

CHAPTER SIX TECHNICAL BARRIERS TO TRADE

ARTICLE 6.1: OBJECTIVES

The objectives of this Chapter are:

- (a) to increase and facilitate trade between the Parties, through the improvement of the implementation of the TBT Agreement;
- (b) to ensure that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade; and
- (c) to enhance joint cooperation between the Parties.

ARTICLE 6.2: GENERAL PROVISION

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 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 the trade in goods between the Parties.
2. Notwithstanding paragraph 1, this Chapter shall not apply to sanitary and phytosanitary measures covered by Chapter 5 (Sanitary and Phytosanitary Measures) or to technical specifications prepared by governmental bodies for production or consumption requirements of such bodies covered by Chapter 14 (Government Procurement).

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, 5 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 since January 1, 1995¹ by the WTO Committee on Technical Barriers to Trade (hereinafter referred to as the “TBT Committee”).

¹ G/TBT/1/Rev.9, 8 September 2008 Annex B to part I

ARTICLE 6.5: 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 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 in writing the reasons for its decision.

ARTICLE 6.6: 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. Accordingly, the Parties may agree on the following:

- (a) the acceptance of a supplier's declaration of conformity;
- (b) the acceptance of the results of conformity assessment procedures by bodies located in the other Party's territory, including those regarding specific technical regulations;
- (c) that a conformity assessment body located in a Party's territory may enter into voluntary recognition agreements for the acceptance of the results of its conformity assessment procedures, with a conformity assessment body located in the other Party's territory; and
- (d) the adoption of accreditation procedures to qualify the conformity assessment bodies located in the other Party's territory.

The Parties shall exchange information on the range of the mechanisms used in their territories.

2. The Parties shall accept, whenever possible, the results of 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 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 territory of the other Party, it shall, upon request of the other Party, explain in writing the reasons for its decision.

3. Prior to accepting the results of a conformity assessment procedure pursuant to paragraph 2, and in order to enhance confidence in the permanent reliability of each one of the conformity assessment results, the Parties may consult on matters such as the technical competence of the conformity assessment bodies involved. Where a Party

considers that a conformity assessment body of the other Party does not fulfill its requirements, it shall explain to the other Party in writing the reasons for its decision.

4. A Party 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 in writing the reasons for its decision. The Parties shall work together to implement the mutual recognition agreements to which both Parties are party.

ARTICLE 6.7: TRANSPARENCY

1. At the same time a Party submits its notification to the WTO Central Registry of Notifications in accordance with the TBT Agreement, such Party shall make electronically the same notification to the other Party's Coordinator referenced in Annex 6-A.

2. Where possible, each Party should notify with the following documents to the other Party through the other Party's Coordinator referenced in Annex 6-A:

- (a) new technical regulations and amendments to existing technical regulations that are based on relevant international standards;
- (b) new conformity assessment procedures and amendments to existing conformity assessment procedures that are based on relevant international standards;
- (c) proposed new technical regulations and amendments to existing technical regulations in a case there is doubt about whether the effect on trade is significant; and
- (d) proposed new conformity assessment procedures and amendments to existing conformity assessment procedures in a case there is doubt about whether the effect on trade is significant.

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 or a summary of the notified document in English.

4. Each Party shall allow at least 60 days following the notification of its proposed technical regulations and conformity assessment procedures for 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 period for comments.

5. Each Party shall publish or otherwise make available to the public, in print or electronically, its responses, or a summary of its responses, to comments received from

the other Party, 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 regarding 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 period for comments 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. Except in urgent circumstances, the Parties shall allow a reasonable interval² 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.

9. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are available on an official website that is freely accessible and publicly available.

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 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.

2. These initiatives may include:

- (a) 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;
- (b) technical assistance directed at reaching effective and full compliance with metrology demands arising from this Chapter and the TBT Agreement;
- (c) initiatives to develop common views on good regulatory practices such as transparency, use of equivalency, and regulatory impact assessment; and

² **Reasonable 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, in accordance with paragraph 5 of the *Implementation-Related Issues and Concerns*, Decision of 14 November 2001(WT/MIN(01)/17).

- (d) use of mechanisms to facilitate the acceptance of results of conformity assessment procedures conducted in the other Party's territory.

3. The cooperation described on this article may be preferably focused on fields such as: (i) auto parts, (ii) textiles, clothing, and design, (iii) cosmetics and hygienic products, and (iv) pharmaceutical products and medical devices. However, upon request, a Party shall give favorable consideration to any sector-specific proposal that the other Party makes for further cooperation under this Chapter.

ARTICLE 6.9: COMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hererinafter referred to as the "Committee"), composed of representatives of each Party.
2. The Committee's functions shall include:
 - (a) working to facilitate 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 related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures;
 - (d) enhancing joint cooperation between the Parties in the areas set out in Article 6.8;
 - (e) facilitating the process for the negotiation of a mutual recognition agreement;
 - (f) exchanging information, upon request of a Party, on standards, technical regulations, and conformity assessment procedures, including the Parties' respective views regarding non-party issues;
 - (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 Committee 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 Commission on the implementation of this Chapter; and
- (l) taking any other step 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 paragraph 2(h), the consultations shall, if the Parties agree, constitute consultations under Article 20.4 (Consultations).

5. The authorities set out in paragraph 1 of Annex 6-A 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. The Committee shall carry out its work through the communication channels agreed by the Parties, which may include electronic mail, teleconferencing, videoconferencing, or other means.

ARTICLE 6.10: 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, 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 is contrary to its essential security interests.

ARTICLE 6.11: DEFINITIONS

For purposes of this Chapter, the terms and definitions of Annex 1 of the TBT Agreement shall apply.

ARTICLE 6.12: BORDER CONTROL AND MARKET SURVEILLANCE

The Parties undertake to:

- (a) exchange information and experiences on their border control and market surveillance activities, except in those cases in which the documentation is confidential; and

- (b) ensure that border control and market surveillance activities are undertaken by the competent authorities, to which end these authorities may use accredited, designated, or delegated bodies, avoiding conflicts of interest between those bodies and the economic agents subject to control or supervision.

ANNEX 6-A
COMMITTEE AND COORDINATOR ON TECHNICAL BARRIERS TO TRADE

1. For purposes of Article 6.9, the Committee on Technical Barriers to Trade shall be coordinated by:

- (a) for Colombia, the *Ministry of Trade, Industry and Tourism (Ministerio de Comercio, Industria y Turismo)*, or its successor; and
- (b) for Korea, the *Korean Agency for Technology and Standards*, or its successor;

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

2. For purposes of Article 6.7, the Coordinator on Technical Barriers to Trade shall be:

- (a) for Colombia, the enquiry point at the Central Registry of Notifications in accordance with the TBT Agreement; and
- (b) for Korea, the *Korean Agency for Technology and Standards*, or its successor.