

CHAPTER SIX

TECHNICAL BARRIERS TO TRADE

Article 601: Objectives

The objectives of this Chapter are to:

- (a)# improve the implementation of the TBT Agreement;
- (b)# ensure that standards, technical regulations, and conformity assessment procedures, including those related to metrology, do not create unnecessary obstacles to trade; and
- (c)# enhance joint cooperation between the Parties in order to resolve specific issues related to the development and application of standards, technical regulations and conformity assessment procedures, thereby facilitating the conduct of international trade in goods.

Article 602: Affirmation of the TBT Agreement

Further to Article 102 (Initial Provisions and General Definitions - Relation to Other Agreements), the Parties affirm with respect to each other their existing rights and obligations under the TBT Agreement.

Article 603: Scope and Coverage

1. The provisions of this Chapter apply to the preparation, adoption and application of all standards, technical regulations and conformity assessment procedures, including those related to metrology, of national government bodies that may affect trade in goods between the Parties.

2. This Chapter does not apply to:

- (a) purchasing specifications prepared by governmental bodies for production or consumption requirements of such bodies; or
- (b) sanitary and phytosanitary measures.

Article 604: Joint Cooperation

1. The Parties shall strengthen their joint cooperation in the areas of standards, technical regulations, conformity assessment and metrology with a view to facilitating the conduct of trade between the Parties.

2. Pursuant to paragraph 1, the Parties shall seek to identify, develop and promote bilateral initiatives regarding standards, technical regulations, conformity assessment procedures and metrology that are appropriate for particular issues or sectors, taking into consideration their experience in regional and multilateral arrangements or agreements. Such initiatives may include: regulatory or technical cooperation programs directed at reaching effective and full compliance with the obligations set forth in this Chapter and the TBT Agreement; initiatives to develop common views on good regulatory practices such as transparency, the use of equivalency and regulatory impact assessment; and the use of mechanisms to facilitate the acceptance of the results of conformity assessment procedures conducted in the other Party's territory.

3. A Party shall give positive consideration to any reasonable sector-specific proposal made by the other Party for further cooperation under this Chapter.

Article 605: International Standards

1. Each Party shall use relevant international standards, guides and recommendations as a basis for its technical regulations and conformity assessment procedures in accordance with Articles 2.4 and 5.4 of the TBT Agreement.

2. In determining whether an international standard, guide, or recommendation exists within the meaning of Articles 2 and 5 and Annex 3 of the TBT Agreement, each Party shall follow, to the greatest possible extent, 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 TBT Committee.

3. Each Party shall encourage its national standardizing bodies to cooperate with the relevant national standardizing bodies of the other Party in international standardizing activities. Such cooperation may take place through the Parties' activities in regional and international standardizing bodies of which they are both members.

Article 606: Technical Regulations

1. Each Party shall give positive consideration to accepting technical regulations of the other Party as equivalent to its own, even if the regulations differ from its own, provided it is satisfied that the regulations adequately fulfil 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, at the request of the other Party, explain its decision. The Parties recognize that it may be necessary to develop common views, methods and procedures to facilitate the use of equivalency.

3. At the request of a Party that has an interest in developing a technical regulation similar to that of the other Party, the other Party shall 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. The Parties recognize that it may be necessary to agree on the scope of a specific request.

Article 607: Conformity Assessment

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. For example:

- (a) a Party may adopt accreditation procedures for qualifying conformity assessment bodies located in the territory of the other Party;
- (b) a Party may recognize the results of conformity assessment procedures conducted in the territory of the other Party;
- (c) 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;
- (d) a Party may designate conformity assessment bodies located in the territory of the other Party;

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

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 so that corrective action may be taken, when appropriate, by the requesting Party.

3. Where a Party declines a request of the other Party to enter into negotiations to conclude an agreement for recognition in its territory of the results of conformity assessment procedures conducted by bodies in the other Party's territory, it shall explain the reasons for its decision.

4. Further to paragraph 2 of Article 604, the Parties shall cooperate by:

- (a) exchanging information on the range of mechanisms that exist to facilitate the acceptance in a Party's territory of the results of conformity assessment procedures conducted in the other Party's territory;
- (b) promoting the accreditation of conformity assessment bodies on the basis of relevant international standards and guides;

- c) promoting the acceptance of results of conformity assessment bodies that have been recognized under a relevant multilateral agreement or arrangement between their respective accreditation systems or bodies; and
- d) encouraging their conformity assessment bodies, including accreditation bodies, to participate in cooperation arrangements that promote the acceptance of conformity assessment results.

Article 608: Transparency

1. Each Party shall ensure that transparency procedures regarding the development of technical regulations and conformity assessment procedures allow interested parties to participate at an early appropriate stage when amendments can still be introduced and comments taken into account, except where urgent problems of safety, health, environmental protection or national security arise or threaten to arise. Where a consultation process on the development of technical regulations and conformity assessment procedures is open to the public, each Party shall permit persons of the other Party to participate on terms no less favourable than those accorded to its own persons.

