

CHAPTER NINE

TECHNICAL BARRIERS TO TRADE

ARTICLE 9.1: AFFIRMATION OF TBT AGREEMENT

Further to Article 1.2 (Relation to Other Agreements), the Parties affirm their existing rights and obligations with respect to each other under the TBT Agreement.

ARTICLE 9.2: SCOPE AND COVERAGE

1. This Chapter applies to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of central government bodies, unless otherwise specified, that may, directly or indirectly, affect trade in goods between the Parties,¹ including any amendment² thereto and any addition to their rules or the product coverage thereof, except amendments and additions of an insignificant nature.

2. Notwithstanding paragraph 1, this Chapter does not apply to:

- (a) technical specifications prepared by a governmental body for its production or consumption requirements; or
- (b) sanitary or phytosanitary measures.

ARTICLE 9.3: INTERNATIONAL STANDARDS

In determining whether an international standard, guide, or recommendation within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement exists, each Party shall base its determination on the principles set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev.8, 23 May 2002, 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.

¹ For greater certainty, the Parties understand that any reference in this Chapter to a standard, technical regulation, or conformity assessment procedure includes those related to metrology.

² “Any amendment” includes the elimination of a technical regulation.

ARTICLE 9.4: JOINT 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 shall 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. These initiatives may include cooperation on regulatory issues, such as transparency, the promotion of good regulatory practices, alignment with international standards, and use of accreditation to qualify conformity assessment bodies.
2. On request, a Party shall give favorable consideration to a sector-specific proposal that the requesting Party makes for further cooperation under this Chapter.

ARTICLE 9.5: CONFORMITY ASSESSMENT PROCEDURES

1. The Parties recognize that a broad range of mechanisms exists 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 that bodies located in the other Party's territory conduct with respect to specific technical regulations;
 - (b) a Party may adopt accreditation procedures for qualifying 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.

The Parties shall intensify their exchange of information on these and similar mechanisms with a view to facilitating the acceptance of conformity assessment results.

2. Where a Party does not accept the results of a conformity assessment procedure conducted in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.
3. 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. Where a Party accredits,

approves, licenses, or otherwise recognizes a body assessing conformity with a specific technical regulation or standard in its territory and it refuses to accredit, approve, license, or otherwise recognize a body assessing conformity with that technical regulation or standard in the territory of the other Party, it shall, on request of the other Party, explain the reasons for its decision.

4. A Party that accredits, approves, licenses, or otherwise recognizes conformity assessment bodies shall do so on the basis of criteria published by the Party for determining whether a conformity assessment body is competent to receive accreditation, approval, licensing or other recognition.

5. Each Party shall take steps to implement Phase II of the *APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment* (1998) with respect to the other Party as soon as possible. No later than one year after the date this Agreement enters into force, Korea will publish notice of the changes in its legislation that it proposes to make to implement Phase II.

ARTICLE 9.6: TRANSPARENCY

1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures.³ Each Party shall permit persons of the other Party to participate in the development of these measures on terms no less favorable than those it accords to its own persons.

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

3. In order to enhance the opportunity for persons and the other Party to be aware of, and to understand, proposed technical regulations and conformity assessment procedures, and to be able to provide meaningful comments on these regulations and procedures, a Party publishing a notice and filing a notification in accordance with Article 2.9, 3.2, 5.6, or 7.2 of the TBT Agreement shall:

- (a) include an explanation of the objectives the proposed technical regulation or conformity assessment procedure is meant to serve and how it addresses those objectives;
- (b) transmit the proposal electronically to the other Party through, in the case of a Korean proposal, the U.S. inquiry point established in accordance with Article 10 of the TBT Agreement or, in the case of a U.S. proposal, the Korean coordinator established in accordance with Annex 9-A, at the same time as it notifies WTO Members of the proposal in accordance with the TBT Agreement; and

³ For purposes of the first sentence of paragraph 1 and for greater certainty, a Party allows persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures if it maintains a process for participation that is open to the public, including persons of the other Party.

- (c) make available to the public, preferably by electronic means, comments it receives from persons or the other Party on the proposed technical regulation or conformity assessment procedure.

Each Party shall also publish and notify new technical regulations and amendments to existing technical regulations that are in accordance with the technical content of any relevant international standards. Each Party shall also take such reasonable measures as may be available to it to ensure that new technical regulations and amendments to existing technical regulations of local governments on the level directly below that of the central government that are in accordance with the technical content of any relevant international standards are published and notified through the inquiry point referenced in subparagraph (b).

Each Party should allow at least 60 days after it transmits a proposal under subparagraph (b) for persons and the other Party to provide comments in writing on the proposal. A Party shall give favorable consideration to reasonable requests from persons or the other Party for extending the comment period.

