

## **CHAPTER 6**

### **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) ensure that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles 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**

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 *Agreement on the Application of Sanitary and Phytosanitary Measures* in Annex 1A to the WTO Agreement or to technical specifications prepared by governmental bodies for production or consumption requirements of such bodies.

#### **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*<sup>1</sup> adopted on 13 November 2000 by the WTO Committee on Technical Barriers to Trade (hereinafter referred to as the “TBT Committee”).

## **Article 6.5 : 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 6.6 : Conformity Assessment Procedures**

1. Each Party shall give positive consideration to accepting the results of conformity assessment procedures of the other Party, even where those procedures differ from its own, provided that it is satisfied that those procedures offer an assurance of conformity with applicable technical regulations or standards equivalent to its own procedures.
2. Each Party shall seek to enhance the acceptance of the results of conformity assessment procedures conducted in the territory of the other Party with a view to increasing efficiency, avoiding duplication and ensuring cost effectiveness of the conformity assessments. In this regard, each Party may choose, depending on the situation of the Party and the specific sectors involved, a broad range of approaches. These may include, but are not limited to:
  - (a) agreements on mutual acceptance of the results of conformity assessment procedures with respect to specific technical regulations conducted by bodies located in the territory of the other Party;
  - (b) adoption of accreditation or nomination procedures for qualifying conformity assessment bodies located in the territory of the other Party;
  - (c) designation of conformity assessment bodies located in the territory of the other Party;
  - (d) recognition by a Party of the results of conformity assessment procedures conducted in the territory of the other Party;
  - (e) voluntary arrangements between conformity assessment bodies in the territory of each Party; and
  - (f) supplier’s declaration of conformity.

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<sup>1</sup> Annex 2 to Part 1 of G/TBT/1/Rev.11 and the subsequent revisions

3. The Parties shall exchange information on their experience in the development and application of the approaches in subparagraphs 2(a) through (f) and other appropriate approaches with a view to facilitating the acceptance of the results of conformity assessment procedures.

4. A Party shall, 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. A Party shall, upon written request of the other Party, give positive consideration to accrediting, approving, or otherwise recognizing the conformity assessment bodies recommended by the other Party, which have a local presence in the former Party's territory.

6. The Parties shall endeavor to promote information exchange relating to the *APEC Mutual Recognition Arrangement for Conformity Assessment of Telecommunications Equipment*.

#### **Article 6.7 : Transparency**

1. Upon request of the other Party, each Party shall provide, whenever possible, the other Party with an online link to, or a copy of, the complete text 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 of, 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.

#### **Article 6.8 : 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 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:

- (a) information exchange on standards, technical regulations, and conformity assessment procedures;
- (b) cooperation on 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; and
- (d) use of mechanisms to facilitate the acceptance of results of conformity assessment procedures conducted in the other Party's territory.

3. A Party shall endeavor to give favorable consideration to any specific sector proposed by the other Party for further cooperation under this Chapter, for example, construction materials, cosmetics products, pharmaceutical products and medical devices, *et cetera*.

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

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 the Parties have had recourse to consultations under subparagraph 2(h), the Committee shall, if the Parties agree, constitute consultations according to the Article 15.4 (Consultations).

5. The Committee shall be coordinated by:

- (a) for Korea, the Korean Agency for Technology and Standards; and
- (b) for Viet Nam, the Directorate for Standards Metrology and Quality, Ministry of Science and Technology;

or their respective successors.

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.

#### **Article 6.11 : Definitions**

1. For the purposes of this Chapter, **TBT Agreement** means the *Agreement on Technical Barriers to Trade*, in Annex 1A to the WTO Agreement.
2. The definitions of Annex 1 to the TBT Agreement shall apply.