2. Each Party shall recommend to standardization bodies in its territory that they observe paragraph 1 with respect to their consultation processes for the development of standards and voluntary conformity assessment procedures.

3. Each Party shall transmit electronically to the other Party's contact point, established under Article 10 of the TBT Agreement at the same time it submits its notification to the WTO Central Registry of Notifications in accordance with the TBT Agreement:

- (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.

4. Each Party shall transmit electronically to the other Party's contact point its proposed technical regulations and conformity assessment procedures that are in accordance with the technical content of the relevant international standards and that may have an effect on trade.

5. The transmission of technical regulations and conformity assessment procedures made pursuant to paragraphs 3 and 4 shall include an electronic link to, or a copy of, the full text of the document.

6. Further to subparagraph 3(a) and paragraph 4, each Party shall allow a period of at least 60 days following transmission of proposed technical regulations and conformity assessment procedures for the public and the other Party to provide written comments. A Party shall give positive consideration to a reasonable request for extending the comment period.

7. 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.

8. 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.

9. A Party shall give positive consideration to a reasonable request from the other Party, received prior to the end of the comment period following the transmission of a proposed technical regulation, to establish or extend the period of time between the adoption of the technical regulation and the day upon which it is applicable, except where such delay would be ineffective in fulfilling the legitimate objectives pursued.

10. Each Party shall ensure that its adopted technical regulations and conformity assessment procedures are available on official websites that are freely and publicly available.

11. Where a Party detains at a port of entry a good imported from the territory of the other Party on the ground that the good has failed to comply with a technical regulation, it shall immediately notify the importer of the reasons for the detention of the good.

12. Each Party shall implement this Article as soon as is practicable and under no circumstances later than two years from the date of entry into force of this Agreement.

Article 609: Country Coordinators on Technical Barriers to Trade

1. The Country Coordinators designated in Annex 609.1 shall work jointly to facilitate the implementation of this Chapter and the cooperation between the Parties on matters pertaining to this Chapter.

2. The Country Coordinators' functions include:

- (a) monitoring the implementation and administration of this Chapter;
- (b) promptly addressing any issue that a Party raises, under this Chapter or the TBT Agreement, related to the development, adoption or application of standards, technical regulations or conformity assessment procedures;
- (c) enhancing joint cooperation by the Parties in the development and improvement of standards, technical regulations, conformity assessment procedures and metrology;
- (d) exchanging information on standards, technical regulations, and conformity assessment procedures;
- (e) on a Party's written request, consulting on any matter arising under this Chapter;
- (f) reviewing this Chapter in the light of any developments in the TBT Committee or under the TBT Agreement, and, if necessary, developing recommendations for amendments to this Chapter;

- (g) reporting to the Commission on the implementation of this Chapter as appropriate;
- (h) establishing, if necessary to achieve the objectives of this Chapter, issue- or sector-specific *ad hoc* working groups;
- (i) taking any other steps that the Parties consider will assist them in implementing this Chapter and the TBT Agreement and in facilitating trade between the Parties.

3. Consultations under subparagraph 2(e) shall constitute consultations under Article 2104 (Dispute Settlement - Consultations) and shall be governed by the procedures set out in that Article.

4. The Country Coordinator of each Party is responsible for ensuring that the relevant institutions and persons in its territory participate, as appropriate, in the activities related to this Chapter and for coordinating such participation. The Country Coordinators shall elaborate their own work rules and shall meet at least once a year unless the Parties otherwise agree. The Country Coordinators shall carry out their work through communication channels agreed to by the Parties, which may include electronic mail, videoconferencing or other means.

Article 610: Information Exchange

1. Where a Party makes a reasonable enquiry pursuant to the provisions of Articles 10.1 and 10.3 of the TBT Agreement, the other Party shall answer, in print or electronically, ordinarily within 30 days from the date of receipt of the enquiry, but may extend the period of time for answering by giving notice to the enquiring Party prior to the end of the 30 day period.

2. With respect to information exchanges referred to in paragraph 1, the Parties shall apply recommendations 3 and 4 of Section IV (Procedure for information exchanges) set out in *Decisions and Recommendations adopted by the Committee since 1 January 1995*, G/TBT/1/Rev. 8, 23 May, 2002, issued by the TBT Committee.

Article 611: Definitions

For the purposes of this Chapter, the terms and definitions of Annex 1 of the *WTO Agreement on Technical Barriers to Trade* shall apply;

For the purposes of this Chapter:

national government body means a central government body as defined in Annex 1 of the *WTO Agreement on Technical Barriers to Trade*;

TBT Agreement means the *WTO Agreement on Technical Barriers to Trade*; and

TBT Committee means the WTO Committee on Technical Barriers to Trade.

Annex 609.1

Country Coordinators on Technical Barriers to Trade

The Country Coordinators on Technical Barriers to Trade are:

- (a) in the case of Peru, the Ministerio de Comercio Exterior y Turismo, or its successor; and
- (b) in the case of Canada, the Department of Foreign Affairs and International Trade, or its successor.