

## **CHAPTER SEVEN**

### **TECHNICAL BARRIERS TO TRADE**

#### **ARTICLE 7.1: OBJECTIVE**

The objective of this Chapter is to increase and facilitate trade between the Parties by:

- (a) improving the implementation of the TBT Agreement;
- (b) ensuring that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade; and
- (c) enhancing joint cooperation between the Parties.

#### **ARTICLE 7.2: RELATION TO 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 7.3: SCOPE OF APPLICATION**

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of the Parties that may affect trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter shall not apply to sanitary and phytosanitary measures covered by Chapter Six (Sanitary and Phytosanitary Measures) or to purchasing specifications prepared by governmental bodies for production or consumption requirements of governmental bodies covered by Chapter Sixteen (Government Procurement).

#### **ARTICLE 7.4: INTERNATIONAL STANDARDS**

1. 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, as a basis for its technical regulations and conformity assessment procedures.
2. In determining whether an international standard, guide, or recommendation for purposes of Articles 2, 5, and Annex 3 of the TBT Agreement exists, each Party shall apply *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* (Annex 4 to G/TBT/9), adopted on November 13, 2000 by the WTO Committee on Technical Barriers to Trade.

#### ARTICLE 7.5: EQUIVALENCE OF TECHNICAL REGULATIONS

1. Each Party shall, upon written request of the other Party, give positive 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, upon request of the other Party, explain the reasons for its decision.

#### ARTICLE 7.6: CONFORMITY ASSESSMENT PROCEDURES

1. The Parties recognize that a broad range of mechanisms exists to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory. The Parties shall exchange information on the range of mechanisms used in their territories.
2. The Parties shall accept, whenever possible, the results of the conformity assessment procedures conducted in the territory of the other Party, even when those procedures differ from its own, provided that those procedures offer a satisfactory assurance of conformity with applicable technical regulations or standards equivalent to its own procedures. Where a Party does not accept the results of conformity assessment procedures conducted in the other Party, it shall, upon request of the other Party, explain the reasons for its decision.
3. Prior to accepting the results of a conformity assessment procedure in accordance with paragraph 2, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved in order to enhance confidence in the permanent reliability of each one of the conformity assessment results.
4. Each Party may accredit 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. If a Party accredits or otherwise recognizes a body assessing conformity with a particular technical regulation or standard in its territory and it refuses to accredit or otherwise recognize a body in the territory of the other Party assessing conformity with that technical regulation or standard, it shall, upon request of the other Party, explain the reasons for its decision.
5. The Parties 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. Where a Party declines such request, it shall, upon request of the other Party, explain the reasons for its decision. The Parties shall work together to implement the mutual recognition agreements to which both Parties are party.

#### ARTICLE 7.7: TRANSPARENCY

1. Each Party shall electronically notify the other Party's representative to the Committee on Technical Barriers to Trade established under Article 7.9, at the same time as

it submits its notification to the WTO Central Registry of Notifications in accordance with the TBT Agreement of:

- (a) its proposed technical regulations and conformity assessment procedures; and
- (b) its technical regulations and conformity assessment procedures adopted to address urgent problems of safety, health, environmental protection, or national security arising or threatening to arise.

2. Each Party shall also notify the other Party of its proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of relevant international standards and that may have a significant effect on trade between the Parties.

3. The notification of technical regulations and conformity assessment procedures shall include an on-line link to, or a copy of, the complete text of the notified document. Where possible, the Parties shall provide an on-line link to, or a copy of, the complete text of the notified document in English.

4. Each Party shall allow 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. A Party shall give positive consideration to a reasonable request of the other Party for extending the comment period.

5. Each Party shall publish or otherwise make publicly available, in print or electronically, its responses or a summary of its responses to significant comments it receives, no later than the date it publishes the final technical regulation or conformity assessment procedure.

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

7. A Party shall 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 adoption of the technical regulation and its entry into force, except where this would be ineffective in fulfilling the legitimate objectives pursued.

8. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are available on an official website that is free of charge and publicly accessible.

9. Where a Party detains at a port of entry a good imported from the territory of the other Party due to a failure to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention of the good.

#### ARTICLE 7.8: TECHNICAL COOPERATION

1. The Parties agree to cooperate and provide technical assistance, to the extent possible, in order to, *inter alia*:

- (a) encourage the implementation of this Chapter;
- (b) encourage the implementation of the TBT Agreement;
- (c) strengthen the relevant organizations of standardization, technical regulation, and conformity assessment, including their training of the human resources;
- (d) increase the cooperation between the standardizing, technical regulatory, or conformity assessment bodies in the Parties' territories, including participation and collaboration in international organizations;
- (e) enhance cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures; and
- (f) facilitate the consideration of any sector-specific proposal a Party makes for further cooperation between governmental and non-governmental standardizing or conformity assessment bodies in the Parties' territories.

2. Upon request of a Party that has an interest in developing a similar technical regulation of the other Party, that other Party shall endeavor to provide, to the extent practicable, relevant information, studies, or other documents, except for confidential information, on which it has relied in the development of the technical regulation.

#### ARTICLE 7.9: COMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Parties hereby establish a Committee on Technical Barriers to Trade comprising representatives of each Party as set out in paragraph 4.

2. The Committee shall:

- (a) monitor the implementation, enforcement, and administration of this Chapter;
- (b) promptly address any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
- (c) enhance cooperation between the Parties in the areas set out in Article 7.8;
- (d) facilitate the process for the negotiation of a mutual recognition agreement;

- (e) exchange information, upon request of a Party, on standards, technical regulations, and conformity assessment procedures, including the Parties respective views regarding third party issues;
- (f) exchange information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
- (g) upon written request of a Party, consult on any matter arising under this Chapter;
- (h) review this Chapter in light of any developments under the WTO Committee on Technical Barriers to Trade and, if necessary, develop recommendations for amendments to this Chapter;
- (i) establish, if necessary to achieve the objectives of this Chapter, issue or sector-specific *ad-hoc* working groups;
- (j) as it considers appropriate, report to the Joint Commission on the implementation of this Chapter;
- (k) take any other steps that the Parties consider will assist them in implementing this Chapter; and
- (l) establish its own rules.

3. Where the Parties have had recourse to consultations under paragraph 2(g), the consultations shall, if the Parties agree, constitute consultations under Article 23.4 (Consultations).

4. The Committee shall be coordinated by:

- (a) for Korea, the *Korean Agency for Technology and Standards*, or its successor; and
- (b) for Peru, the *Vice Ministry of Foreign Trade*, or its successor.

5. The Committee shall meet at least every two years unless the Parties otherwise agree. The Committee may meet in person or by any technological means available to the Parties.

#### ARTICLE 7.10: INFORMATION EXCHANGE

1. Any information or explanation requested by a Party in accordance with this Chapter shall be provided by the other Party, in print or electronically, within 60 days, which may be extended with prior justification of the Party providing information or explanation.

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

ARTICLE 7.11: DEFINITION

For purposes of this Chapter, **TBT Agreement** means the *Agreement on Technical Barriers to Trade*, contained in Annex 1A to the WTO Agreement.