

CHAPTER 6

TECHNICAL BARRIERS TO TRADE

Article 6.1: Objectives

The objectives of this Chapter are to:

- (a) promote mutual understanding of each Party's standards, technical regulations and conformity assessment procedures;
- (b) strengthen cooperation, including information exchange in the field of standards, technical regulations and conformity assessment procedures, reduce the costs of trade, promote and facilitate bilateral trade between the Parties; and
- (c) ensure that standards, technical regulations, and conformity assessment procedures do not create unnecessary obstacles to trade.

Article 6.2: Scope and Definitions

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations, and conformity assessment procedures of the central government bodies that may affect trade in goods between the Parties.
2. Notwithstanding paragraph 1, 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 as defined in Annex A to the SPS Agreement.
3. Each Party shall take such reasonable measures as may be available to it to ensure compliance with the provisions of this Chapter by local government bodies within its territory which are responsible for the preparation, adoption and application of technical regulations, standards and conformity assessment procedures.
4. For the purposes of this Chapter, the definitions of Annex 1 to the TBT Agreement shall apply.

Article 6.3: 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.

Article 6.4: Standards

1. With respect to the preparation, adoption and application of standards, each Party shall take reasonable measures to ensure that its standardizing body accept and comply with Annex 3 to the TBT Agreement.
2. Each Party shall encourage the standardizing body or bodies in its territory to cooperate with the standardizing body or bodies of the other Party. Such cooperation shall include, but is not limited to, information and experience on standards.
3. Where technical regulation or conformity assessment procedures are required and relevant international standards exist or their completion is imminent, each Party shall use them, or the relevant parts of them, as a basis for their technical regulations and conformity assessment procedures except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued.
4. In determining whether an international standard in the sense of Article 2.4 of the TBT Agreement exists, each Party shall consider the Decision of WTO Committee on Technical Barriers to Trade (hereinafter referred to as “WTO TBT Committee”). Such international standards shall include, but are not limited to, those developed by the International Organization for Standardization (ISO), the International Electrotechnical Commission (IEC), the International Telecommunication Union (ITU) and Codex Alimentarius Commission (CAC).

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. The Parties recognize that a broad range of mechanisms exist 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.

2. The Parties shall exchange information on their experience in the development and application of the approaches in paragraph 1 and other appropriate approaches and therefore encourage their conformity assessment bodies to work closer with a view to facilitating the acceptance of conformity assessment results between both Parties.

3. Each Party shall ensure that conformity assessment procedures are prepared, adopted and applied so as to grant access of like products originating in the territory of the other Party under conditions no less favorable than those accorded to suppliers of like products of national origin.

4. 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.

5. The Parties shall cooperate to limit the processing period and fees to the extent necessary for conformity assessment procedures.

Article 6.7: Transparency

1. Each Party shall allow a period of at least 60 days following the notification of its proposed technical regulations and conformity assessment procedures to WTO Central Registry of Notifications to solicit comments from the other Party except where urgent problems of safety, health, environmental protection, or national security arise or threaten to arise.

2. 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.

3. Each Party should take the comments of the other Party into due consideration, received prior to the end of the comment period following the notification of a proposed technical regulation, and shall endeavor to provide responses to these comments upon request.

4. The Parties shall ensure that all adopted technical regulations and conformity assessment procedures are promptly published or otherwise made available in such a manner as to enable

interested persons of the other Party and the other Party to become acquainted with them.

Article 6.8: Cooperation

1. The Parties shall intensify their joint efforts in the fields of technical regulations, standards and conformity assessment procedures with a view to enhancing the mutual understanding of their respective regulatory systems, improving technical competence and facilitating capacity building activities.

2. Each Party shall, upon request of the other Party, give positive consideration to proposals of cooperation on technical regulations, standards and conformity assessment procedures. Such cooperation, which shall be on mutually determined terms and conditions, may include but is not limited to:

- (a) providing advice or technical assistance relating to the development and application of technical regulations, standards and conformity assessment procedures;
- (b) encouraging cooperation between their respective organizations, public or private, responsible for metrology, standardization, testing, certification and accreditation;
- (c) use of accreditation to qualify conformity assessment bodies;
- (d) enhancing technical capacity in calibration, testing, inspection, certification and accreditation to meet relevant international standards, recommendations and guidelines;
- (e) cooperation in areas of mutual interest in the work of relevant regional and international bodies relating to the development and application of standards and conformity assessment procedures;
- (f) strengthening communication and coordination in the WTO TBT Committee and other relevant international or regional fora; and
- (g) encouraging the implementation of the TBT Agreement.

3. The Parties agree to cooperate on establishment and operation of conformity assessment bodies of the other Party in its own territory.