4. Where a Party makes a notification under Article 2.10, 3.2, 5.7, or 7.2 of the TBT Agreement, it shall at the same time transmit the notification and text of the proposal electronically to the other Party through the inquiry point referenced in paragraph 3(b). Each Party shall also notify new technical regulations and amendments to existing technical regulations that are in accordance with the technical content of any relevant international standards. Each Party shall also take such reasonable measures as may be available to it to ensure that new technical regulations and amendments to existing technical regulations of local governments on the level directly below that of the central government that are in accordance with the technical content of any relevant international standards are published and notified through the inquiry point referenced in paragraph 3(b).

5. Each Party shall publish, preferably by electronic means, notices of proposed and final technical regulations and conformity assessment procedures required under Articles 2.9, 2.11, 5.6, and 5.8 of the TBT Agreement in a single official journal and shall encourage the government bodies that issue them to disseminate them through additional channels. With respect to notices of proposed and final technical regulations and conformity assessment procedures notified under Articles 3.2 and 7.2 of the TBT Agreement, each Party shall ensure to the extent practicable, that all such notices are accessible through a single Internet site or other information source.

6. Each Party shall include in the notice of a final technical regulation or conformity assessment procedure that it publishes in its official journal:

- (a) an explanation of the objectives of the technical regulation or conformity assessment procedure and how it addresses those objectives; and
- (b) responses to significant comments that it received during the comment period and an explanation of substantive revisions that it made to the proposed technical regulation or conformity assessment procedure.

7. On request, each Party shall provide the other Party with additional available

information regarding the objective of, and rationale for, a standard, technical regulation, or conformity assessment procedure that the Party has adopted or is proposing to adopt. Such requests may include requests for information regarding the matter the technical regulation or conformity assessment procedure is designed to address, alternative approaches the Party considered, and the merits of the particular approach the Party chose.

ARTICLE 9.7: AUTOMOTIVE STANDARDS AND TECHNICAL REGULATIONS

1. The Parties shall cooperate bilaterally, including in the World Forum for Harmonization of Vehicle Regulations of the United Nations Economic Commission for Europe (WP.29), to harmonize standards for motor vehicle environmental performance and safety.
2. Each Party shall ensure that technical regulations related to motor vehicles are not prepared, adopted, or applied with a view to or with the effect of creating unnecessary obstacles to international trade, to the extent provided in Article 2.2 of the TBT Agreement. For this purpose, technical regulations related to motor vehicles shall not be more trade-restrictive than necessary to fulfill a legitimate objective, taking account of the risks non-fulfillment would create. Such legitimate objectives are, *inter alia*: national security requirements; the prevention of deceptive practices; and protection of human health or safety, animal or plant life or health, or the environment. In assessing such risks, relevant elements of consideration are, *inter alia*: available scientific and technical information, related processing technology, or intended end-uses of products.

ARTICLE 9.8: 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 Annex 9-A.
2. The Committee's functions shall include:
 - (a) monitoring the implementation and administration of this Chapter;
 - (b) promptly addressing any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
 - (c) enhancing cooperation in the development and improvement of standards, technical regulations, and conformity assessment procedures;
 - (d) facilitating the consideration of any sector-specific proposal a Party makes for further cooperation between conformity assessment bodies, including, where appropriate, between governmental and non-governmental conformity assessment bodies in the Parties' territories;
 - (e) facilitating the consideration of a request that a Party recognize the results of conformity assessment procedures conducted by bodies in the other Party's territory, including a request for the negotiation of an agreement, in a sector nominated by that other Party;

- (f) exchanging information on developments in non-governmental, regional, and multilateral fora engaged in activities related to standards, technical regulations, and conformity assessment procedures;
- (g) at a Party's request, consulting on any matter arising under this Chapter;
- (h) reviewing this Chapter in light of any developments under the TBT Agreement, and developing recommendations for amendments to this Chapter in light of those developments;
- (i) taking any other steps that the Parties consider will assist them in implementing this Chapter;
- (j) exchanging information, at a Party's request, on the Parties' respective views regarding third party issues concerning standards, technical regulations, and conformity assessment procedures so as to foster a common approach to their resolution; and
- (k) as it considers appropriate, reporting to the Joint Committee on the implementation of this Chapter.

3. Where the Parties have had recourse to consultations under paragraph 2(g), the consultations shall, if the Parties agree, constitute consultations under Article 22.7 (Consultations).

4. The Committee shall meet at least once a year unless the Parties otherwise agree.

5. 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 decisions of the Committee and as the Parties may agree, 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.

6. Within 30 days after the date this Agreement enters into force, each Party shall notify the Committee of the criteria it uses to accredit, approve, license, or otherwise recognize conformity assessment bodies with respect to cosmetics, household electrical appliances, motor vehicles, and noise and emissions, and with respect to any other areas identified by a Party. Thereafter, each Party shall notify the Committee of the criteria it uses for this purpose with respect to other areas that the other Party requests. The Committee shall review this information in order to improve mutual understanding of each Party's conformity assessment system and to discuss possible reforms to facilitate trade between the Parties.

ARTICLE 9.9: INFORMATION EXCHANGE

Any information or explanation that a Party provides on request of the other Party pursuant to this Chapter shall be provided in print or electronically within a reasonable period. A Party shall endeavor to respond to each such request within 60 days.

