, such Party shall not require the approval, registration or certification of labels or markings as a precondition for sale on their respective market. This subparagraph is without prejudice to measures adopted by the Party pursuant to its domestic rules to verify the compliance of labels with mandatory requirement and measures taken to control practices which may mislead consumers;

- (c) when a Party requires the use of an identification number by the economic operator, this shall be issued without undue delay;
- (d) the Party shall remain free to require that the information on the marks or labels be in a specified language. Where there is an international system of nomenclature accepted by the Parties, this may also be used. The simultaneous use of other languages shall not be prohibited, provided that, either the information provided in the other languages shall be identical to that provided in the specified language, or that the information provided in the additional language shall not constitute a deceptive statement regarding the product; and
- (e) when the legitimate objectives established in the TBT Agreement are not compromised, such Party shall endeavour to accept non-permanent or removable labels, or having the information provided by means of the product manual, packing or packaging instead of it being printed on or physically adhered to the product.