

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, conformity assessment procedures, do not create unnecessary obstacles to trade;
- (c) effectively solve the relevant problems arising from bilateral trade; and
- (d) enhance joint cooperation between the Parties.

ARTICLE 6.2: GENERAL PROVISION

The Parties affirm their existing rights and obligations 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: DEFINITIONS

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

ARTICLE 6.4: SCOPE

1. This Chapter shall apply to the preparation, adoption, and application of all standards, technical regulations and conformity assessment procedures 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 8 (Government Procurement).

ARTICLE 6.5: 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 and 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 on 13 November 2000 by the WTO Committee on Technical Barriers to Trade (Annex 2 to PART 1 of G/TBT/1/Rev. 12), and any subsequent development thereof.

ARTICLE 6.6: TECHNICAL REGULATIONS

1. The Parties agree to make the best use of good regulatory practices, as indicated in the TBT Agreement. In particular, the Parties agree to:

- (a) use relevant international standards as a basis for technical regulations including conformity assessment procedures, except when such international standards would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued; and where international standards have not been used as a basis, to explain, upon request of the other Party, the reasons why such standards have been judged inappropriate or ineffective for the aim being pursued; and
- (b) provide upon request and without undue delay, information, and where appropriate, written guidance on compliance with their technical regulations to the other Party or its economic operators.

2. 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.

3. 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 6.7: 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;
- (d) the adoption of accreditation procedures to qualify the conformity assessment bodies located in the other Party's territory;
- (e) the designation of conformity assessment bodies located in the other Party's territory; and
- (f) the 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.

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 including verified compliance with relevant international standards through means such as accreditation. 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 6.8: TRANSPARENCY

1. The Parties shall endeavor to comply with the decisions and recommendations of the TBT Committee of the WTO.

2. 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. A Party shall give positive consideration to a reasonable request of the other Party for extending the period for comments.

3. 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.

4. 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.

5. 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.

6. Each Party shall publish or otherwise make available to the public, in print or electronically, its responses, or a summary of its responses to significant comments received from the other Party, no later than the date it publishes the final technical regulation or conformity assessment procedure.

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 interval¹ 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.

ARTICLE 6.9: COOPERATION

1. The Parties shall strengthen their cooperation in the field of standards, technical regulations, 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, conformity assessment procedures, that are appropriate for particular issues or sectors.

¹ 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 November 14, 2001 (WT/MIN(01)/17).

2. These initiatives may include, *inter alia*, cooperation on:
 - (a) regulatory issues, such as transparency, the promotion of good regulatory practices, alignment with international standards, use of accreditation to qualify conformity assessment bodies; and
 - (b) capacity building activities, aimed at improving technical infrastructure in conformity assessment (e.g. metrology, testing, certification, and accreditation).
3. Upon request, a Party shall give favorable consideration to a sector-specific proposal that the requesting Party makes for further cooperation under this Chapter.

ARTICLE 6.10: MARKING AND LABELING

1. The Parties note the provision of paragraph 1 of Annex 1 of the TBT Agreement, that a technical regulation may include or deal exclusively with marking or labeling requirements, and agree that where their technical regulations contain mandatory marking or labeling, they will observe the principles of Article 2.2 of the TBT Agreement, that technical regulations should not be prepared with a view to, or with the effect of, creating unnecessary obstacles to international trade, and should not be more trade restrictive than necessary to fulfill a legitimate objective.
2. In particular, the Parties agree that where a Party requires mandatory marking or labeling of products:
 - (a) the Party shall endeavor to minimize its requirements for marking or labeling other than marking or labeling relevant to consumers or users of the product. Where labeling for other purposes, for example, for fiscal purposes is required, such a requirement shall be formulated in a manner that is not more trade restrictive than necessary to fulfill a legitimate objective;
 - (b) the Party may specify the form of markings or labels, but shall not require any prior approval, registration or certification in this regard; except where the Parties have specific marking or labeling in the light of the relevant regulation. The specific marking or labeling shall be confined to the risk of the products to human, animal or plant health or life, the environment, or national safety;
 - (c) where the Party requires the use of a unique identification number by economic operators, the Party shall issue such number to the economic operators of the other Party without undue delay and on a non-discriminatory basis;
 - (d) the Party shall be able to require that the information on the marks or labels be in a specified language. Where there is an international system of nomenclature accepted by the Parties, this may also be used. The simultaneous use of other languages shall not be prohibited, provided

that, either the information provided in the other languages shall be identical to that provided in the specified language, or that the information provided in the additional language shall not constitute a deceptive statement regarding the product; and

- (e) the Party shall, in cases where it considers that legitimate objectives under the TBT Agreement are not compromised thereby, endeavor to accept non-permanent or detachable labels, or marking or labeling in the accompanying documentation rather than physically attached to the product, according to its regulation.

ARTICLE 6.11: BORDER CONTROL AND MARKET SURVEILLANCE

1. 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.

2. 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 6.12: COMMITTEE ON TECHNICAL BARRIERS TO TRADE

1. The Parties hereby establish a Committee on Technical Barriers to Trade (hereinafter referred to as the “Committee”), comprising representatives of each Party.

2. The Committee’s functions shall include:

- (a) working to facilitate the implementation between the Parties in all matters pertaining to this Chapter;
- (b) monitoring the implementation, enforcement, and administration of this Chapter;
- (c) 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 initiatives set out in Article 6.9;

- (e) identifying priority sectors for enhanced cooperation, including giving favorable consideration to any proposal made by either Party;
- (f) facilitating the process for the negotiation of a mutual recognition agreement;
- (g) exchanging information, upon request of a Party, on standards, technical regulations, conformity assessment procedures, including activities developed in regional or international fora;
- (h) reviewing this Chapter in light of any development under the TBT Committee and, if necessary, developing recommendations for amendments to this Chapter;
- (i) establishing, if necessary to achieve the objectives of this Chapter, issue-specific or sector-specific *ad-hoc* working groups;
- (j) considering, if necessary, upon request of a Party, establishing a subsidiary working group for technical discussion with the aim of seeking to address any issue that a Party raises related to the development, adoption, application, or enforcement of standards, technical regulations, or conformity assessment procedures. The meeting of such working group shall take place within a period agreed by the Parties and may be conducted by electronic means;
- (k) reporting to the Joint Committee on the implementation of this Chapter; and
- (l) carrying out other functions as may be assigned by the Joint Committee or agreed by the Parties.

3. The Committee shall meet upon request of a Party. Meetings may be conducted in person or by any technological means available to the Parties.

4. The authorities set out in 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 6.13: INFORMATION EXCHANGE

1. Any information or explanation that a Party provides upon request of the other Party pursuant to this Chapter shall be communicated in printed or electronic form or any other means acceptable to the Parties within a period of 60 days after the receipt of notification.

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.

ANNEX 6-A
COMMITTEE ON TECHNICAL BARRIERS TO TRADE

For the purposes of Article 6.12, the Committee shall be coordinated by the following contact points:

- (a) for Korea, the Korean Agency for Technology and Standards;
- (b) for Costa Rica, Ministry of Foreign Trade (Ministerio de Comercio Exterior);
- (c) for El Salvador, Ministry of Economy (Ministerio de Economía);
- (d) for Honduras, Secretariat of Economic Development (Secretaría de Desarrollo Económico);
- (e) for Nicaragua, Ministry of Development, Industry and Commerce (Ministerio de Fomento, Industria y Comercio); and
- (f) for Panama, Ministry of Commerce and Industries (Ministerio de Comercio e Industrias),

or their successors.