4. The Parties agree to share information and experiences on developing relevant standards, technical regulations and conformity assessment procedures for products with new technology or new features.

5. The Parties shall encourage their national certification bodies to be member of the IECEE-CB scheme and the national certification bodies to accept each other's IECEE-CB test certificate as the basis for national certification to electric safety requirements in order to reduce duplicative testing and certification requirements.

Article 6.9: Consumer Product Safety

1. The Parties recognize the importance of ensuring safety of consumer products traded between the Parties.
2. The Parties shall exchange information on relevant regulatory systems, incident analysis, hazard alerts, products bans, product recalls and market surveillance activities
3. The Parties agree to cooperate on good regulatory practice, the development and implementation of risk management principles including product safety monitoring, and regulatory enforcement.

Article 6.10: Implementing Arrangements

The Parties agree to make their best efforts to negotiate possible implementing arrangements with regard to conformity assessment cooperation at their earliest convenience. The Parties may conclude further implementing arrangements in the area of mutual interest.

Article 6.11: Marking and Labeling

1. For the purposes of this Article, and in accordance with paragraph 1 of Annex 1 to the TBT Agreement, a technical regulation may include or deal exclusively with marking or labeling requirements.
2. Each Party shall, in accordance with Article 2.2 of the TBT Agreement, ensure that technical regulations, including mandatory marking or labeling of products, are not prepared, adopted or applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, such technical regulations shall not be more trade restrictive than necessary to fulfill a legitimate objective.
3. Where a Party requires mandatory marking or labeling of products:
 - (a) the Party shall endeavour to minimize the requirements for marking or labeling other than marking or labeling relevant to consumers or users of the product;
 - (b) the Party may specify the form of labels or markings in a reasonable manner, but shall not require any prior approval, registration or certification in this regard. This provision is without prejudice to the right of the Party to require prior approval of the specific information to be provided on the label or marking in the light of the relevant domestic regulation;
 - (c) the Party shall, where it requires the use of a unique identification number by economic operators, issue such number to the economic operators of the

other Party without undue delay and on a non-discriminatory basis;

- (d) the Party shall remain free to require that information on the marks or labels be in a specified language. Where an international system of nomenclature has been accepted by the Parties, such nomenclature may be used. The simultaneous use of additional languages shall not be prohibited, provided that:
 - (i) the information provided in the other languages is identical to that provided in the specified language; or
 - (ii) the information provided in the additional language does not constitute a deceptive statement regarding the product; and
- (e) the Party shall, where it considers that legitimate objectives in accordance with the TBT Agreement are not compromised thereby, endeavour to accept non-permanent or detachable labels.

Article 6.12: Measures at the Border

Where a Party detains, at a port of entry, goods including testing samples for conformity assessment exported from the other Party due to a perceived failure to comply with a technical regulation or conformity assessment procedures, the reasons for the detention shall be promptly notified to the importer or his or her representative.

Article 6.13: Committee on Technical Barriers to Trade

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hereinafter referred to as the “Committee”), composed of representatives of each Party as set out in paragraph 4.
2. The Committee’s functions shall include:
 - (a) working to facilitate implementation of this Chapter and cooperation between the Parties in all matters pertaining to this Chapter;
 - (b) monitoring and encouraging 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 cooperation between the Parties in the areas set out in Article 6.8;
 - (e) exchanging information, upon request of a Party, on standards, technical

regulations, and conformity assessment procedures;

- (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) encouraging the discussion on mutual recognition of the conformity assessment results performed in the other Party's territory;
- (h) reviewing this Chapter in light of any development under the WTO TBT Committee and, if necessary, developing recommendations for amendments to this Chapter;
- (i) as it considers appropriate, reporting to the Joint Commission on the implementation of this Chapter;
- (j) taking any other steps that the Parties consider will assist them in implementing this Chapter; and
- (k) upon written request of a Party, consulting with the aim of solving any matter arising under this Chapter within a reasonable period of time.

3. The Committee shall meet at least once a year, unless the Parties otherwise agree. Meetings may be conducted in person, or via teleconference, videoconference, or any other means as mutually agreed by the Parties.

4. For the purposes of this Article, the Committee shall be coordinated by:

- (a) for China, the General Administration of Quality Supervision, Inspection and Quarantine, 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.

5. The authorities set out in paragraph 4 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 6.14: Information Exchange

1. Any information or explanation that is provided upon request of a Party pursuant to this Chapter shall be provided in print or electronically within a reasonable period of time. 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 6.15: Non-Application of Dispute Settlement

Neither Party shall have recourse to Chapter 20 (Dispute Settlement) for any matter arising under this Chapter.