ARTICLE 9.10: DEFINITIONS

For purposes of this Chapter:

central government body,⁴ **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

good regulatory practice means a practice that: (i) serves clearly identified policy goals, and is effective in achieving those goals; (ii) has a sound legal and empirical basis; (iii) takes into consideration the distribution of a regulation's effects across society, taking economic, environmental, and social effects into account; (iv) minimizes costs and market distortions; (v) promotes innovation through market incentives and goal-based approaches; (vi) is clear, simple, and practical for users; (vii) is consistent with the Party's other regulations and policies; and (viii) is compatible as far as possible with domestic and international competition, trade, and investment principles.

⁴ For greater certainty, a non-governmental entity that a Party's central government has authorized to prepare, adopt, or apply standards, technical regulations, or conformity assessment procedures on its behalf shall be considered a central government body for purposes of this Chapter in respect of such activity.

ANNEX 9-A
COMMITTEE ON TECHNICAL BARRIERS TO TRADE

The Committee on Technical Barriers to Trade shall be coordinated by:

- (a) in the case of Korea, the Korean Agency for Technology and Standards, or its successor; and
- (b) in the case of the United States, the Office of the United States Trade Representative, or its successor.

ANNEX 9-B
AUTOMOTIVE WORKING GROUP

1. The Parties hereby establish an Automotive Working Group under Article 9.8.5 comprising representatives of each Party. Representatives of the Office of the United States Trade Representative, in the case of the United States, and the Ministry of Foreign Affairs and Trade, in the case of Korea, shall serve as coordinators. The Working Group shall include or consult as appropriate with the United States Department of Transportation, through its National Highway Traffic Safety Administration, the United States Environmental Protection Agency, the Ministry of Information and Communications of Korea, the Ministry of Commerce, Industry and Energy of Korea, the Ministry of Environment of Korea, the Ministry of Construction and Transportation of Korea, and other relevant government regulatory agencies. The Working Group may include or consult with other experts and stakeholders as the Parties deem necessary and appropriate.

2. The Working Group shall:

- (a) consult to resolve issues that a Party raises with respect to developing, implementing, and enforcing relevant standards, technical regulations, and conformity assessment procedures;
- (b) facilitate increased cooperation between the Parties and stakeholders in their territories with respect to issues that arise in developing, implementing, and enforcing relevant standards, technical regulations, and conformity assessment procedures;
- (c) work to enhance cooperation between the Parties in multilateral fora addressing automotive regulatory issues; and
- (d) monitor the development, implementation, and enforcement of each Party's relevant standards, technical regulations, and conformity assessment procedures to promote the development of good regulatory practices with respect to regulation of motor vehicles.

3. The Working Group shall convene at least once each year, unless the coordinators otherwise agree. Its meetings shall normally be held in conjunction with meetings of WP.29 or other bilateral or multilateral fora in which both Parties participate that address automotive regulatory issues. The Working Group shall also carry out its work through electronic mail, videoconferences, and such other means of communication as the Working Group may agree.

4. (a) Unless the Working Group otherwise agrees, no later than the date on which a Party first supplies information in writing to a non-governmental expert or stakeholder for comment⁵ regarding:

⁵ The United States first supplies information to a non-governmental expert or stakeholder for comment when it publishes a notice in the *Federal Register* requesting comment on a proposed regulation or amendment.

- (i) a relevant standard, technical regulation, or conformity assessment procedure; or
- (ii) an amendment to a relevant standard, technical regulation, or conformity assessment procedure

it is developing, it shall provide the information to the Working Group. When a Party transmits a proposal to the other Party pursuant to Article 9.6.3 or 9.6.4, the Party shall at the same time provide the proposal to the Working Group.

- (b) As soon as it is available, a Party shall provide to the Working Group a draft of the relevant standard, technical regulation, or conformity assessment procedure or amendment it is developing.
- (c) On request of the other Party, a Party shall provide additional available information with respect to a relevant standard, technical regulation, or conformity assessment procedure or amendment it is developing, such as information regarding other regulatory approaches under consideration and analysis of regulatory impact.

On request of either Party, the Working Group should evaluate the information a Party provides it and provide views to the Party that provided the information, consistent with the Working Group's mandate described in paragraph 2.

5. If a Party carries out a post-implementation review of a relevant standard, technical regulation, or conformity assessment procedure it has adopted:

- (a) the Party should provide a summary of the results of the review to the Working Group; and
- (b) on request of a Party, the Working Group should analyze the results of, and methods and assumptions used in, the review.

For purposes of this paragraph, **post-implementation review** means a comprehensive and systematic examination of the effectiveness of a standard, technical regulation, or conformity assessment procedure after it has been implemented, including an assessment of whether it achieves its stated objectives, the burden it imposes, and its compatibility with other standards, technical regulations, or conformity assessment procedures the Party has adopted.

6. For purposes of this Annex:

relevant standard, technical regulation, and conformity assessment procedure means a standard, technical regulation, or conformity assessment procedure affecting motor vehicles.